

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

By

Charles E. Schlumberger

Institute of Air and Space Law, Faculty of Law,
McGill University, Montreal.

February 2009

A thesis submitted to McGill University in
partial fulfillment of the requirements of the
degree of Doctor of Civil Law (DCL)

© Charles E. Schlumberger, 2009

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

TABLE OF CONTENTS

ACKNOWLEDGMENTS.....	v
ABSTRACT	viii
RÉSUMÉ.....	ix
INTRODUCTION	1
CHAPTER 1 HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION.....	7
1.1 <i>Early development of air services in Africa</i>	8
1.2 <i>Post World War II era.....</i>	13
CHAPTER 2 MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION.....	20
2.1 <i>Liberalization of Air Services in Africa.....</i>	20
2.2 <i>The Yamoussoukro Declaration</i>	25
2.3 <i>The Yamoussoukro Decision – Main Elements</i>	28
2.4 <i>The Yamoussoukro Decision – Implementation</i>	37
2.5 <i>The Yamoussoukro Decision – Status Quo.....</i>	44
2.5.1 <i>Policy Implementation.....</i>	44
2.5.2 <i>Operational Implementation</i>	47
2.5.3 <i>The African Air Transport Industry and Liberalization.....</i>	53
2.6 <i>Conclusion</i>	56
CHAPTER 3 CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION.....	58
3.1 <i>Introduction.....</i>	58
3.2 <i>The Treaty of Abuja.....</i>	59
3.2.1 <i>The Origins of the Treaty of Abuja</i>	59
3.2.2 <i>The Establishment of the African Economic Community</i>	63
3.2.3 <i>Ratification and Entry into Force</i>	67
3.3 <i>Entry into force of the Yamoussoukro Decision</i>	68
3.3.1 <i>The Abuja Treaty as Legal Basis of the Yamoussoukro Decision.....</i>	68
3.3.2 <i>The Establishment of the African Union</i>	73
3.3.3 <i>The Ratification Period of the Yamoussoukro Decision based on the Abuja Treaty</i>	75
3.3.4 <i>The Status of the non-Abuja Treaty States</i>	77
3.3.5 <i>Conclusion about entry into force and Member States of the Yamoussoukro Decision.....</i>	83
3.4 <i>Elements of implementation of the Yamoussoukro Decision.....</i>	84
3.4.1 <i>Establishment of competition rules.....</i>	84
3.4.2 <i>Establishment of an arbitration procedure</i>	87
3.4.3 <i>Establishment of a Monitoring Body.....</i>	89
3.4.4 <i>Establishment of an Executing Agency</i>	91
3.4.5 <i>Safety and Security requirements</i>	94

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

3.4.6	Implementation - Condition precedent or subsequent?	123
3.5	Conclusion	130
CHAPTER 4 REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION		132
4.1	<i>North Africa (The Arab Maghreb Union and The League of Arab Nations)</i>	133
4.1.1	The Arab Maghreb Union	133
4.1.2	The League of Arab States	143
4.1.3	Conclusion: Arab States and the Yamoussoukro Decision	157
4.2	<i>West & Central Africa (ECOWAS, WAEMU, BAG, and CEMAC)</i>	159
4.2.1	Economic Community of West African States (ECOWAS)	160
4.2.2	The West African Economic and Monetary Union (WAEMU)	167
4.2.3	The Banjul Accord Group of States	196
4.2.4	The Economic and Monetary Community of Central Africa (CEMAC)	204
4.3	<i>Southern and Eastern Africa (COMESA, SADC, and EAC)</i>	218
4.3.1	The Common Market for Eastern and Southern Africa (COMESA)	218
4.3.2	Southern African Development Community (SADC)	233
4.3.3	East African Community (EAC)	243
4.4	<i>Law making by Regional Economic Communities (RECs) in Africa</i>	261
4.5	Conclusion	279
CHAPTER 5 AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION		282
5.1	<i>Data source and methodology of analyzing air service markets</i>	282
5.2	<i>Africa's air traffic development between 2001 and 2007</i>	288
5.2.1	Intercontinental air traffic	288
5.2.2	International air traffic within the African continent ("intra-African" air traffic)	296
5.2.3	Domestic air traffic markets	306
5.3	<i>Evidence of the impact of the Yamoussoukro Decision on traffic and airline fleets</i>	310
5.3.1	General traffic analysis	310
5.3.2	General fleet analysis	313
5.3.3	The impact of liberalization on traffic and air carriers by region	316
5.4	<i>Conclusions on the impact of liberalization</i>	345
CHAPTER 6 REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA		350
6.1	<i>Economic benefits of the air transport sector in general</i>	352
6.1.1	The direct, indirect, and induced global effect of air transportation	352
6.1.2	The effect of air transportation on other industries	356
6.1.3	Social impact of air transportation	362
6.2	<i>Potential impact of liberalization of air transport services</i>	364
6.3	<i>Economic significance of the liberalization of air transport services in Africa</i>	380
6.4	Conclusion	386
CHAPTER 7 CONCLUSIONS AND POLICY RECOMMENDATIONS FOR THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION		389

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ANNEX I – African Prewar Air Routes	393
ANNEX II – Freedoms of the Air.....	394
ANNEX III –African Country Overview	396
ANNEX IV – Bilateral Air Service Agreements concluded by Ethiopia with other African States as of October 2006	404
ANNEX V – Safety Review and Rating of African States.....	419
ANNEX VI – Safety Oversight and Accident Rates	426
ANNEX VI – Regional Implementation and Traffic Impact.....	429
ANNEX VIII - Top 30 intercontinental routes for Africa.....	430
ANNEX IX – Codification of Aircraft Types for the Fleet Analysis	432
BIBLIOGRAPHY	443
PRIMARY MATERIALS	443
INTERNATIONAL MATERIALS	443
Treaties and Other International Agreements	443
Documents of International and Regional Organizations	447
SECONDARY MATERIALS.....	456
BOOKS AND BOOK SECTIONS	456
JOURNAL AND MAGAZINE ARTICLES	461
OTHERS	465

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ACKNOWLEDGMENTS

I would like to express my gratitude and thanks to Professor Paul S. Dempsey, Director of the Institute of Air and Space Law (IASL), McGill University, for motivating me to initiate this research, and for providing me with excellent guidance and enlightening suggestions throughout the preparation of this dissertation. His academic excellence and detailed knowledge in the field of air transport policy were essential elements for the successful conduct of this research on air transportation in Africa. Also at the IASL, I want to give special thanks to my fellow colleague Yaw Otu Mankata Nyampong, D.C.L. Candidate, for his continued support and advice during the preparation of the thesis.

My studies and research would not have been possible without the consent and agreement of my employer, the World Bank. I am especially grateful to Mrs. Maryvonne Plessis-Fraissard, former Director of the Transport and Urban Development Unit, and Marc H. Juhel, Sector Manager Transport, for actively supporting my research by recognizing that it beneficially serves the interests both the World Bank and my own academic education. In addition, I want to recognize two colleagues of mine at the World Bank, Michel J. Iches, Senior Air Transport Economist, and Heinrich C. Bofinger, Air Transport Consultant, for their dedication and efforts in supporting my research at the headquarters and in the field.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

This research would not have been possible without the willingness of numerous African government officials, airline executives and staff, and other persons engaged in air transportation in Africa to open their books, databases, or provide background information to reveal crucial information, sometimes even considered confidential by many. A warm and collective expression of thanks and appreciation is devoted to them.

Finally, I want to thank my wife Maria Teresa Villanueva de Schlumberger and our two children, Ana Cristina and Eric Manuel, for their understanding and sacrifice during the many nights and weekends I spent researching and writing the thesis. Without their support, my work would certainly not have been so fruitful; I have promised to stay home and dedicate more time to them in the future.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

This thesis is dedicated to the many African men and women who, every day, fulfill their duty as pilots and flight attendants to the best of their ability to ensure safe air travel, while sometimes facing various kinds of difficult and exceptional challenges.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ABSTRACT

This thesis examines progress made in liberalizing the economic regulation of air transport services in Africa through evaluating advancements made in the implementation of the Yamoussoukro Decision, and the effects observed in the sector.

Despite the fact that the Yamoussoukro Decision was reached ten years ago, very little is known about the progress achieved by its implementation in various regions of Africa. While it is generally acknowledged that the formal application of the principles of the Decision to liberalize air services remains incomplete, the thesis outlines and establishes developments in various African markets that point toward a disconnection between the policy and legal framework and the operational realities of the sector. This disconnection, driven mainly by the governments of a small number of African countries who aim at protecting their weak or failing national carriers by refusing to liberalize their air transport markets irrespective of the obligations they have assumed under the Decision, has hindered full liberalization of the African air transport sector and effectively prevented African nations from taking full advantage of the positive economic impacts of air transportation. This thesis reviews these economic aspects, as well as the potential economic impact of full liberalization of African air transport.

This thesis demonstrates that, although at the operational level significant progress has been achieved in the liberalization of air services through the signing of numerous bilateral agreements, policy implementation remains incomplete or stagnant in many regions of the continent, thereby hindering the full deployment of the economic potential of Africa. The purpose of this research is to recommend a set of policy measures for African governments in order to move towards full application of the Yamoussoukro Decision to liberalize air services.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

RÉSUMÉ

La présente thèse traite des progrès de la libéralisation des services de transport aérien en Afrique. Elle s'appuie pour cela sur une évaluation des avancées réalisées dans la mise en œuvre de la Décision de Yamoussoukro ainsi que des effets observés dans le secteur.

La Décision de Yamoussoukro libéralisant les services aériens en Afrique date d'il y a déjà dix ans, et pourtant l'état d'avancement de sa mise en œuvre dans les différentes régions est souvent mal connu. Alors qu'il est communément admis que l'application formelle des principes énoncés dans l'accord reste incomplète, la thèse repère nombre de développements intervenus sur différents marchés africains et tendant à mettre en lumière le décalage entre les réalités pratiques du secteur et la réalisation du cadre politique et juridique prévu par la Décision. Bien que ce décalage soit surtout le fait d'un petit nombre de gouvernements soucieux de protéger leurs transporteurs défaillants, il fait obstacle à une libéralisation complète, empêchant ainsi l'Afrique de profiter à plein des impacts positifs du transport aérien. La thèse passe en revue les implications économiques à attendre d'une libéralisation complète. Le but de cette recherche est d'identifier un ensemble de mesures à recommander aux gouvernements africains pour faire progresser la libéralisation effective des services aériens.

La thèse démontre par ailleurs que la libéralisation des services aériens a connu des progrès substantiels au plan pratique grâce à la signature de nombreux accords bilatéraux, alors même que la mise en œuvre de la politique de libéralisation reste à la traîne dans plusieurs régions du continent, obérant ainsi le plein déploiement du potentiel économique du transport aérien pour l'Afrique.

INTRODUCTION

INTRODUCTION

As compared to other regions of the world, air transport in Africa is seriously lagging behind in terms of growth, safety, and efficiency. Despite the fact that the air transport sector could play a key role in the economic development of the continent, many bilateral and administrative hurdles remain which hinder the sector's ascendancy to a modern air transport network. One such pertinent hurdle is the perceived non-implementation of the Yamoussoukro Decision, a regional agreement intended to fully liberalize intra-continental air services among all African nations who are party to it. The present thesis examines Africa's air transport sector and the progress it has made towards liberalization since the advent of the Yamoussoukro Decision. It examines the legal and policy aspects of implementing and applying the decision, both on a continental and regional level. It also considers whether the impact of those steps so far taken towards liberalization can be measured in certain regions, and concludes with policy recommendations backed by economic arguments in support of the full liberalization of air services in Africa.

The thesis commences with an outline of the history of the African aviation sector in Chapter 1. It explains that, on the one hand, it was recognized in Africa at a very early stage that air transport was an essential mode of transportation, and this was marked by a long trail of emergence and

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

disappearance of various African carriers. On the other hand, until the tide of independence began blowing over Africa in the late 1950's and early 1960's, the bulk of African aviation activity was developed and controlled by its former colonial masters. Even with the advent of independence, air transport policy in Africa still largely followed policies adopted by European countries. Despite the fact that most independent African countries swiftly established international bilateral air service relationships with each other soon after independence, the African air transport sector continued to face numerous difficulties in that era.

In Chapter 2, the major elements and objectives of the Yamoussoukro Decision are reviewed and discussed. The Chapter explains that the initial move for policy change in the air transport sector came following the recognition that smaller African States needed to cooperate in order to gain the necessary strength to compete with established and dominant European and US carriers. This understanding emerged at several early conferences where African unity came to be seen as one of the underpinning elements of sustainable economic development. Air transportation had always been considered as an important means of integration and economic stimulus between African countries. However, broader attempts to achieve cooperation among carriers, such as the Yamoussoukro Declaration, did not materialize and as such had no effect. Subsequently, most of the operational cooperative ventures, such as the West African multi-national carrier Air Afrique, eventually disappeared.

Nevertheless, the gradual policy change from pure protection of the African air transport market which was often controlled by state-owned

INTRODUCTION

carriers, towards a more open and cooperative model strengthened the notion that intra-African air service should be liberalized. This eventually led to the adoption of the Yamoussoukro Decision, which aims at liberalizing intra-African air transportation up to the so called *Fifth Freedom*. The Chapter explains all the major elements of the Decision, such as the Monitoring Body and the competition regulation regime thereby established. Special focus is placed on the meaning of the term *implementation* in the context of the Decision, as the Yamoussoukro Decision is often referred to as not yet being implemented. A distinction between policy implementation and operational implementation is made, and the Chapter concludes by arguing *inter alia* that the vast majority of countries are willing to apply the Decision and open their air transport markets.

With the objective of examining in detail the current stage of implementation of the Decision, Chapter 3 examines the conditions and requirements for implementation. First, it reviews the legal origin of the Yamoussoukro Decision: the so called “Abuja Treaty”, a multilateral agreement executed between most African States, which despite creating the African Economic Community, did not contain any provision requiring ratification by any of the States signatory to it. The Yamoussoukro Decision was agreed upon on the basis of and within the framework of the Abuja Treaty. Chapter 3 therefore concludes that States that are not party to the Abuja Treaty are also not party to the Yamoussoukro Decision. This is followed by an examination of the degree of implementation of the various elements of the Yamoussoukro Decision. Special attention is paid to the safety and security requirements of the decision, issues

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

which continue to pose substantial challenges to the development of air services in Africa. Finally, the issue as to whether implementation is a condition precedent or a condition subsequent is discussed, and this leads to the Chapter's conclusion that operational application of the Decision should not be stalled or hindered by the argument that policy implementation has not yet been completed.

Implementation of the Yamoussoukro Decision by regional economic organizations is also very important despite the fact that the Decision is a pan-African agreement and primarily binds only those States who are party to it. In this connection, several African regional organizations have achieved varying levels of progress in implementation, ranging from no steps having been taken at all so far to full liberalization beyond the demands and principles of the Decision. Chapter 4 examines each region's progress in developing the necessary regulatory framework for implementing the Decision. Particular attention is focused on assessing the legal structure and the powers of each of the regional organization in order to determine if the regulations adopted in support of liberalized air transport policy can be easily implemented and enforced in Member States. The Chapter summarizes the different levels of progress in implementation achieved by the various regions. It concludes that Africa provides a very fragmented picture of various heterogeneous economic and political organizations, and this is reflected in the degree of application of the decision.

One of the key questions that remains unanswered to date is the extent to which the Yamoussoukro Decision has influenced Africa's air transport sector throughout its existence. Chapter 5 of this thesis evaluates data on both

INTRODUCTION

traffic flow and fleet development of various African carriers between 2001 and 2007. This evaluation provides clear indications that liberalization of air services, as envisaged by the Decision, has already had positive impacts on certain States and regions in Africa, whereas others have stagnated or even lost traffic. The impact analysis also shows a positive trend of more efficient usage of fleet capacity, and it underlines the statement that operational implementation of the Decision on a bilateral basis between countries is paramount for the sustainable development of the sector.

Since the early days of independence, many African nations and organizations have considered the development of air services as a key factor for economic development of the continent. During the initial stages of developing reformed air transport policies, measures discussed aimed primarily at achieving cooperation between African carriers. Liberalization of air services between States only came on board very recently. While a majority of African States consider liberalization of air services beneficial for the air transport sector, a few still argue that liberalization is detrimental to the sector. Chapter 6 of this thesis therefore reviews the economic and social benefits which can be derived from air transportation. It focuses particularly on the potential economic benefits that Africa as a continent stands to gain from a fully liberalized regime of air transport. The Chapter further evaluates various reports on the impact of liberalization of air services around the world, and draws conclusions for the African continent. The objective of this Chapter is to provide sound policy guidance and recommendations to African policy makers and decision makers for purposes of

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

encouraging them to implement measures that will lead to the sustainable development of the air transport sector.

Chapter 7 concludes the thesis with concrete policy recommendations for the full application and implementation of the Yamoussoukro Decision. It makes the case that overall, Africa stands to benefit immensely from a liberalized regime of air services on the continent. It also appeals to decision makers not to continue to drag the application of the liberalization process by insisting, for example, that certain elements of the Decision (such as competition regulations) are missing, and therefore the remainder of the principles of the Decision cannot be applied. Currently, this attitude is the biggest obstacle stalling the application of the Decision in certain countries. Ethiopian Airlines represents the most positive example of the benefits to be derived from liberalization, and it should be acknowledged as the model application of the Yamoussoukro Decision. On the other hand, there are many negative cases of protected state-owned carriers which must be eliminated as they hinder the development of air services and often drain sparse public funds in poor countries.

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

CHAPTER 1

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

Today, air transport accounts for up to 40% of world trade in terms of the value of goods transported.¹ It plays a significant role in the economic development of many if not all countries around the world. In Africa, where poor roads, ports and railway infrastructure often constrain the rapid and efficient transportation of passengers and high value goods earmarked for export, air transport holds both a potential for growth and a role for the economic development of the continent by fostering trade and foreign investments. The advantages of air transportation for Africa were recognized in the very early stages of aviation. To a certain extent, air transport was used in support of the exploration, colonization and development of the continent of Africa in the early 20th century. On the other hand, national air carriers of newly independent African States often became a symbol of freedom and sovereign identity. Today, to a very large extent, the history of the development of air transportation in Africa continues to influence discussion of changes in air transport policy, such as the

¹ See Air Transport Action Group *The Economic and Social Benefits of Air Transport* (Geneva, Switzerland: Air Transport Action Group (ATAG)) at 2.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

implementation a liberalized framework which might in some cases result in the liquidation of national carriers.

1.1 Early development of air services in Africa

Initial steps towards the development of air transportation in Africa date as far back as 1919. In that year, the British Royal Air Force (RAF) pioneered the first flights across the continent on what was called the Cairo-to-the-Cape route.² The RAF aimed primarily at flying across and landing in British colonies and territories. This led to the establishment of an East African trunk route, which passed through Egypt, Sudan, Kenya, Uganda, and Rhodesia,³ to reach South Africa. However, these flights, referred to as “formation flights”, were primarily exploratory in nature, and did not transport any passengers or commercial payloads.⁴

Commercial international air services to Africa began in 1930 after British Imperial Airways concluded an agreement with the British Government to operate a weekly service from London to Cape.⁵ In similar fashion as the British Government which concentrated the bulk of its air services to its territories in Africa, France and Belgium also set up their own networks of air routes in Africa.

² See H. Burchall, "Air Services in Africa" (1933) 32:126 *Journal of the Royal African Society* 55 at 57 [Burchall].

³ Today Zimbabwe

⁴ Burchall, *supra* note 2 at 58.

⁵ *Ibid.*, at 60.

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

The French trunk route went across Morocco and Mauritania, to reach Dakar in Senegal. The Belgian trunk route remained within its territories, serving some major cities within the Belgium Congo.⁶ The link back to Belgium was maintained by a joint French-Belgian route across French Congo and French West Africa. By 1932, a network of several trunk and short routes had been developed, and commercial air service had already become a reality in Africa.⁷

Domestic and regional commercial aviation in Africa started as far back as 1919 when several small air operators emerged to provide air transportation within the boundaries of African territories held by the same colonial master. Early pre-World War II examples include, in North Africa, the *Compagnie Transafricaine D'Aviation*, which commenced as a private company in Algiers in 1929, and subsequently merged in 1935 into the airline *Régie Air Afrique*. This carrier maintained air routes from Algiers to Brazzaville in the French Congo.⁸ The first carrier to be called *Air Afrique* was set-up in Algeria by the French colonial government in 1937.⁹ The carrier quickly established air routes to Paris and Marseilles; to West African destinations in Mali, (such as Timbouctou, Mopti, and Bamako); to Dakar in Senegal; and, to several Central African cities (such as Niamey in Chad, Cotonou in Benin, and Bangui in Central Africa). From Bangui, it even maintained a route to Eastern and Southern Africa,

⁶ *Ibid.*, at 59.

⁷ *Ibid.*, at 66, Chart reproduced in Annex I.

⁸ Ben R. Guttery, *Encyclopedia of African Airlines* (Jefferson, North Carolina: McFarland & Company, 1998) at 17 [Guttery, *Encyclopedia of African Airlines*].

⁹ *Ibid.*, at 11.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

reaching Brazzaville in the former French Congo, Léopoldville and Stanleyville (today Kinshasa and Kisangani) in the Belgian Congo (today the Democratic Republic of Congo (DRC)), Tete and Queilimane in Mozambique, and finally, Tananarive (today Antananarivo), the capital of Madagascar.

Another successful early North African carrier was *Misr Airwork*, which was created in Egypt in 1932 by Alan Muntz, Chairman of the British operator *Airwork*. The new Egyptian airline started by serving several domestic destinations, and then expanded its pre-World War II network to a few cities in the Middle East.¹⁰ In 1949, the carrier became the government owned airline *Misair*, which in 1968 was integrated into the *United Arab Airlines*. This carrier was owned and operated by the United Arab Republic, which was created in 1958 when Egypt and Syria merged into one republic. Eventually, after the United Arab Republic folded in 1971, the carrier became known, and continues to operate today, as *Egypt Air*.

The first West African carrier was created in Senegal in 1935, when the French independent airline *Aéromaritime* started operating between Cotonou in Dahomey (today Benin) and Niamey in Niger.¹¹ Soon, the carrier established other routes in West and Central Africa, linking Dakar in Senegal with Conakry in Guinea, Douala in Cameroun, Libreville in Gabon, and Pointe-Noire in Congo. In Central Africa, one of the first African carriers was established in the former Belgian Congo (today the Democratic Republic of Congo) when, in 1919

¹⁰ *Ibid.*, at 51.

¹¹ *Ibid.*, at 154.

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

the Belgian *Syndicat National pour l'Étude de Transport Aériens* started operations between Leopoldville (today Kinshasa) and N'Gombe. In 1920 the operator became known as the *Ligne Aérienne du Roi Albert (LARA)* and it served additional domestic designations in a Levy Lepen seaplane.¹² Thereafter, in 1925, the *Société Air Afrique* was formed, which merged into the Company *Transafricaine d'Afrique* in 1929.

State-owned carriers were created in the former Portuguese colonies of Africa and they operated as a division of the Ports, Railways, and Transport Services Administration of the Portuguese government. These included the *Divisão de Transportes Aéreos de Angola (DTA)*, (which operated from 1938 to 1973 when it became Angola's current national carrier *TAAG/Angola Airlines*), and the *Divisão de Exploração dos Transportes Aéreos (DETA)*, (which existed from 1936 to 1980, when it changed its name to today's *Linhas Aéreas de Moçambique (LAM)*). Both carriers served some domestic and regional destinations in neighbouring countries.¹³ However, as with most of the early carriers in Africa, direct flights or air services to the capital cities of the colonial rulers were the prime destinations where the most profit was to be generated.

One of the first commercial operators in East Africa was Wilson Airways, which was created in Kenya in 1929 by Florence Kerr Wilson, the

¹² *Ibid.*, at 42.

¹³ For DTA these included Pointe-Noire in Congo, and later Lourenço Marques (today Maputo) in Mozambique; and for DETA the early destinations were several domestic stops such as Inhambane, Beira, and Quelimane, as well as Johannesburg. See *ibid.*, at 130.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

widow of an expatriate farmer.¹⁴ The carrier quickly established a regional network to destinations in Kenya, Tanganyika (today Tanzania), Rhodesia (today Zimbabwe and Zambia), and South Africa. However, it ceased operations in 1939 on the eve of World War II, and did not re-emerge after the war.

Southern Africa saw several early commercial operators. In South Africa, the very first operator was *Aviation Limited*, which was started in 1919 to offer flights for reward in a de Havilland D.H. 6 biplane from an airfield at Miuzenberg.¹⁵ It soon operated several domestic stops, but went bankrupt in 1922 following a fatal crash killing four. The most successful airline start-up in Southern Africa happened in 1934 when the South African Railways and Harbours Administration formed a new division called *South African Airways* (SAA).¹⁶ During the pre-World War II era, SAA established a solid domestic and regional network by integrating smaller carriers (such as the *South West African Airways* formed in 1930), and by expanding its air services to regional destinations in Rhodesia and Nyasaland (today Zimbabwe, Zambia, and Malawi), and Mozambique. After the war, SAA expanded its network to many intercontinental destinations to become the most successful air carrier in sub-Saharan Africa. Another early Southern African carrier was founded in Namibia in 1931 when the German Junkers Company of Dessau launched *South West African*

¹⁴ *Ibid.*, at 102.

¹⁵ *Ibid.*, at 165

¹⁶ *Ibid.*, at 182.

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

Airways.¹⁷ The carrier operated two Junkers A 50 and a Junkers F 13 aircraft, serving several destinations in Southern Africa. Six years after its creation, the carrier was acquired by South African Airways.

The above description summarizes pre-War air services which were conducted primarily within the territorial boundaries of the respective colonial masters. Some flights, however, were conducted between these territories, for example flights between Rhodesia (British until 1966) and Mozambique (Portuguese until 1975). In all such cases, those flights were agreed upon and administered by the respective colonial rulers, and the implementing carriers always maintained their European relationships and agreements. There is therefore no evidence of any pre-World War II bilateral air service agreements concerning commercial flights between African countries. After the Second World War, the commercial air service network in Africa continued to follow the territorial concept, which primarily focused on serving colonial territories.

1.2 Post World War II era

Several new carriers were formed during the time between the end of World War II and the attainment of independence by most African States around 1960. Among the most successful of these is Ethiopian Airlines, which was launched by independent Ethiopia in close cooperation with the United States.¹⁸ Over the years, the carrier has grown to become one of the most important African carriers serving many African, as well as intercontinental

¹⁷ *Ibid.*, at 135.

¹⁸ *Ibid.*, at 59.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

destinations.¹⁹ To date, the carrier remains State-owned and operates profitably by maintaining a positive and modern image. Another significant post-World War II carrier was the regional airline *East African Airways*, which was formed within the East African Community (EAC) (i.e., Kenya, Tanganyika (today Tanzania), and Uganda) in 1946.²⁰ The carrier quickly established many routes to serve East and Southern African destinations, as well as a strong intercontinental network, which included several cities in Europe, the Middle East, and Asia. However, the carrier ceased operations in 1971 when it fell apart and Kenya started its own carrier *Kenya Airways*.

In West Africa, the regional carrier *West African Airways Corporation* was established in 1946 by the then newly created West African Air Transport Authority, which was responsible for the development and exploration of aviation within the British West African colonies of Nigeria, Gold Coast (today Ghana), Sierra Leone, and The Gambia.²¹ The carrier ceased operations in 1958 when its assets and operations were distributed among the newly established national airlines of the constituent States: *Gambia Airways*, *Nigeria Airways*, and *Sierra Leone Airways*.

A similar model was followed in Southern Africa when, in 1946, the Central African Air Authority was established by the three colonies of

¹⁹ See Annex IV of this Dissertation – Bilateral Air Service Agreements concluded by Ethiopia with other States as of October 2006.

²⁰ Guttery, *Encyclopedia of African Airlines*, *supra* note 8 at 89.

²¹ King George VI of England signed the West African Territories Order-in-Council on 15 May 1946 establishing the West African Air Transport Authority. The regional carrier was therefore considered the national airline of British West Africa. See *ibid.*, at 149.

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

Northern and Southern Rhodesia (today Zambia and Zimbabwe), and Nyasaland (today Malawi).²² The authority created a new carrier called *Central African Airways*, which became one of the dominant players in the Southern hemisphere serving many destinations in the territories of its owner countries, as well as in South Africa, Tanganyika (today Tanzania), Kenya, Mozambique, Madagascar, and Mauritius. Like many other regional airlines, this regional airline was dissolved in 1967 following the establishment of independent national carriers by the constituent States: *Air Malawi*, *Air Rhodesia*, and *Zambia Airways*.

One positive experiment in this period was the creation the multi-State owned West African carrier *Air Afrique* in 1961. Under the leadership of France, twelve African nations signed the Treaty on Air Transport in Africa which became known as the Yaoundé Treaty on 28 March 1961, thereby establishing *Air Afrique*.²³ The newly established West African carrier operated for over 40 years, serving many destinations in West and Central Africa, and in Europe.

As with pre-World War II air traffic, the post-War air services were based primarily on European relationships and agreements. It was only in the early 1960s, when many former colonies became independent countries, that

²² *Ibid.*, at 224

²³ Air Afrique was registered in Paris, France, as *Société de Transports Aériens en Afrique*. At creation, its main shareholders were Air France, Union Aéromaritime de Transport (UAT), Société pour le Développement du Transport Aérien en Afrique (SODETRAF), the French Caisse de Développement, the West African Development Bank, and the following West African countries: Benin, Cameroon, Central African Republic, Chad, Congo-Brazzaville, Gabon, Ivory Coast (Côte d'Ivoire), Mali, Mauritania, Niger, the Republic of Upper Volta (today Burkina Faso), and Senegal. Cameroon and Gabon withdrew from the consortium in the early 1970s, while Togo joined in January 1968. However, even this quite promising set-up failed when Air Afrique went bankrupt and was liquidated in 2002. See *ibid.*, at 81.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

African States began to negotiate and conclude their own agreements on air services. During that time, most of the newly independent African States also created their own, mostly government owned, national air carriers, of which many failed subsequently.²⁴ Many of the government-owned carriers of the newly independent African States pursued the same business model, which consisted of using the profits gained on international routes to large European cities (usually those of their former colonial masters) to cross-subsidize their costly yet extensive domestic route network.²⁵ This often resulted in the maintenance of a strict bilateral relationship on intercontinental routes, where capacity was limited and controlled in order to maximize profitability. The development of regional air services was mostly seen as a secondary objective, especially when a costly domestic network had to be maintained.

Nevertheless, following the international example pertaining at the time, intra-African air transport services came to be regulated by the traditional framework of bi-lateral air service agreements (bilaterals) executed between States. The typical bilaterals of the 1960s were based on the *traditional-predetermination model*, under which market access and capacity were

²⁴ Examples include, in alphabetical order, Botswana National Airlines (1966-1969), Air Burkina (1984), Royal Air Burundi (1960-1963), Air Tchad (1966), Air Congo – Brazzaville (1961-1965), Air Congo, later Air Zaire (1961-1995), Air Djibouti (1963-1970), Lignes Aériennes de Guinea Ecuatorial (1969), Gambia Airways (1964), Ghana Airways (1958), Air Guinée (1960), Air Bissau (1960), Lesotho Airways (1967-1970), Libyan Arab Airlines (1964), Air Malawi (1964), Air Mali (1960), Air Mauritanie (1962), Air Mauritius (1967), Royal Air Maroc (1957), Air Namibia (1991), Air Niger (1966-1993), Nigeria Airways (1958), Air Rwanda (1975-1996), Air Senegal (1962), Sierra Leone Airways (1958-1987), Somali Airlines (1964), Royal Swazi National Airways (1978), Tunis Air (1948), Zambia Airways (1963-1994), and Air Zimbabwe (1980). See generally Guttery, *Encyclopedia of African Airlines*, *supra* note 8.

²⁵ *Ibid.*, at 1.

HISTORICAL BACKGROUND OF THE YAMOUSSOUKRO DECISION

restricted.²⁶ However, whereas the international example has since changed significantly, leading to the active commencement and pursuit of liberalization of air services in the US since the late 1970s,²⁷ and in Europe about ten years later, African air services have continued to remain generally restrictive, costly and inefficient.²⁸

In order to address these shortcomings, African Ministers responsible for civil aviation adopted the so called Yamoussoukro Decision on the liberalization of access to air transport markets in Africa on 14 November 1999.²⁹ In essence, the Yamoussoukro Decision is a multilateral agreement among most of the 54 African countries.³⁰ It allows for the multilateral exchange of up to fifth

²⁶ See Rigas Doganis, *The Airline Business in the 21st Century* (London and New York: Routledge, 2001) at 19. Doganis refers to the pre-liberalization type of bilateral air service agreements which emerged in the aftermath of the Second World War as having the prime purpose of controlling market access (points served and traffic rights), market entry (designation of airlines) and capacity and frequencies. This was the outcome of a failed attempt, spearheaded by the United States, towards creating a competitive regime for international air transport with minimal regulation at the intergovernmental conference in Chicago in 1944.

²⁷ See commentary on the details of the *US Airline Deregulation Act of 1978* in Paul Stephen Dempsey & Laurence E. Gesell, *Air Commerce and the Law* (Chandler, Arizona: Coast Aire Publications, 2004) at 192.

²⁸ A World Bank study ascribes this to high operating and capital costs, which include: airline insurance premiums which are 40% higher; fuel costs which are 50% higher; 15%-30% higher lease rates for equipment, 100% higher air navigation fees (compared to South America), high handling and maintenance costs, and the difficulties in obtaining the necessary working capital. See *Air Transport Trends and Economics in Western and Central Africa* by The World Bank (Washington DC: The World Bank Group, 1998) at 30.

²⁹ *Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa*, 14 November 1999, ECA/RCID/CM.CIVAC/99/RPT, online: United Nations Economic Commission for Africa (UNECA) website, <<http://www.uneca.org/itca/yamoussoukro/>> [*Yamoussoukro Decision*].

³⁰ There are 53 internationally recognized States in Africa. However, the African Union has granted membership to the Saharawi Arab Democratic Republic, the territory of the

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

freedom air traffic rights between any member African States on a simple procedure of notification.³¹ The Yamoussoukro Decision entered into force and became fully binding on 12 August 2002 following its endorsement by the Heads of States and Governments of the Organization of African Unity (OAU) in July 2000. According to the Yamoussoukro Decision, its provisions became enforceable throughout the continent of Africa once it was endorsed by the Heads of States of the African Union under the African Economic Community Treaty³² framework in 2000.

Article 10 of the Treaty establishing the African Economic Community (AEC), also known as the “Abuja Treaty”, provides that the Assembly of the African Economic Community shall act by decisions, and that these decisions shall be binding on Member States and organs of the Community, as well as regional organizations. The legal basis for ratification of the Yamoussoukro Decision is therefore considered to be the Abuja Treaty, which was adopted by most of the 54 African States.³³

former Spanish Sahara, which proclaimed itself a country against territorial claims of Morocco. The thesis shall therefore assume that there are 54 States in Africa.

³¹ The “five freedoms” originate from the negotiations that took place during the International Civil Aviation Conference in Chicago in November of 1944. The US delegation called for “five freedoms” (see definition of freedoms of the air in Annex II of this dissertation) of the air where capacities, frequencies, and fares would be left to be determined by market forces. See *Report of the Chicago Conference on International Civil Aviation* by United Nations Information Organization (UNIO) at 1, 4 and 31.

³² *Treaty Establishing the African Economic Community*, 5 September 1991, 30 ILM 5 [Abuja Treaty].

³³ See countries that adopted the treaty in Annex III. Article 12.1.2 of the Yamoussoukro Decision defines the procedure for States that are not part of the Abuja Treaty. However, national ratification is required for such States.

HISTORICAL BACKGROUND OF THE YAMO USSOUKRO DECISION

However, twenty years after the initial Yamoussoukro Declaration, and over five years after the Yamoussoukro Decision became fully binding, only a few instances of the exercise of the new air traffic rights granted by applying the principles and mechanism of the Yamoussoukro Decision have been observed. The reasons underlying the non-application of the Yamoussoukro Decision range from non-implementation of certain elements of the decision (e.g., the establishment of competition rules, a dispute settlement mechanism, and an operational monitoring body) to simple non-adherence by the States who are party to it who continue to agree to traditional restrictive bilaterals as between themselves.³⁴

³⁴

See the example of Zambia in section 2.5.2 – Operational Implementation below.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

CHAPTER 2

MAJOR ELEMENTS AND

OBJECTIVES

OF THE YAMOUSSOUKRO DECISION

2.1 Liberalization of Air Services in Africa

Africa's air transport industry has always been a relatively small player when compared with the global industry. In terms of revenue passenger-kilometers (RPK)³⁵ flown, the intra-African market represents less than 1% of the global market, and the total African RPK (intra African and intercontinental traffic) account for only 4.12% of global RPK.³⁶ With a potential market of more than 12% of the World's population, African air traffic is expected to grow at 5.7%, which is considerably faster than the world average of 4.9%.³⁷ However, despite strong expected growth, it is prevalent that especially intra-African markets are still very thin and, in most regions, a true competitive environment does not exist.

Until 1991, nearly all African air carriers were state-owned. These carriers were mostly run as government entities, which lacked the necessary economic and commercial focus to ensure market-based profitability. Their main

³⁵ The definition of a revenue passenger-kilometer (RPK) is one fare-paying passenger transported over a distance of one kilometer.

³⁶ See Boeing, *Current Market Outlook 2008-2027*, online: Boeing Corporation website <<http://www.boeing.com/commercial/cmo/>> at 37.

³⁷ *Ibid.*, at 35.

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

means achieving some profitability was to control income effectively, using restrictions provided by the framework of bilaterals. Air transport agreements were modeled on the traditional-predetermination type of bilaterals, where market access and capacity was pre-determined. This allowed carriers to effectively control the market and restrict competition. In some cases, certain States even refused to grant traffic rights to foreign carriers despite the fact that their own carriers lacked the technical, human, or financial resources to develop proposed new routes. Sometimes, however, fifth freedom rights were obtained against payment of “royalties” or commissions.³⁸ As a result, intra African air transport remained costly and inefficient, especially in cases where the bilaterals did protect a state-owned carrier.

In the early days of independence, air transportation came to be recognized as “both far-reaching and essential for the development of Inter-African trade and for the improvement of the economic, social and cultural conditions of the African peoples”.³⁹ The underlying reasoning was that the road and highway network which existed prior to the accession of African countries to independence was broken down into sectors that were mostly distinct from each other. The road network was mainly designed to channel raw materials from the interior to seaports for export, rather than being part of a network between countries aimed at facilitating regional development. Initially also, African air

³⁸ See United Nations Economic Commission for Africa, *La Décision de Yamoussoukro et le transport aérien en Afrique* (Paris: Servedit, 2004) at 33 [UNECA, *La Décision de Yamoussoukro*].

³⁹ See Organization of African Unity (OAU), *10th Summit Anniversary* (1973) at 39.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

transport was considered to be under threat from dominating European and especially American carriers.⁴⁰ As a result, most African carriers set their focus in international air transport on intercontinental traffic to the detriment of the intra-African network, which therefore remained far less developed.⁴¹ In 1979, the prospect of liberalization was seen as being driven by the “United States, which wished to export its deregulation throughout the world” when it organized a conference in Nairobi on air transport. However, African States themselves also began to realize that “Europe itself, the buffer zone which could have protected Africa from the new policy’s direct effects, ha[d] now joined the liberalization bandwagon, and Africa [could] no longer afford to be the odd man out”.⁴²

Earlier on, the Economic Commission for Africa of the United Nations’ Economic and Social Council (ECA) had also recognized that a new policy was needed to support the development of Africa’s air transport sector.⁴³ The ECA’s inspiration came from several declarations and resolutions, which eventually resulted in the Lagos Plan of Action, all of which addressed the declining economic environment and the role of the air transport sector in

⁴⁰ *Ibid.*

⁴¹ In 1990, there were 249 bilaterals between sub-Saharan African and other countries for intercontinental traffic as compared to only 57 bilaterals among African States for intra-African traffic. See Institute of Air Transport, “Africa and the Liberalization of the Air Transport Regulatory System” (1990) 20 ITA Studies and Reports at 8.

⁴² *Ibid.*, at 5.

⁴³ The Economic Commission for Africa has recognized air transportation as one of the most important modes of transportation for the physical integration of Africa. To examine and discuss its development, the ECA organized in 1964 the first conference on African continental air transportation in cooperation with the OAU and ICAO. See UNECA, *La Décision de Yamoussoukro*, *supra* note 31 at 31.

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

Africa.⁴⁴ The Lagos Plan of Action aimed at promoting the integration of transport and communication infrastructure with a view of increasing intra-African trade and opening up land-locked countries and isolated regions.⁴⁵ It was this spirit which initiated the focus on the development of intra-African air services. The Lagos Plan of Action was the result of many discussions and consultations among African States, which primarily focused on how to eliminate the physical and non physical barriers which allegedly hindered the development of African air services.⁴⁶ The initiative, which was led by the ECA, considered intra-continental air services as the prime instrument for Africa's integration and development. Consequently intercontinental air services were only discussed under the competitive challenges posed by non-African operators. It was understood that African carriers must first grow (and merge), before they could successfully face the markets between Africa and Europe, and the USA.

In November 1984, the ECA organized a conference in Mbabane, Swaziland, to discuss the reasons underlying the difficulties faced by African carriers in their efforts to obtain traffic rights in other African States. The conference ended with the adoption of the Declaration of Mbabane, which called for the creation of a technical committee to develop "a common African approach for the exchange of third and fourth freedom rights", and also to "encourage the

⁴⁴ United Nations Economic Commission for Africa (UNECA), *Declaration of Yamoussoukro on a New African Air Transport Policy*, (1988) preamble [*Yamoussoukro Declaration*].

⁴⁵ Organization of African Unity (OAU), *Lagos Plan of Action for the Economic Development of Africa, 1980-2000* (1980) at 58

⁴⁶ UNECA, *La Décision de Yamoussoukro*, *supra* note 31 at 31.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

exchange of fifth freedom rights”.⁴⁷ It further proposed an additional set of measures, which primarily focused on closer cooperation between African carriers. These measures, which later became the core of the “Yamoussoukro Declaration”, included: a joint financing mechanism; coordination in the scheduling of air services; a centralized databank and research program; and, promotion of the establishment of sub-regional carriers. However, the focus on liberalization quickly faded away, and, in the subsequent “Yamoussoukro Declaration”, liberalization was envisaged only in the form of a gradual elimination of traffic restrictions.⁴⁸ It was only a decade later, when the Yamoussoukro Decision was reached, that the primary policy focus shifted back to the liberalization of access to intra-African air services markets.

In addition, the airlines themselves aimed at liberalizing access in order to develop new markets. Represented by the African Airline Association (AFRAA), the African airline industry proposed a set of rules and conditions to liberalize the granting of first to fifth freedom rights.⁴⁹ Under the proposed rules

⁴⁷ Third Freedom of The Air is the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a Third Freedom Right). Fourth Freedom of The Air is the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a Fourth Freedom Right). Fifth Freedom of The Air is the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a Fifth Freedom Right). See International Civil Aviation Organization, *Manual on the Regulation of International Air Transport*, (ICAO Doc. 9626, Part 4)

⁴⁸ *Yamoussoukro Declaration*, *supra* note 44, at B, Traffic Rights.

⁴⁹ In 1984, AFRAA proposed that all African carriers got unrestricted first and second freedom rights, third and fourth freedom rights (limited to three a week) on certain defined corridors (on East-West, North, Sahara, and equatorial axis), and fifth freedom

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

and conditions, first and second freedom rights were to be granted without restriction, while third and fourth freedom would be given under certain limitations of frequency, and on specific routes. Fifth freedom rights on the other hand were to be given to carriers with multiple destinations in the hope of building a network, and sixth freedom rights to all North African carriers, which operated to sub-Saharan destinations.⁵⁰

2.2 The Yamoussoukro Declaration

On 17 October 1988, the Ministers in charge of Civil Aviation of forty African States met in Yamoussoukro, Ivory Coast, and declared a new African Air Transport Policy, which was subsequently named the “Yamoussoukro Declaration”.⁵¹ Although the Yamoussoukro Declaration is seen as the origin of the subsequent Yamoussoukro Decision, it primarily focused on airline cooperation and integration. It stated a commitment of the governments represented to make all the necessary efforts to achieve the integration of their airlines within a period of eight years.⁵² The eight year period was sub-divided into three phases. In the first phase (a planned two year period), the focus was to be placed on the maximization of capacity usage between carriers. This was to be

rights on multiple leg flights, which must be negotiated and agreed upon. See UNECA, *La Décision de Yamoussoukro*, *supra* note 31 at 33.

⁵⁰ See *ibid.*, at 35.

⁵¹ The States represented at the conference were Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape-Verde, Central African Republic, Chad, Congo, Ivory Coast, Egypt, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Equatorial Guinea, Kenya, Liberia, Libya, Madagascar, Mali, Morocco, Mauritius, Mauritania, Niger, Nigeria, Uganda, Rwanda, Senegal, Sierra Leone, Somalia, Swaziland, Tanzania, Togo, Tunisia, Zaire, and Zimbabwe. See *Yamoussoukro Declaration*, *supra* note 44 at 7.

⁵² *Ibid.*, at 2.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

achieved by exchanging technical and capacity data, preparing the designation of gateway airports, and by promoting airline cooperation between the national carriers in order to eventually merge them into larger and more competitive airlines.

The second phase, which should have taken three years to implement, would have committed the airlines to joint operations on international routes. In addition, certain airline operations would have been conducted jointly in order to achieve better economies of scale and deeper integration.⁵³ Finally, the last phase of three years was to be used to strive towards achieving the complete integration of airlines by establishing joint airline operations or entities by means of one or all of the following three schemes:

- (i) creating an airline consortium (close collaboration without a new joint legal entity);
- (ii) establishing airline joint-ventures (merged operations, but separate legal entities); and,
- (iii) merging existing carriers into a new, jointly held, legal entity.⁵⁴

The stated strategy of cooperation and integration between African carriers seemed to have been driven primarily by the need for pan-African

⁵³ These included cooperation in the area of joint insurance, a common computer reservation system, the purchase of spare parts, the purchase of aircraft or spare parts, common designation of flights (code share), common market access and granting of traffic rights, consolidated points of sale and joint handling activities, joint promotion and marketing efforts, revenue and cost sharing, harmonization of networks, training facilities, and in the field of maintenance and overhaul of equipment. See *ibid.*, at 3.

⁵⁴ *Ibid.*, at 4.

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

cooperation, rather than by the objective of creating a more competitive market environment. Nevertheless, the Yamoussoukro Declaration also foresaw the gradual elimination of traffic restrictions. Specifically, the granting of fifth freedom rights to African airlines during the implementation period was declared as a necessary measure of flexibility. However, the objective full integration of the African air transport market (comprising at least 40 of 54 African States) within eight years and schemes employed were overly ambitious. In addition, as its denotation indicated, the Yamoussoukro Declaration was widely understood only as a general, non-binding expression of policy.⁵⁵

Despite its ambitious objectives and its poor likelihood of implementation, the Yamoussoukro Declaration set in motion further initiatives aimed at liberalizing the African air transport market. In 1994, after an evaluation of the steps required to implement the Yamoussoukro Declaration, the African Ministers in charge of Civil Aviation met in Mauritius and agreed on a set of measures to facilitate the granting of third, fourth, and fifth freedom rights to African carriers. Most remarkable was the understanding that fifth freedom rights should be granted on routes, where third and fourth freedom flights did not exist.⁵⁶

⁵⁵ Interviews with: Jorge Lima Delgado Lopes, Minister of Infrastructure and Transport of Cape Verde on 13 May 2002 in Praia, Cape Verde; with Sama Juma Ignatius, Director General of the Cameroon Civil Aviation Authority on 27 August 2003, in Yaoundé, Cameroon; and with António Pinto, Director General of the Instituto De Aviação Civil de Moçambique on 30 March 2004 in Maputo, Mozambique.

⁵⁶ It was decided that States shall grant the fifth freedom on the following bases:
(a) Unconditionally in cases where no other airlines are operating under the third and fourth freedoms;
(b) In cases where there are airlines operating the third and fourth freedoms, up to 20 per cent of the traffic (based on the total volume of traffic of the preceding year) or of the number of seats available on the route, shall be reserved for operation under the fifth

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Significant also was the fact that the Yamoussoukro Declaration affirmed the notion that the air transport sector in Africa primarily needed to be liberalized. Given the recommendations of the conference in Mbabane in November 1984, and the agreement of African Ministers on measures to facilitate the granting of traffic rights in Mauritius in 1994, the ECA shifted its focus in African air transport development primarily to the liberalization of air services. In November 1999, the ECA initiated a conference in Yamoussoukro, which resulted in the historic agreement of pan-African liberalization of air services – the Yamoussoukro Decision.

2.3 The Yamoussoukro Decision – Main Elements

When African Ministers in charge of civil aviation met in Yamoussoukro, Ivory Coast, on 13 and 14 November 1999 to discuss liberalization of air services, their mandate was based mainly on the objectives of the Yamoussoukro Declaration, and on their previous decision adopted in Mauritius in September 1994, which aimed at accelerating the implementation of the Yamoussoukro Declaration. In addition, the recommendation of the 11th Conference of African Ministers responsible for Transport and Communications held in Cairo in November 1997 called for a regional meeting of African

freedom, provided that 80 per cent of the total traffic or number of seats available on the route are reserved for airlines operating the third and fourth freedoms; and,
(c) In cases where there are airlines operating the third, fourth and fifth freedoms, fifth freedom rights should be granted to non-African operators on a reciprocal basis after due consultation with concerned operators in the subregion for the benefit of the ECOWAS subregion. This provision for the application of the fifth freedom in those States shall enter into force on 1 November 1997 at the latest. UNECA, *La Décision de Yamoussoukro*, *supra* note 31 at 32.

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

Ministers to find ways to implement the Yamoussoukro Declaration.⁵⁷ The 1999 conference in Yamoussoukro ended with the adoption of the “*Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa*”, which became commonly known as the “Yamoussoukro Decision”. The Yamoussoukro Decision was thereafter formally adopted during the Assembly of the Heads of States from 10 to 12 July 2000, in Lomé, Togo.

The overall objective of the Yamoussoukro Decision is defined under Article 2, headed Scope of Application, as the gradual liberalization of scheduled and non-scheduled intra-African air transport services. The main elements include the granting to all State parties of the free exercise of first, second, third, fourth and fifth freedom rights on both scheduled and non-scheduled passenger and freight (cargo and mail) air services performed by an eligible airline. Article 3 initially limited the granting of fifth freedom rights by introducing the possibility for a State to grant these rights only under specific circumstances.⁵⁸ However, this limitation was set for a transitional period of two years, which expired on 12 August 2002.⁵⁹

The Yamoussoukro Decision liberalizes tariffs in Article 4 to the

⁵⁷ See *Yamoussoukro Decision*, *supra* note 29, preamble.

⁵⁸ Article 3.2 limits the obligation to grant and receive unrestricted fifth freedom rights to, (a) on sectors where, for economic reasons, there are no third and fourth freedom operators; and (b) a minimum of 20 percent of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

⁵⁹ The Yamoussoukro Decision came into force on 12 August 2000, 30 days after the date of the signature by the Chairman of the Assembly of the African Economic Community.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

extent that no approval is required by the aeronautical authorities of State parties for any increase. An increase in tariffs only has to be filed with competent authorities 30 working days before they enter into effect; while a lowering of tariffs takes immediate effect. As the Yamoussoukro Decision liberalizes only international air services, the tariff liberalization regime thereby established only applies to international air traffic. In terms of capacity and frequency, Article 5 stipulates that there shall be no limit on the number of frequencies and capacity offered in air services linking any city pair combination between State parties concerned. It specifies this by providing that no State party shall unilaterally limit the volume of traffic, the type of aircraft to be operated, or the number of flights per week. However, the same Article stipulates that for environmental, safety, technical or other special consideration, States may limit traffic. While limitation or refusal of air services for environmental, safety or technical reasons are standard practices in traditional air service agreements,⁶⁰ “other special considerations” need further clarification.

The Monitoring Body, which was established in accordance with Article 9 of the Yamoussoukro Decision, has issued a directive clarifying that the “other special considerations” are primarily of technical nature, such as fuel shortages, runway repairs in progress, or security reasons.⁶¹ These considerations should not be driven by commercial considerations in favor of any particular airline. The directive further sets out conditions applicable to any limitation of

⁶⁰ As an example, see *Air Transport Agreement between the United States of America and Singapore*, 3 CCH Avi./26495a. Art. 6(2).

⁶¹ See UNECA, *La Décision de Yamoussoukro*, *supra* note 31 at 89.

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

capacity and frequencies. The limitation must:

- a) be non discriminatory to any carrier;
- b) have limited duration;
- c) not excessively affect the objectives of the Yamoussoukro

Decision;

- d) not distort competitive forces among carriers; and,
- e) not being too restrictive in relation to their cause of application.

In addition, a State party may refuse to authorize an increase in capacity if such additional capacity is not in compliance with the provisions of the rules of fair competition, as set forth in Article 7.

The procedure for the designation and authorization of a carrier by each State is outlined in Article 6. Each State party can designate in writing at least one airline to operate intra-African air transport services on its behalf. The notification to the other State party, or in fifth freedom cases, to two other State parties, must be done in writing through diplomatic channels.⁶² It is notable that a State can designate any eligible airline from another State party to operate air services on its behalf, including an eligible African multinational airline in which it is a stakeholder. There is no limitation of the number of carriers a State party can designate, as long as they meet the eligibility criteria. The notification obligates the other State party to initiate the process of authorization and licensing of the designated airline to operate the services (third and fourth freedom, and

⁶² According to the directive of the Monitoring Body, a copy of the notification should be transmitted to the regional economic organizations concerned. The State party which grants the operational permit must in turn notify the Monitoring Body and the regional economic organization. See *ibid.*, at 90.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

where agreed, fifth freedom traffic) in accordance with its national laws. The authorization must be granted within 30 days, and the airline must submit its proposed schedule of flights to the appropriate authorities for approval.

The eligibility criteria, set forth in Article 6.9, aims at ensuring that the designated airline meets minimum standards with regard to its legal and physical establishment, its licensing and operating capacity, its insurance coverage, and its capacity to comply with international standards. The carrier must, therefore, be legally established in accordance with the regulations applicable in the relevant State party, and must have its headquarters, central administration and principal place of business physically located in that same country. It must also be effectively controlled by the nationals of one or more State parties (in the case of multinational airlines). The airline must be duly licensed by a State party as per the requirements in Annex 6 of the Convention on International Civil Aviation,⁶³ and must fully own or have a long-term lease exceeding six months on an aircraft, on which it has technical supervision. Finally, it must be adequately insured with regard to passengers, cargo, mail, baggage and third parties, and must be capable of demonstrating its ability to maintain standards equal at least to those set by the International Civil Aviation Organization (ICAO). If an airline fails to meet the eligibility criteria, a State

⁶³ *Convention on International Civil Aviation*, 61 Stat. 1180 (1944), [*Chicago Convention*].

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

party may revoke, suspend or limit its operating authorization by informing the carrier at least thirty days before the measure enters into force.⁶⁴

One of the important elements of the Yamoussoukro Decision is its focus on safety and security. Not only must an airline meet the standards prescribed by ICAO; the State parties explicitly reaffirm in Article 6.12, their obligation to comply with the established civil aviation safety and security standards and practices of ICAO. A State party must also recognize Air Operating Certificates, Certificates of Airworthiness, Certificates of Competency and the personnel licenses issued or validated by other State parties, and still in force, provided that the requirements for the issuance of such certificates or licenses are at least equal to the minimum standards set by ICAO. Although justified, the strong focus on safety and security has rather become the main obstacle for timely implementation, as many African States do not, or only marginally, comply with ICAO Standards and Recommended Practices (SARP) dealing with safety and security.⁶⁵

Another perceived obstacle to the implementation of the Yamoussoukro Decision is the issue of unfair competitive behavior when the

⁶⁴ *Yamoussoukro Decision*, *supra* note 29, Art. 6.10.

⁶⁵ The Report of the Experts of the Conference of African Ministers responsible for Air transport, Second Session held in Libreville, Gabon, 15 – 19 May 2006, discussed the safety related challenges of African carriers. It was recognized that capacity building in safety oversight must be addressed on a regional level and aircraft that don't meet basic airworthiness criteria must be banned. See African Union, *Report of the Experts Meeting in Libreville Gabon 2006, Conference of African Ministers Responsible for Air Transport*, (Libreville, Republic of Gabon; 2006) at 6-8 [AU, *Report of Libreville Experts Meeting*, 2006].

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

Decision is applied.⁶⁶ Article 7 of the Decision obligates State parties to “ensure fair opportunity on non-discriminatory basis for the designated African airline to effectively compete in providing air transport services within their respective territory”. While this implies that certain common competition rules should be established, the Yamoussoukro Decision falls short in further defining this requirement. It does, nevertheless, refer in Article 8 to arbitration procedures, which it claims are set forth in Annex 2 of the Decision. However, Annex 2 of the Decision primarily defines the duties and responsibilities of the Monitoring Body, which is established in Article 9. It does not make particular reference to competition rules or arbitration procedures except (a) the duty of the Monitoring Body to prepare, for adoption by the subcommittee on Air Transport, the relevant annexes to the Yamoussoukro Decision. It can thus be assumed, that arbitration procedures, still missing in Annex 2, are one of the tasks that must be performed by the Monitoring Body in order to implement the Yamoussoukro Decision. Another indication in Annex 2 (g) is the Monitoring Body’s obligation to state, at the request of States party, its views on predatory and unfair competition practices.

The Monitoring Body is established in Article 9.1. Its principal responsibility is defined as the overall supervision, follow-up and implementation of the Decision. It is composed of representatives of the ECA, the OAU, the African Civil Aviation Commission (AFCAC) and AFRAA, who are assisted by

⁶⁶ Especially smaller African carriers fear unfair competitive practices such as price dumping, when they are facing larger established airlines. See Donald Macdonald. "Yamoussoukro Decision - Kill or Cure", (paper presented at the ICAO - World Bank - ATAG Air Transport Development Forum, Montreal, 2006).

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

representatives of sub-regional organizations. Its main purpose, as defined in Article 9.2, is to assist the Sub-Committee on Air Transport, composed of African Ministers Responsible for Civil Aviation, in following-up on the implementation of the Decision. In Article 9.3 reference is made to Annex 3 of the Decision for an outline of the Monitoring Body's overall duties and responsibilities. However, since Annex 3 does not exist, it can be assumed that Article 9.3 refers to Annex 2, which is adequately titled "Duties and Responsibilities of the Monitoring Body". As Annex 3 in fact is Annex 2, it becomes apparent that the arbitration procedures referred to in Article 8 have never been prepared.

In addition to the Monitoring Body, an African Air Transport Executing Agency shall be established. Article 9.4 defines the principal responsibilities of this agency as the supervision and management of Africa's liberalized air transport industry in order to ensure the successful implementation of the Yamoussoukro Decision. Article 9.5 provides that the Executing Agency shall have "sufficient powers to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition". In addition, in Article 9.6, the Executing Agency is also mandated to ensure consumer rights protection. In other words, it is the Executing Agency which is in charge of assuring fair competition and consumer protection, once the appropriate rules have been drafted and adopted.

As a transitional measure, Article 10.1 of the Yamoussoukro Decision provides the option for State parties to opt out from granting and receiving the rights and obligations envisaged in Articles 3 and 4, (i.e. up to

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

unrestricted fifth freedom rights and a liberal tariff regime). This option is limited to a maximum transitional period of two years, which expired when the Yamoussoukro Decision became fully binding on 12 August 2002. Given the fact that the implementation of the Yamoussoukro Decision was considered “pending” over the last five years,⁶⁷ the transitional measures remain theoretical and were never applied.

Finally, Article 11 of the Yamoussoukro Decision addresses some commercial and operational issues. In Article 11(1), certain commercial aspects, such as: (1) the right of the designated airline to establish offices in the territory of the other State party; (2) the right to convert and remit revenues in local currency without restrictions; (3) the option to pay for local expenses such as handling and for fuel in local currency; and, (4) the possibility to employ and bring into the territory employees to perform various tasks, are provided for on a reciprocal basis. Article 11(2) allows the designated carrier a certain level of operational flexibility, such as: one way or return service on the concerned segments; the use of code share arrangements; and, the right to serve additional points, as well as to omit certain stops. These cooperative arrangements, first mentioned under operational flexibility under the rubric of “the use of the same

⁶⁷

The Report of the Experts of the Conference of African Ministers responsible for Air Transport, First Session held in Sun City, South Africa, 16 – 19 May 2005, mentions several reasons for the “slow implementation” of the Yamoussoukro Decision, which include the lack of active tools and funds for monitoring the implementation of the Yamoussoukro Decision, no clear and independent responsibilities assigned to the regional economic communities, the monitoring mechanism was established without any clearly defined powers of prescribing rules, and the negative implications of the European Union position and policy on an Open Aviation Area. African Union, *Report of the Meeting of Experts on Air Transport in Sun City, South Africa 2005, Second Meeting of African Ministers responsible for Air Transport* (Sun City, South Africa; 2005) at 11 [AU, *Report of Sun City Experts Meeting*, 2005].

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

flight number” are further defined in Article 11(3) as extending to marketing arrangements such as blocked-space, code sharing, franchising or leasing arrangements among State party airlines.

In addition to these operational issues, Article 11(4) provides the possibility for a State party to request consultations with respect to the interpretation or application of the Yamoussoukro Decision. This is enhanced by the mandate given in Article 11.5 to the Air Transport Sub-committee to review the Decision every two years or earlier if requested by two-thirds of the State parties. The main purpose of such a review, which so far has never been requested, is for the Monitoring Body to propose measures to further eliminate existing restrictions.

2.4 The Yamoussoukro Decision – Implementation

Since its adoption by the Heads of State in 1999, the central theme of the Yamoussoukro Decision has been its implementation on a continent-wide scale.⁶⁸ However, as the Decision itself is named the “*Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa*”,⁶⁹ the question arises as to what “implementation” means in the context of the Decision. This is relevant because it could easily be concluded that the Yamoussoukro Decision of 1999 is, in fact, the legally binding framework for the implementation of the former Yamoussoukro

⁶⁸ See *ibid.*, Introduction, where, at the continental level, the Yamoussoukro Decision is recognized as a “landmark initiative to develop the industry through the removal of barriers by promoting the liberalization of the industry”.

⁶⁹ See *Yamoussoukro Decision*, *supra* note 29.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Declaration. Therefore, no further legal action would be necessary, and the Yamoussoukro Decision would automatically become applicable after the transition period provided for in Article 10.

On the other hand, many African politicians, representatives of economic organizations, and members of the aviation industry refer to the pending “implementation of the Yamoussoukro Decision”. In numerous conferences, studies, papers, and initiatives, a set of actions has been developed “to implement the Yamoussoukro Decision”, which is commonly seen as the most important measure for the development of the African aviation sector.⁷⁰ However, one could conclude that using the term implementation in relation to the Yamoussoukro Decision is in fact a pleonasm,⁷¹ because the Yamoussoukro Decision itself is a decision to implement the Yamoussoukro Declaration of 1988. Alternatively, one could also state that “implementation” stands for applying the Yamoussoukro Decision framework, as its legal implementation was achieved at the time of its adoption by the Heads of States in 1999.

The question arises regarding what is actually meant in a legal and political sense by the term "implementation of a treaty", which, in itself, is the

⁷⁰ See African Union, *Final Communiqué of the Second Session of the Conference of African Ministers Responsible for Air Transport*, (Libreville, Republic of Gabon; 2006) [AU, *Ministers Final Communiqué at Libreville*, 2006].

⁷¹ *Pleonasm*, as defined in dictionaries, is the use of more words (or even word-parts) than necessary to express an idea clearly. The word comes originally from Greek *πλεονασμός* ("excess"). A closely related, narrower concept (some would say a subset of pleonasm) is rhetorical tautology, in which essentially the same thing is said more than once in different words. Regardless, both are a form of redundancy. Pleonasm and tautology each refer to different forms of redundancy in speech and the written word. Definition obtained from Wikipedia, Multilingual, web-based, free content Encyclopedia, *Wikipedia*; 2007. (Date accessed 23 May 2007).

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

implementation of a declaration or intention to liberalize air services. In order to answer this question, recourse must be had to the broader concept of public policy which has been researched and well described by Austin Ranney in a 1968 publication sponsored by the Committee on Governmental and Legal Processes of the US Social Research Council.⁷² According to Ranney, the concept of public policy contains the following five main components:

- i. *A particular object or set of objects* – some designated part of the environment (an aspect of the society or physical world) which is intended to be affected.
- ii. *A desired course of events* – a particular sequence of behavior desired in the particular object or set of objects.
- iii. *A selected line of action* – a particular set of actions chosen to bring about the desired course of events.
- iv. *A declaration of intent* – statement by the policy-maker as to what they intend to do, how, and why.
- v. *An implementation of intent* – the actions actually undertaken vis-à-vis the particular set of objects in pursuance of the choices and declaration.

These elements may very well be applied to the Yamoussoukro Decision. The particular object to be affected is intra-African air transportation. The desired course of events is its liberalization up to the fifth freedom for African carriers on intra-African air services. The selected line of action consists of several elements that are defined in the Decision (e.g. competition rules). The

⁷² Austin Ranney, *Political Science and Public Policy* (Chicago: Markham Publishing, 1968) at 6 [Ranney].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

declaration of intent has been widely broadcasted, and is included in the Preamble of the Yamoussoukro Decision. Finally, the implementation of intent contains several actions vis-à-vis air transportation, which are defined in the declaration. These actions include concrete elements such as the establishment of competition regulation or the setting up of a Monitoring Body. However, these actions also contain the right of designated African air carriers to operate freely between African nations. In that sense, African air transportation (the object of this public policy) is liberalized when carriers are operating according to the principles and dictates of the Yamoussoukro Decision. Thus, in the political sense of public policy, "implementation" is achieved when all elements are established and applied, and carriers are actually operating according to these principles.

The next issue concerning implementation of public policy is the question as to who is in charge or responsible for the actions required for its adoption or implementation. According to David Easton, the authorities of a political system are in charge.⁷³ The authorities concerned are at the national, regional or even pan-African level, given the nature of the Yamoussoukro Decision as an international treaty. In fact, the Decision addresses both national and regional authorities on several occasions. An example where national authorities are addressed can be found in Article 7, where "State parties shall ensure fair opportunity on non-discriminatory basis for the designated African

⁷³ The authorities are the persons who "engage in the daily affairs of a political system", and are "recognized by most members of the system as having the responsibility for these matters." Their actions are "accepted as binding most of the time by most of the members so long as they act within the limits of their roles" – that is, "elders, paramount chiefs, executives, legislators, judges, administrators, councilors, monarchs, and the like." See David Easton, *A Systems Analysis of Political Life* (New York: John Wiley & Sons, 1965) at 212 [Easton].

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

airline”. Regional authorities are also addressed, for example, in Article 9, where the composition of the Monitoring Body primarily comprises representatives of several regional organizations.

At the international civil aviation level, ICAO has defined the term implementation in connection with the obligation of Contracting States to adopt SARPs as a two-phased process:

The first comprises the administrative arrangements necessary to bring the Standards and associated Procedures into force nationally; the second consists of the practical arrangements necessary, such as the provision of facilities, personnel and equipment.⁷⁴

This definition focuses on bringing standards and procedures into force nationally, which is a legislative task, and on the provision of the necessary facilities.

Despite intensive research, a more general and well rounded definition of the term "implementation" in a legal and administrative sense could not be found in any official dictionary. Nevertheless, the popular online encyclopedia Wikipedia succinctly and precisely sums up the above mentioned elements as follows:

In political science, implementation refers to the carrying out of public policy. Legislatures pass laws that are then carried out by public servants working in bureaucratic agencies. This process consists of rule-making,

⁷⁴ International Civil Aviation Organization, *General Review of the Past Work of the Organization in the Air Navigation Field and Consideration of the Future Programme and Policies in the Light of Action Taken on Resolutions of Previous Sessions of the Assembly*, ICAO Assembly Working Paper No. A12-WP/15 (12th Session of the Assembly, San Diego, CA; 1959) at 4.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

rule-administration and rule-adjudication. Factors impacting implementation include the legislative intent, the administrative capacity of the implementing bureaucracy, interest group activity and opposition, and presidential or executive support.⁷⁵

In analyzing the implementation of the Yamoussoukro Decision as the carrying out of public policy based on a law or treaty, there is the need to review which elements have been formally created by the Decision itself, and which elements of the Decision are to be established. The entity which is explicitly created in Article 9 of the Yamoussoukro Decision is the Monitoring Body, which is composed of representatives of ECA, OAU, AFCAC and AFRAA. Its duties are defined in Annex 3, which, at publication, became Annex 2. While this body was created by the Yamoussoukro Decision, Article 9.4 also mentions the African Air Transport Executing Agency, which needs to be created for the “successful implementation of the Decision”. This indicates that the implementation of the Yamoussoukro Decision is indeed understood as an administrative procedure, which will be carried out by a specialized agency.

Finally, implementation of the Yamoussoukro Decision could alternatively be understood as the application of its operational principles. These operational principles are defined in Article 3.1 as the granting of the free exercise of the rights of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and/or mail flights performed by an eligible airline to or from their respective territories. The application

⁷⁵ Wikipedia, Multilingual, web-based, free content Encyclopedia. s.v. “implementation”, (Date accessed: 11 April 2007).

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

mechanism is defined in Article 6.1. Each State party has the right to designate in writing at least one airline to operate in accordance with the principles of the Yamoussoukro Decision, and the designation must be notified to the other State party in writing through diplomatic channels. Article 6.4 obliges the other State party to initiate the process of authorization and licensing of the designated airline to operate the services. The authorization should be granted within 30 days.

Another application, though supplementary, can be found in Article 2 which states that the Yamoussoukro Decision has precedence over any multilateral or bilateral agreements on air services between States parties, which are incompatible with the Decision. However, it also states that provisions of such agreements, which are not incompatible with the Yamoussoukro Decision, remain valid and supplementary to the Yamoussoukro Decision. Despite the fact that the formal application mechanism of the Yamoussoukro Decision, as defined in Article 6.1⁷⁶ is very clear, one could conclude that agreeing on a bilateral air service agreement which fully complies with the provisions of the Yamoussoukro Decision is, in fact, a valid application mechanism. This is especially important as long as many elements of implementation (in the sense of “carrying out of public policy”) remain pending.

It can be concluded that the implementation of the Yamoussoukro Decision is widely understood as the carrying out of public policy based on a law or treaty. This entails several additional steps, such as setting up specialized

⁷⁶ Article 6.1: Each State party shall have the right to designate in writing at least one airline to operate the intra-Africa air transport services in accordance with this Decision. Such designation shall be notified to the other State party in writing through diplomatic channels.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

agencies, and defining competition regulation. However, the key question which will be examined later in this thesis is: does the absence of implementation in the sense of public policy suspend the application of the operational principles of the Yamoussoukro Decision?

2.5 The Yamoussoukro Decision – Status Quo

In reference to the above outlined interpretations of the word “implementation”, the status quo must be analyzed both in terms of policy implementation and operational implementation.

2.5.1 Policy Implementation

As seen above, the Yamoussoukro Decision which is an official denomination referring to the implementation of the Yamoussoukro Declaration, provides the following main elements of implementation:

- Competition Rules (Article 7): “State parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territories”. There are no further provisions for competition rules other than in Article 9.5, which states that the Executing Agency shall have sufficient power to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition.
- The Arbitration Procedure (Article 8): This provision encourages State parties to settle disputes by negotiation. Failing that, either

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

party may submit the dispute to arbitration in accordance with the procedures set forth in Appendix 2. However, Appendix 2, which should read “Annex 2”, does not include any arbitration procedure, but describes the duties and responsibilities of the Monitoring Body.

- The Monitoring Body (Articles 9.1 – 9.3) is the only element, which is formally created (“hereby established”), by the Yamoussoukro Decision. It takes the form of a Sub-Committee on Air Transport of the Committee on Transport, Communications and Tourism of the former AEC (now African Union), which is responsible for the overall supervision, follow-up and implementation of the Yamoussoukro Decision. The Monitoring Body is composed of representatives from the ECA, OAU, AFCAC,⁷⁷ and AFRAA.⁷⁸
- The Executing Agency (Articles 9.4 - 9.6) shall be created to ensure successful implementation of the Yamoussoukro Decision, which includes the supervision and management of Africa’s liberalized air transport industry. For this, the Executing Agency shall formulate and enforce appropriate competition rules and regulations, and ensure that consumer rights are protected.

⁷⁷ African Civil Aviation Commission, a specialized agency in the field of civil aviation of the former Organization of the African Unity (OAU) and now of the African Union (AU).

⁷⁸ African Airlines Association, located in Nairobi, Kenya.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

Based on the above provided elements of implementation of the Yamoussoukro Decision, the following four main components must be completed: (a) development of competition rules and consumer protection rights; (b) implementation of formal arbitration procedures; (c) the Monitoring Body, which has already been created, must start functioning by meeting regularly to supervise and follow-up on the implementation of the Yamoussoukro Decision; and, (d) the establishment of an Executing Agency.

Little progress was observed in the development of competition rules and consumer protection rights during the first few years following the entry into force of the Decision. It was only in May 2007 when the Ministers in Charge of Civil Aviation met at their Third Session in Addis Ababa, that draft competition rules were presented and discussed.⁷⁹ Since then, the adoption of the draft competition rules and the implementation of formal arbitration procedures have remained pending. The Monitoring Body has had a few meetings since the signing of the Yamoussoukro Decision. However, the Monitoring Body recognized its own ineffectiveness due to lack of funding, weak attendance by Regional Economic Communities (RECs), and too few meetings, which have cumulatively resulted in a delay in the implementation of the Decision.⁸⁰ Finally, the establishment of an Executing Agency was discussed at several meetings of

⁷⁹ See African Union, *Draft Competition Rules for Air Services*, 2007.

⁸⁰ African Union, *4th Meeting of the Monitoring Body for the Implementation of the Yamoussoukro Decision, Meeting of African Ministers responsible for Air Transport, First Ordinary Session* (Addis Ababa, Ethiopia; 2005) at 5 [AU, *4th Meeting of Monitoring Body*, Addis Ababa].

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

the Monitoring Body,⁸¹ but no significant progress has been made. However, it was decided at the Third Session of the Meeting of African Ministers responsible for Air Transport, that the Executing Agency shall be established at the AFCAC.⁸²

In summary, it can be concluded that very little progress has been achieved in the policy implementation of the Yamoussoukro Decision over the past eight years. However, the outcome of the most recent meeting of the Ministers responsible for Air Transport indicates the existence of some enhanced political will to move ahead with the required policy implementation of the Yamoussoukro Decision.⁸³

2.5.2 Operational Implementation

At the operational level, the current situation in Africa concerning liberalization of intra-African air services reflects a very heterogeneous picture. On the one side are those States which typically maintain a small, often struggling state-owned carrier, and which generally remain very protective in their bilaterals. By not applying the principles of the Yamoussoukro Decision, they aim at regulating access, capacity, and frequency in order to limit competition, which thereby maintains tariffs at a high level.

⁸¹ At the fourth meeting of the Monitoring Body it was concluded, after recognizing that the agency still wasn't formed despite that the Yamoussoukro Decision suggested immediate creation, that the Monitoring Body should assume the responsibilities of the Executing Agency until its establishment. See *ibid.*, at 7.

⁸² See African Union, *Addis Ababa Resolution on Entrusting the Functions of the Executing Agency of the Yamoussoukro Decision to the African Civil Aviation Commission, Third African Union Conference of Ministers responsible for Air Transport* (Addis Ababa, Ethiopia; 2007) [AU, *Addis Ababa AFCAC Resolution 2007*].

⁸³ See African Union, *Report of the Meeting of Ministers, Third African Union Conference of Ministers responsible for Air Transport* (Addis Ababa, Ethiopia; 2007) [AU, *Report of Meeting of Ministers*, Addis Ababa, 2007].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

On the other side are two groups of countries which actively support liberalization of air services. The first group of States consists of those which have strong and often market-dominant air carriers. These States typically are able to compete on an operational as well as on a financial level. Their main challenge, however, is access to adequate markets, as the intra-African air service markets remain generally thin, fragmented, and little developed. In order to support the development of new markets, States with strong carriers therefore aim at opening their own markets up in order to achieve free access on a bilateral basis.

The second group comprises States which have lost or never had a significant national carrier. These States are typically keen to attract more flights to serve their country and do not mind foreign domination of the airline industry. Both types of States with a liberal air services policy have begun to agree to bilaterals generally consistent with the principles of the Yamoussoukro Decision.

The Cases of Zambia, Ethiopia, and Uganda

An interesting case of a special form of protectionist policy is Zambia, which liquidated its national airline “Zambia Airways” in 1994. Despite the fact that Zambia does not currently have a recognized national carrier,⁸⁴ and that it is unlikely that a national carrier could be operated successfully on the proposed network which includes transcontinental flights to Europe, the

⁸⁴ A small operator, Zambian Airways, has successfully established a regional network and is operating three Boeing 737 aircraft. However, the Government of Zambia does not consider this operator as a replacement for a national airline and continues to insist that a new national carrier must be established (interview with Brigadier General Peter Tembo, Permanent Secretary of the Ministry of Communications and Transport, on 26 March 2007 in Lusaka).

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

Government of Zambia continues to plan for the re-establishment of such a carrier.⁸⁵ This situation has resulted in a continued policy of protectionism when negotiating international air service agreements. The Government of Zambia has signed a total of 72 bilaterals. However, of these, only the following eight are currently in use: United Kingdom, South Africa, Angola, Kenya, Malawi, Zimbabwe, Ethiopia, and the Democratic Republic of Congo. The most important bilateral air service relationship is with South Africa, for which traffic between five city pairs was agreed: Johannesburg to Lusaka (3000 seats per week each party); to Ndola (2700 seats); to Livingstone (2200 seats); to Mfuwe (400 seats); and, from Pilanesberg to Livingstone (400 seats).

Initially, the capacity of these traffic rights was used only partially because Zambia did not designate a qualified operator. Eventually, the Zambian traffic rights were assigned to a South African low cost carrier on the Lusaka – Johannesburg segment, which operated under a Zambian operator's certificate. However, further liberalization has been constrained due to continued resistance by both the Zambian and the South African governments. Both countries repeatedly refused to grant fifth freedom rights, which were requested on the basis of the Yamoussoukro Decision: the Republic of Egypt (Cairo-Lusaka-Johannesburg) was refused by South Africa in 2001; Libya (Tripoli – Lusaka – Johannesburg) was refused by Zambia in 2001; Ethiopia (Addis Ababa – Lusaka – Johannesburg) was refused by Zambia in 2005; Nigeria (Lagos – Lusaka – Johannesburg) was refused by Zambia during bilateral negotiations; and, a request

⁸⁵ *Formation of a National Airline in Zambia* by SH&E Limited and Ernst and Young Zambia (Lusaka) at 8.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

by Kenya (Nairobi – Lusaka – Harare) was also refused by Zambia in 2005.⁸⁶ It is obvious that the protective policy of Zambia is geared at protecting a future national carrier. This is especially obvious on the most lucrative routes, where even existing Zambian operators were refused traffic rights.

The stark contrast to Zambia is Ethiopia, whose strong national carrier “Ethiopian” has consistently operated for more than sixty years. For many years, Ethiopia pursued an aggressive open skies policy aimed at granting very liberal air service rights on a reciprocal basis to States both within and outside the African continent. As an airline, Ethiopian recognizes that access to new markets, especially those in Africa, is a strategic opportunity which clearly outweighs the possible fare reductions that may occur due to an enhanced competitive environment.⁸⁷ As of October 2006, Ethiopia had concluded a total of 84 bilaterals with other countries. Of these, 46 bilaterals had been concluded with African States,⁸⁸ 13 with European States, and 26 with other States.⁸⁹ Of the 46 bilaterals with African States, 19 can be considered to be in accordance with the Yamoussoukro Decision. Of these 19, six were concluded before the Yamoussoukro Decision came into force, and 13 were signed after the

⁸⁶ Charles E. Schlumberger, "Air Transport: Revitalizing Yamoussoukro" in Aaditya Mattoo & Lucy Payton, eds., *Services Trade & Development - The Experience of Zambia* (Washington DC: The World Bank, 2007) at 192.

⁸⁷ Interview held with Mr. Girma Wake, Chief Executive Officer of Ethiopian, on 25 April 2007 in Addis Ababa.

⁸⁸ One of these States is Somaliland, a self-declared independent republic located in the Horn of Africa within the internationally recognized borders of Somalia. However, it is not recognized by any other country or international organization.

⁸⁹ See generally *Digest of Bilateral Air Service Agreements Concluded by Ethiopia* by Strategic Planning Consulting (Addis Ababa).

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

Yamoussoukro Decision was adopted.⁹⁰ The analysis of Ethiopian's current network (see table in Annex II) provides a rather interesting picture:

- of the 19 Yamoussoukro Decision conforming bilaterals, 13 are regularly served by Ethiopian with 3rd, 4th, and 5th freedom traffic; six have no traffic,
- of the 27 non-Yamoussoukro Decision conforming bilaterals, 10 are regularly served by Ethiopian with 3rd, 4th, and 5th freedom traffic; 17 have no traffic.

The analysis of the bilaterals of Ethiopia with the current network flown by its designated carrier indicates that two thirds of these bilaterals result in regular 3rd, 4th, and 5th freedom traffic, while only two exclude 5th freedom operations. On the other hand, of the 27 non-Yamoussoukro Decision conforming bilaterals, only about one third results in regular 3rd, 4th, and 5th freedom traffic; two exclude 5th freedom operations, and a large majority result in no traffic at all.

The example of Ethiopia demonstrates that implementation, when understood as the application of the principles of the Yamoussoukro Decision, can be carried out successfully on a purely operational basis. This is of significant importance because it supports the view that the implementation of the Yamoussoukro Decision does not primarily depend on the carrying out of public policy based on a law or treaty. In other words, even if certain elements of the Yamoussoukro Decision such as the Executing Agency are absent,

⁹⁰ See Annex IV of this dissertation - Bilateral Air Service Agreements concluded by Ethiopia with other African States as of October 2006.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

implementation can be achieved between two or more States on a bilateral basis. This also implies that certain elements of the Yamoussoukro Decision which are considered crucial for implementation (e.g. competition regulation), could in fact be substituted by a bilateral understanding. This also means that if a conflict should arise in the application of a Yamoussoukro Decision conforming bilateral, a solution would most likely be sought in negotiations rather than by calling upon a third party institution such as the proposed Executing Agency or the Monitoring Body.⁹¹

Uganda is an example of a country, which has developed an open skies policy, without having a strong carrier to benefit from liberalization.⁹² Uganda's national carrier "Air Uganda" was liquidated in 2001, after it had declared bankruptcy. In the absence of a significant national carrier, Uganda begun opening up its air service market by agreeing to bilaterals which have no restrictions in terms of access, capacity, or frequency. These bilaterals conform fully to the Yamoussoukro Decision. The objective of the Ugandan Government was to allow the foreign private sector to develop the air transport market,

⁹¹ Kenya temporarily refused Ethiopian the right to conduct fifth freedom operations between Nairobi and Kigali, Rwanda, in breach of the Yamoussoukro Decision compliant bilaterals between Ethiopia and Kenya. However, the issue was dealt with by seeking a diplomatic solution in negotiating directly between the parties, rather than calling e.g. the AU for support. Ethiopian's management consider an amicable solution paramount of any legal procedure that the Yamoussoukro Decision framework would provide in the future. Interview with Mr. Girma Wake, Chief Executive Officer of Ethiopian, on 25 April 2007 in Addis Ababa.

⁹² An open skies policy is referred to as the liberal granting of at least 3rd, 4th, and 5th freedom traffic rights without any restrictions of frequency, capacity or type of equipment used. An open skies policy is always translated into a bilaterals with the above mentioned liberal traffic rights. However, the Yamoussoukro Decision notification process does in fact eliminate the need for a formal Yamoussoukro Decision compliant Bilateral Air Service Agreement, but up to date no such case is known to exist.

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

recognizing that domestic private capital in the country was not sufficient to support the start-up of an operator that could successfully compete.⁹³ This open policy has resulted in the continued growth of air services in terms of passengers and cargo carried.⁹⁴

2.5.3 The African Air Transport Industry and Liberalization

The opportunities that liberalization of air transportation in Africa provides have also been recognized by the African air transport industry association AFRAA. AFRAA expressed its concerns about the lack of progress in the liberalization of market access within Africa at its 38th Annual General Assembly. It stated that procrastination in implementation was inhibiting the growth and competitiveness of African carriers. However, it also recognized that full implementation by all States at the same time was not feasible due to the great disparity in air transport development and level of preparedness of many African countries. In order to support the implementation process by certain Member States and the AU, AFRAA decided to establish a core group of States, which are like-minded, ready, and willing to spearhead the implementation of the Yamoussoukro Decision on a multilateral basis, without waiting for its

⁹³ Interview held with Mr. Zephaniah M. Baliddawa, Chairman of the Board of Directors of the Civil Aviation Authority of Uganda, on 24 April 2007 in Addis Ababa.

⁹⁴ According to Ugandan Civil Aviation Authority statistics, the growth of international passenger flows from 2002 to 2006 was at an average of 11% per year, while cargo grew at 7.9%. In 2001, when the Ugandan national carrier was liquidated, growth in international passenger flows stagnated, but air cargo experienced a significant increase of 42.7% that same year.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

implementation by all other countries.⁹⁵ This group, referred to as “Club of the Ready and Willing (CREW)”, does not carry any legal weight, as it was initiated by AFRAA, a private association of African carriers, without any official endorsement by the States parties to the Yamoussoukro Decision. However, it signifies an important political factor namely, that the implementation of the Yamoussoukro Decision is indeed supported by the industry, while many States still are procrastinating in moving forward.

Finally, when assessing the current situation in Africa in terms of operational implementation, one needs to review the air transport sector by segmenting it on a country by country basis according to the type of national carrier operated.⁹⁶ Doing this, one gets a very fragmented picture:

- (1) five countries have dominating state-owned carriers: Egypt, Ethiopia, Kenya, Morocco, and South Africa;
- (2) twenty countries have weak or small state-owned carriers: Algeria, Angola, Botswana, Cameroon, Cape Verde, Comoros, Djibouti, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius,

⁹⁵ African Airlines Association AFRAA, *Final Resolutions adopted by the 38th Annual General Assembly* (Cairo: AFRAA; 2006), at 2, Resolution 38/5.

⁹⁶ See Annex III of this dissertation – African Country Overview

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMO USSOUKRO DECISION

Mozambique, Namibia, Seychelles, Sudan,
Tanzania, Tunisia, and Zimbabwe;⁹⁷

- (3) twenty five countries have only private operators:
Benin, Burkina Faso, Burundi, Chad, Congo, Côte
d'Ivoire, Democratic Republic of Congo, Equatorial
Guinea, Eritrea, Gabon, Gambia, Ghana, Guinea,
Guinea-Bissau, Liberia, Nigeria, Rwanda, Sao
Tome & Principe, Senegal, Sierra Leone, Somalia,
Swaziland, Togo, Uganda, and Zambia;
- (4) four countries have no known operators: Central
African Republic, Niger, Lesotho, and the Saharawi
Arab Democratic Republic.

In evaluating the status-quo of the countries which are or would be ready and willing⁹⁸ to apply the Yamoussoukro Decision, it can be assumed that all five (5) countries with dominating state-owned carriers, most of the twenty-five (25) countries with private operators, and all four (4) countries with no operators would be included. These countries represent a clear majority (34) as compared to the twenty countries, which maintain weak or small state-owned carriers, and which are procrastinating in opening up their air service markets.

⁹⁷ Weakness is defined as in their demonstrated strategy in an intra-African market environment, by either maintaining a heavily subsidized air carrier with public funds or by providing other government directed advantages (e.g. airport privileges).

⁹⁸ See above, countries of air carriers which decided to establish a core group of States, which are like-minded, ready, and willing to spearhead the implementation of the Yamoussoukro Decision on a multilateral basis without waiting for the implementation by all other countries or by RECs.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

It is interesting to note, that in grouping these countries into the four above mentioned categories, the clear majority of 62% of countries (group 1, group 3, and group 4) represents 73% of the African population, 68% of the African gross national income, as well as 71% of seats and 68% of flights offered on an annualized basis in 2007. Also interesting is the fact that the two main groups open to liberalization (groups 1 and 3) with their own carriers have, on average, higher capacity aircraft (132 and 123 seats) than the group of weak or small state-owned carriers (see Table 1 for summary).⁹⁹ Countries reluctant to open up their air services are, on average, smaller, less developed, and with less traffic. They also tend to operate smaller and often older types of aircraft (for example Boeing B737-200).

Table 1 Country grouping by airline status, population, income, and flights

Airline status 2007	Population millions 2005	Gross national income \$ billions	Annualized Flights ¹⁰⁰ 2007		
			Seats	Flights	Capacity
Group 1	256	398.6	96,047,028	727,056	132
Group 2	244	276.4	52,975,824	467,676	113
Group 3	378	179.4	34,719,948	283,260	123
Group 4	20	6.4	375,792	3,768	100
G.2 in %	27%	32%	29%	32%	113
G.1,3,4%	73%	68%	71%	68%	118

2.6 Conclusion

The Yamoussoukro Decision is a rather ambitious treaty framework which aims at opening up air services between all African States. It is, in fact, quite a progressive and radical move in regulating air services between

⁹⁹ See Chapter 4 below for a detailed fleet and traffic analysis.

¹⁰⁰ See Annex III of this dissertation – Country Overview by Population, Income, and Flights

MAJOR ELEMENTS AND OBJECTIVES OF THE YAMOUSSOUKRO DECISION

States on the basis of restrictive bilaterals given Africa's long history. However, two very opposite realities have been encountered in the implementation of the Decision. Implementation, understood as the carrying out of public policy, has seen little progress on the pan-African level. Many of the key policy elements are still missing or exist only on paper. On the other hand, operational implementation has advanced, with many countries opening up their transport markets by applying the principles of the Yamoussoukro Decision on a bilateral level basis. Given the current structure of the air transport sector in many African countries, it can be assumed that about two thirds are willing to apply the Yamoussoukro Decision as they see little value in protecting their own markets from outside competition.

CHAPTER 3

CONDITIONS AND REQUIREMENTS FOR

IMPLEMENTATION

OF THE YAMOUSSOUKRO DECISION

3.1 Introduction

The Yamoussoukro Decision has defined certain conditions and requirements for its implementation. However, what remains to be assessed is its legal applicability in any given African State. The Yamoussoukro Decision is an international treaty which was established using the very specific mechanism of the African Economic Community (AEC).¹⁰¹ One must therefore examine if all States which were members of the AEC during its existence would be bound by the Yamoussoukro Decision. There are also a number of States which were never members of the AEC because they did not sign, ratify, or deposit their instruments of ratification during the pendency of the AEC Treaty. Some of these countries which cannot be considered to be States parties to the Yamoussoukro Decision may at the same time be part of a Regional Economic Community (REC)¹⁰² aimed at (and, in some cases, has made good progress towards) the implementation of

¹⁰¹ Article 10 of the Abuja Treaty renders a decision of the AEC automatically binding upon all Member States.

¹⁰² The following RECs are either preparing for or are in the process of implementing the liberalization of air transport: Arab Maghreb Union (AMU), Economic and Monetary Community of Central Africa (CEMAC), Common Market for Eastern and Southern Africa (COMESA), East Africa Community (EAC), Economic Community of Western African States (ECOWAS), Southern African Development Community (SADC), and West African Economic and Monetary Union (WAEMU).

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

liberalized air services using the same or very similar procedures and criteria as the Yamoussoukro Decision. This thesis will examine these RECs in Chapter four.

Once it is determined that a State is bound by the Yamoussoukro Decision, the next question to consider concerns the set of conditions to be met for the Yamoussoukro Decision to be in force in that State; that is to say to be “implemented”. However, one needs to distinguish between a condition that is of a precedent character¹⁰³ (meaning that the Decision can only be applied once the condition is met), and a condition that is of an antecedent effect (which would not delay its applicability, but could cancel the application of the Decision in specific cases where the condition was not met).¹⁰⁴

Another issue to consider is the time of performance of certain conditions. In other words, do general competition rules satisfy the requirement, or does a State need to adopt an air-transport-specific set of competition rules?

3.2 The Treaty of Abuja

3.2.1 The Origins of the Treaty of Abuja

On 3 June 1991, an international treaty was signed in Abuja, Nigeria, which established the African Economic Community (AEC). The treaty, commonly known as the *Abuja Treaty*, was the culmination of over 30 years of

¹⁰³ A condition precedent is a fact [act or event] which must exist or occur before a duty of immediate performance of a promise arises. See Steven H. Gifis, *Law Dictionary* (Hauppauge, New York: Barron's Educational Series, 1991) at 87.

¹⁰⁴ In contract law, a condition subsequent is a fact which will extinguish a duty to pay compensation for breach of contract after the breach has occurred (e.g. where a party claims the suspension of a right granted based on such a condition). See *ibid.*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

initiatives which were all aimed at achieving greater economic, social, and cultural integration among the countries of the African continent.¹⁰⁵

The origin of these initiatives is the establishment of the Organization of African Unity (OAU) in Addis Ababa on 25 May 1963 by the signing of the OAU Charter by representatives of 32 governments.¹⁰⁶ Subsequently, a further 21 African States joined the OAU, with South Africa becoming its 53rd member on 23 May 1994.

The main purposes of the OAU was: to promote unity and solidarity of African States; coordinate efforts to improve living standards in Africa; to defend the sovereignty and independence of African States; to eradicate all forms of colonialism; and, to promote international co-operation with due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.¹⁰⁷ The initial purpose and mission of the OAU was greatly influenced by a period (1960-63) of intense political struggle, with the “main preoccupation on an accelerated liberation process”.¹⁰⁸ Subsequently, during its

¹⁰⁵ *Treaty Establishing the African Economic Community*, (June 3 1991), online: African Union website, www.africa-union.org/root/au/Documents/Treaties/Text/AEC_Treaty_1991.pdf Preamble [*AEC Treaty*].

¹⁰⁶ The countries were: Algeria, Burundi, Cameroun, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville, today Democratic Republic of Congo), Dahomey (today Benin), Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika (today Tanzania), Togo, Tunisia, Uganda, United Arab Republic (today Egypt), and Upper Volta (today Burkina Faso). See *Charter of the Organization of African Unity*, (September 13, 1963) 479 U.N.T.S. 39, Art. XXXIII [*OAU Charter*].

¹⁰⁷ *Ibid.*, Art. II

¹⁰⁸ Edem Kodjo, "Introduction" in Yassin El-Ayouty & I. William Zartman, eds., *The OAU after twenty years - A SAIS Study on Africa* (New York: Praeger Publishing, 1984) at 4.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

initial decade, the OAU was primarily seen as a political organization, which focused on the liberation struggle,¹⁰⁹ the settlement of disputes (e.g. border disputes), and on continued decolonization efforts in territories under Portuguese, French, Spanish and British domination, and of South Africa and Namibia.

However, during its tenth anniversary, the OAU recalled that the first Assembly of Heads of States and Governments of the OAU, held in Cairo on 21 July 1964, had specified that the OAU had a basic role of planning and direction in economic and social matters in Africa.¹¹⁰ This included: the intensification of regional co-operation in addressing the concerns of the markets of several countries; the acceleration of industrial development with emphasis on multi-national projects; achievement of the objective of increasing inter-African trade; the harmonization of customs procedures; co-operation between African air-transport companies with a view to increasing trade and promoting tourism; and, the harmonization of social and labor legislation.

After a series of international meetings at different levels and on various issues,¹¹¹ the Heads of States met again in Lagos on 28 and 29 April 1980, under the auspices of the OAU. The objective was to take stock of the declining economic situation of many Member States and to prepare an action plan to

¹⁰⁹ OAU, *10th Summit Anniversary*, at 28: “through peaceful and democratic means” (e.g. action at the United Nations), and “through non-peaceful means” (e.g. training of freedom fighters and boycott of external trade with Portugal, South Africa, and Rhodesia).

¹¹⁰ *Ibid.*, at 36

¹¹¹ From 1963 until 1980 the OAU held over 66 documented meetings in various locations in Africa, see generally: El-Ayouty & Zartman, eds., *The OAU after twenty years - A SAIS Study on Africa* at 369-376.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

address the then prevailing deficiencies. The result was the adoption a plan of action, which was aimed at overcoming problems in various fields.¹¹² The so-called “Lagos Plan of Action” retained a broad, state-led model of actions¹¹³ which were considered necessary, given the past twenty years of disappointing economic performance. The States committed themselves to the promotion of economic and social development, and to the integration of their economies.¹¹⁴ The actions and objectives focusing on industrial development were grouped into short-term (until 1985), medium-term (1990), and long-term actions (2000), which were supposed to significantly improve Africa’s economic and social situation. However, while the need for integration was clearly stipulated, the Plan of Action did not include liberalization of trade or services as a declared objective.

The transport and communications sector was recognized as most important for all sectors and for socio-economic development.¹¹⁵ However, the actions proposed were based on the Transport and Communications Decade for Africa, 1978-88 declaration, which focused mainly on infrastructure

¹¹² The adoption by the OAU of the Lagos Plan of Action for the Economic Development of Africa, 1980 – 2000, and of an agenda for creating an African Economic Community by 2000, was the culmination of the initiative for a change in the international economic order, which was launched by the United Nations in 1974-1975.

¹¹³ See OAU, *Lagos Plan of Action for the Economic Development of Africa, 1980-2000*, re-published by the United Nations Economic Commission for Africa, 1980, online: UNECA Website, <www.uneca.org/itca/ariportal/docs/lagos_plan.PDF> [*Lagos Plan*].

¹¹⁴ *Lagos Plan, ibid.*, Preamble.

¹¹⁵ *Ibid.*, at 58.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

improvements.¹¹⁶ In the field of air transport, the plan mentioned the development of air transport infrastructure, the extension and modernization of airports, and technical assistance for better air transport integration.¹¹⁷

Overall, the 1980 Lagos Plan of Action was an attempt to gradually strengthen economic and cultural relationships between States and its ultimate goal was the establishment of an African Common Market by the year 2000. The achievement of these goals was impeded by the failure of the numerous Conferences of Independent African States held between 1958 and 1968, which aimed at establishing a universal African organization; coupled with the failure of regional initiatives, such as the collapse of the East African Community in 1977. However, there was also an opposing viewpoint that continental unity could only be achieved through political integration.¹¹⁸

3.2.2 The Establishment of the African Economic Community

The signing of the Abuja Treaty which established the AEC on 3 June 1991 was a clear sign of a new philosophy of regional economic cooperation leading eventually to full economic integration. The preamble of the treaty recites

¹¹⁶ See *Resolution by the Economic Commission for Africa Conference of Ministers* held in March 1977, which was endorsed by the Economic and Social Council and, subsequently, by the General Assembly of the UN.

¹¹⁷ *Lagos Plan*, *supra* note 114, at 61.

¹¹⁸ See generally Elenga M'buyinga, *Pan Africanism or Neo-Colonialism: The Bankruptcy of the O.A.U.* (London: Zed Press, 1982).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the various conferences at which declarations and resolutions paved the way for consensus by the governments of the various African States.¹¹⁹

Article 2 of the treaty provides for the establishment of the community, while Article 4(1) lists its objective in four paragraphs: (a) promotion of economic, social and cultural development and the integration of African economies; (b) establishment of a framework for the development, mobilization, and utilization of human and material resources; (c) promotion of cooperation in all fields of human endeavor; and, (d) coordination and harmonization of policies among existing and future economic communities to foster the gradual establishment of the AEC.

Article 4(2) then itemizes fifteen actions which the community is expected to implement in order to achieve the stated objectives. This itemization of actions has been seen as a somewhat worrisome approach.¹²⁰ It was suggested that an omnibus provision, granting the power to take whatever action necessary to the attainment of its objective, would have been more suitable.¹²¹ However, the focus on economic integration in Africa is further emphasized in Article 88(3) which provides that the treaty shall coordinate, harmonize and evaluate the activities of existing and future regional economic bodies.

¹¹⁹ The main conferences were the Summit conference of the OAU held in Algiers in 1968, the Monrovia Summit of 1979 (resulting in the Monrovia Declaration), and the Lagos Economic Summit of 1980, where the Lagos Plan of Action was formulated and the Final Act of Lagos adopted.

¹²⁰ O. Akanle, ed., *The Legal and Institutional Framework of the African Economic Community* (Lagos: Nigerian Institute of Advanced Legal Studies, 1993) at 10.

¹²¹ *Ibid.*

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

Article 6(1) defines the modalities for the establishment of the community, which shall be gradual over a transitional period not exceeding thirty-four years. This period is sub-divided into six stages of different duration. The initial stages focus primarily on regional activities and initial steps towards sectoral integration, while the final phase is aimed at reaching a full union, including a Monetary Union and a Pan-African Parliament. Article 98(1) provides that the community shall be an integral part of the Organization of African Unity, which implies that the community has priority over regional economic bodies and is expected to streamline its activities with the general objectives of the OAU as stipulated in its Charter of 1963.

Article 3(5) provides that the parties to the treaty shall observe the legal system of the community. This implies that it is the legal system of the treaty, separate and distinct from those of the constituent Member States of the community that will apply throughout the community in each of the Member States' territories.¹²² As a result, there will be a duality of legal systems: the national legal system and the community legal system. Article 5(2) obligates Member States to ensure the enactment and dissemination of such legislation as is necessary for the implementation of the provisions of the treaty.

The institutions of the community are provided for in Article 7(10). The supreme organ of the community is the Assembly of the Heads of States. Article 8(2) states the Assembly's main responsibility as being the implementation of the objectives of the AEC. Further, in Article 8(3), the

¹²² *Ibid.*, at 12

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Assembly is directly responsible for twelve specific tasks, ranging from: the determination of the general policy; through coordination and harmonization of various policies of Member States; to certain organizational matters. Finally, an omnibus clause provides that the Assembly may “take any action, under this Treaty, to attain the objective of the community”. Article 9(1) mandates the Assembly to meet once every year for a regular session,¹²³ and also empowers the Chairman to convene extraordinary sessions at the request of a Member State, provided that such a request is supported by two-thirds of members of the Assembly.

Finally, the provision that is most significant for the implementation of the Yamoussoukro Decision is Article 10. In it, the Assembly is empowered to act by *decision* (on any subject according to Article 8), which, if reached by consensus or two-thirds majority, becomes binding for all Member States, other organs of the community as well as the regional economic communities. Decisions shall become automatically enforceable thirty (30) days after the date of their signature by the Chairman of the Assembly.

The other organs of the community include the Council of Ministers (Article 11), the Pan-African Parliament (Article 14), the Economic and Social Commission (Article 15), the Court of Justice (Article 18), the General Secretariat (Article 21), and the Specialized Technical Committees (Article 25), one of which is the Committee on Transport, Communications and Tourism

¹²³ It is rather inadequate for a legislative organ of an economic community to meet only once a year. It would have been more appropriate to limit the Assembly’s role to solving political problems. See: *ibid.*, at 31.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

(Article 25(5)). However, given the fact that the Assembly is the only legislative organ of the community, the other organs often have just a preparatory or complementary function.¹²⁴

3.2.3 Ratification and Entry into Force

For the provisions of the Treaty to be binding, Article 100 requires that the Treaty and the Protocols thereto must be signed and ratified by the High Contracting Parties in accordance with their respective constitutional procedures. The Article further stipulates that the instruments of ratification shall be deposited with the Secretary-General of the OAU. Article 101 stipulates that the Treaty shall enter into force thirty days after the deposit of the instruments of ratification by two-thirds of the Member States of the OAU.

The Abuja Treaty entered into force on 12 May 1994 after two-thirds of the Member States of the OAU deposited their instruments of ratification.¹²⁵ The ratification process continued and, as of 22 June 2004,¹²⁶ 48 of the 54 African States had signed and ratified the Treaty. However, four of those ratifications and/or deposit of the ratification instruments were done at a time when the Abuja Treaty had been replaced by the Africa Union framework. Four

¹²⁴ The tasks assigned to the Council of Ministers are predominantly preparatory in character and are very similar to those of the Economic and Social Commissions, making at least one of the two organs unnecessary.

¹²⁵ African Union, *List of Countries which have signed, ratified/acceded to the Treaty establishing the African Economic Community*, 2006, online: African Union website, <<http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>> at 2.

¹²⁶ As shall be seen below, the ratification period for the Treaty establishing the AEC ended on 26 May 2001 when the Constitutive Act of the African Union came into force, but some States continued to ratify the Treaty establishing the AEC even after it had been replaced.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

States (Djibouti, Gabon, Madagascar, and Somalia) have signed, but not ratified the Treaty, and Eritrea and Morocco were never signatories to the Treaty. The status of these apparently non-treaty States is examined below.

3.3 Entry into force of the Yamoussoukro Decision

3.3.1 The Abuja Treaty as Legal Basis of the Yamoussoukro Decision

The African Ministers in charge of civil aviation convened in Yamoussoukro, Ivory Coast, on 13 and 14 November 1999 to discuss and adopt a new framework of liberalized air transport on the African continent. The basis for the discussions was the Yamoussoukro Declaration,¹²⁷ which aimed at the integration of African carriers, the gradual elimination of traffic restrictions, and at the reduction of tariffs.¹²⁸ The meeting resulted in the adoption of the Yamoussoukro Decision, which focused primarily on full liberalization of traffic rights up to the fifth freedom.

The Yamoussoukro Decision has its legal basis in Article 10 of the Abuja Treaty. Article 10 provides that the decisions of the Assembly of the African Economic Community shall be binding on Member States and organs of the Community, as well as regional economic communities. The Assembly, however, is defined in Article 8 as the Assembly of Heads of States, while the meeting in Yamoussoukro was attended by the African Ministers in charge of civil aviation. The formal adoption of the Yamoussoukro Decision on the basis of

¹²⁷ *Yamoussoukro Declaration*, *supra* note 44.

¹²⁸ Forty African States participated in the meeting, which resulted in the Yamoussoukro Declaration. See *ibid.*, at 7.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the Abuja Treaty therefore took place during the Assembly of the Heads of States from 10 to 12 July 2000 in Lomé, Togo.¹²⁹

It is generally assumed that the legal basis of the Yamoussoukro Decision is, in fact, the formal decision of the Assembly of the African Economic Community, which was taken on 12 July 2000. If this assumption is correct, the Yamoussoukro Decision then becomes an obligation under this treaty and is thus a legally binding instrument. However, this is only the case for those countries which signed and ratified the treaty and its protocols, and deposited their instruments of ratification with the Secretary-General of the OAU (Article 100). For States which did not sign the treaty, formal acceptance thereof through accession, acceptance, and approval remains a valid path for the treaty to become binding upon them.¹³⁰

Several States have signed, ratified, and/or deposited their instruments of ratification following entry into force of the treaty. As none of the ratifying State parties has expressed any reservations or consent to be bound by part of the treaty only,¹³¹ all State parties which have succeeded to Member States are technically bound by all the prior decisions taken by the AEC; decisions taken on the basis of Article 10 of the treaty. The only such significant decision taken by the AEC was the Yamoussoukro Decision.

¹²⁹ UNECA, *La Décision de Yamoussoukro*, *supra* note 31 at 63.

¹³⁰ Ian Brownlie, *Principles of Public International Law*, 6th ed. (Oxford: Oxford University Press, 2003) at 583 [*Brownlie*].

¹³¹ See *Vienna Convention on the Law of Treaties*, (1969) 1155 UNTS 331, arts. 15 and 17.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Nevertheless, the question as to whether those States that did not sign, ratify, and/or deposit their instruments of ratification during the ratification period of the Abuja Treaty could have become *de facto* Member States of the Yamoussoukro Decision must also be examined. There are, in fact, two treaties to examine with respect to “*de facto*” accession: the Abuja Treaty, and the Yamoussoukro Decision.

Article 100 of the Abuja Treaty explicitly stated that signature and ratification by the High Contracting Parties “in accordance with their respective constitutional procedures” was required. In addition, it required that the instruments of ratification must be deposited with the Secretary-General of the OAU. Based on this provision, any State that did not ratify or deposit its instrument of ratification must be considered not to be a contracting State and therefore outside the privileges and duties prescribed by the treaty. The strict requirement of ratification for treaties to be considered valid is generally confirmed in the literature, but it is also generally recognized and accepted that where the intention of the parties was to establish a less formal agreement, formal ratification may not be necessary, and simple signature is sufficient.¹³² The same principle applies to the deposit of ratification instruments. In a case concerning the land and maritime boundary between Cameroon and Nigeria, the International Court of Justice (ICJ) explained this principle in the following words:

¹³² Brownlie, *supra* note 130 at 583.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

[...] any state party to the ICJ Statute, in depositing a declaration [of acceptance] under the Optional Clause, makes a standing offer to the other state parties to the Statute that have not yet deposited a declaration of acceptance. The very day that one of those states accepts that offer by depositing its own declaration, the consensual bond is established and no further condition needs to be fulfilled.¹³³

The deposit of a declaration such as the formal ratification of a treaty can be seen as the expression of an acceptance as well as an offer to others to join an international accord.¹³⁴ It is therefore difficult to argue that in the absence of the deposit of an instrument of ratification, the required acceptance could be achieved by a *de facto* adherence to a treaty.

There are very few cases in which the agreed formalities of ratification and deposit of instruments were relaxed. One case concerned Nicaragua which stated that its failure to ratify the Statute of the former Permanent Court of International Justice (PCIJ), and convert “potential commitment to effective commitment”, was being rectified by its ratification of the ICJ Statute, the successor Court to the PCIJ.¹³⁵ The ICJ determined that Nicaragua had indeed made a valid declaration recognizing the Court’s

¹³³ Peter H.F. Bekker, "Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgement" (1998) 92:4 AJIL 751.

¹³⁴ Ratification in the sense of bringing a treaty into force by formal exchange or deposit of the instrument of ratification is generally seen as an important act involving the consent of State parties to be bound. See *Brownlie*, *supra* note 130 at 583.

¹³⁵ Malcom D. Evans, *International Law* (Oxford: Oxford University Press, 2006) at 193 [*Evans*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

compulsory jurisdiction under Article 36(2) of the PCIJ Statute, even though it had failed to deposit “an instrument of ratification” of its 1929 declaration with the League of Nations. The Court justified its decision by relying on the fact that Nicaragua had later signed and ratified the Charter of the United Nations, and had thereby accepted the Statute of the ICJ, which is an integral part of the UN Charter. In addition, the Court noted that Nicaragua did in fact acquiesce over time to statements contained in the Court’s official Yearbook, which it recognized as effectively recognizing the Court’s compulsory jurisdiction.¹³⁶

Nevertheless, the Nicaragua case exception to the generally strict requirements of ratification and deposit of instruments can hardly be used to justify the assertion that certain African States became bound to the Yamoussoukro Decision despite the absence of proper formal ratification on their part. None of the four States which signed but never ratified the treaty (i.e., Djibouti, Gabon, Madagascar, and Somalia), and none of the four States which ratified and/or deposited their instruments of ratification after the AU entered into force (i.e., Equatorial Guinea, Mauritania, South Africa, and Swaziland), have ever manifested their adherence to the Decision by applying any of its principles.¹³⁷

¹³⁶ Monroe Leigh, "Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*)" (1985) 79:2 AJIL 442 at 443.

¹³⁷ As outlined below, the ratification period ended on 26 May 2001, when the Constitutive Act establishing the African Union came into force. See below, section 3.3.3 - The Ratification Period of the Yamoussoukro Decision based on the Abuja Treaty.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

3.3.2 The Establishment of the African Union

At the Fourth Extraordinary Session of the AEC in Sirte, Libya, on 9 September 1999, the Assembly decided to establish a new organization called the “African Union” (AU), which would be in conformity with “the ultimate objectives of the Charter of [their] Continental Organization and the Treaty establishing the African Economic Community”.¹³⁸ The decision was based on the need to “accelerate the process of implementing the Treaty establishing the AEC in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization”.¹³⁹ The formal Constitutive Act establishing the African Union was adopted in Togo on 11 July 2000. Initially, 27 States signed the Act,¹⁴⁰ which formally entered into force on 26 May 2001. By July 2003 all African countries, except Morocco, had adopted and ratified the Act.¹⁴¹

Similar to the AEC, the Constitutive Act of the AU established several organs. Article 5 names them as follows: (a) the Assembly; (b) the Executive Council; (c) the Pan-African Parliament; (d) the Court of Justice; (e)

¹³⁸ *Constitutive Act of the African Union* (2000) Preamble [*Constitutive Act of the AU*].

¹³⁹ *Ibid.*

¹⁴⁰ See African Union, *List of Countries which have signed, ratified/acceded to the Constitutive Act of the African Union*, (2006) online: African Union website, <<http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>>. The list is reproduced in Annex III of this dissertation.

¹⁴¹ Morocco withdrew from the OAU in 1985, after admission of the Sahrawi Arab Democratic Republic (West Sahara), which it did not recognize as a legitimate signatory member of the Act. Later, Morocco refused to sign the Act creating the AU for the same reasons. See generally: Institute for Security Studies, *History and Background of the Organisation of African Unity, the African Economic Community, and the African Union*, (2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the Commission; (f) the Permanent Representative Committee; (g) the Specialized Technical Committees; (h) the Economic, Social and Cultural Council; and, (i) the Financial Institutions. Apart from some slight changes in their titles, the organs of the AU are very similar to the organs of the AEC. The only exceptions are the financial institutions to be created.¹⁴²

The main difference (and for the Yamoussoukro Decision, the most relevant) between the AEC and the AU, is the fact that the Constitutive Act of the AU does not provide for decisions of the Assembly to be automatically binding and enforceable on Member States and Organs of the Community. Instead, Article 9 of the Act limits the powers and functions of the Assembly to: policy decisions; membership and financial issues; directions to the Executive Council on issues concerning war or emergencies; and, the appointment of Judges and Commissioners. The functions and powers of the various other organs are, as well, limited to policy recommendations (Article 13 for the Executive Council), project preparation and supervision (Article 15 for the Technical Committees), or left to be determined in future acts (e.g., the creation of a Pan-African Parliament - Article 17).¹⁴³

Article 33(1) of the Constitutive Act of the AU stipulates that the Act shall replace the Charter of the Organization of African Unity after a

¹⁴² *Constitutive Act of the AU*, *supra* note 138, Art. 19, which provides for the establishment of a (a) The African Central Bank, (b) The African Monetary Fund, and (c) The African Investment Bank.

¹⁴³ The Pan-African Parliament was established by the adoption of the *Treaty Establishing the African Economic Community Relating to the Pan-African Parliament* on 30 July 2003.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

transitional period of one year or such further period determined by the Assembly. It further provides in article 33(2) that the Act shall take precedence over and supersede any inconsistent or contrary provision of the Treaty establishing the AEC. In essence, the Constitutive Act of the AU has replaced the Abuja Treaty,¹⁴⁴ and especially cancelled those provisions that had not been carried over into the AU framework.

For purposes of the Yamoussoukro Decision, the most relevant provision which was not carried over into the Constitutive Act of the AU, was Article 10 of the Abuja Treaty. This meant that, from the day the Constitutive Act of the AU entered into force, decisions taken by the Assembly would no longer become automatically binding upon all Member States. Under Article 7 of the Constitutive Act, decision making by the Assembly of the AU requires consensus or a two-thirds majority of the Member States. However, the words “automatically binding” were omitted. It can thus be assumed that the States parties to the Constitutive Act of the AU wanted to preserve their right to determine whether or not to ratify future major decisions taken by the AU Assembly.

3.3.3 The Ratification Period of the Yamoussoukro Decision based on the Abuja Treaty

The entry into force of the Constitutive Act of the AU on 26 May 2001 terminated the ratification period of the Abuja Treaty, which included accession to Yamoussoukro Decision as a binding element of the Abuja Treaty.

¹⁴⁴ The adoption by a two-thirds majority of the Constitutive Act of the AU is also to be seen as a (major) amendment of the Abuja Treaty in accordance with its article 103.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Thus, even though the Constitutive Act of the African Union provides for a transitional period of one year or such further period as may be necessary,¹⁴⁵ it solely does so for the purpose of enabling the OAU to undertake measures for the devolution of its assets and liabilities to the AU.

The question as to whether the Constitutive Act of the African Union could be seen as a successor to the Abuja Treaty with regard to the Yamoussoukro Decision may be answered by referring to Article 12 of the Yamoussoukro Decision. This article declares Article 10 of the Abuja Treaty as the basis for the entry into force of the Yamoussoukro Decision by stating that “in accordance with Article 10 of the Abuja Treaty, this Decision shall automatically enter into force thirty days after the date of its signature by the Chairman of the Assembly of Heads of State and Government at which this Decision was adopted.” It is exactly this provision, which makes the prime difference between the Abuja Treaty (under which decisions of the Assembly become automatically binding on Member States), and the Constitutive Act of the African Union (which does not include this mechanism). In other words, if the Yamoussoukro Decision had been agreed upon when the African Union was already in existence (and the Abuja Treaty replaced), its entry into force would have depended on the ratification of the Decision by each State, because the African Union treaty does not include a provision to the effect that decisions are automatically binding on Member States.

¹⁴⁵ *Constitutive Act of the AU*, *supra* note 138, art. 33.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

The day that the Constitutive Act of the African Union came into force thereby repealing and replacing the Abuja Treaty therefore marks the end of the mechanism of Article 10 of the Abuja Treaty (i.e., automatic binding effect of decisions upon Member States). Consequently the ratification period of the Abuja Treaty, including the period of accession, acceptance, and approval of the treaty (acts which also resulted in membership of the Yamoussoukro Decision), opened when the treaty was signed on 3 June 1991 and closed on 26 May 2001.

3.3.4 The Status of the non-Abuja Treaty States

Of the total of 54 African States, ten must be considered to be non-Abuja Treaty States. These ten States can be grouped into three categories: (i) States which have never signed the Abuja Treaty (Eritrea and Morocco); (ii) States which have signed, but never ratified the treaty (Djibouti, Gabon, Madagascar, and Somalia); and, (iii) States which ratified and/or deposited their instruments of ratification after the Constitutive Act of the AU entered into force (Equatorial Guinea, Mauritania, South Africa, and Swaziland). Those States which never signed or ratified the Abuja Treaty can clearly be described as non-treaty States. By extension, they are not part of the Yamoussoukro Decision framework.

The status of States which ratified and/or deposited their instruments of ratification after the Constitutive Act of the AU entered into force can be examined in several different perspectives. A first lead can be found in Article 33 of the Constitutive Act of the African Union, which stipulates that the Act shall replace the Charter of the Organization of African Unity; and as well,

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

take precedence over and supersede any provision(s) of the Treaty of the African Economic Community which are inconsistent or contrary to its provisions.

The main provision concerning the Yamoussoukro Decision that was superseded by the Constitutive Act of the African Union was Article 10 of the Abuja Treaty, which provides that the decisions of the Assembly of the African Economic Community shall be binding on Member States and organs of the Community, as well as on regional economic communities. The argument that the provisions of Article 10 of the Abuja Treaty were, in fact, terminated when the Constitutive Act of the African Union came into force can also be made with reference to Article 59 of the Vienna Convention on the Law of Treaties.¹⁴⁶ This article stipulates that a treaty shall be considered to be terminated if all the parties to it conclude a later treaty relating to the same subject matter, and the provisions of the later treaty are so incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time. As all of the four parties concerned (Equatorial Guinea, Mauritania, South Africa, and Swaziland) did, in fact, sign the Constitutive Act of the African Union, and some (Equatorial Guinea and South Africa) even ratified before its entry into force, it can be concluded that these parties knew about and agreed to subscribe to the new legal framework. It is nevertheless remarkable that all four States did, in fact, also ratify the Abuja Treaty and deposit their instruments of ratification after 26 May 2001, the date on which the Constitutive Act of the AU came into force and replaced the Abuja Treaty framework. This is even more astonishing when one considering the fact

¹⁴⁶

Vienna Convention on the Law of Treaties, supra note 131.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

that three of those States (Equatorial Guinea, South Africa, and Swaziland) actually deposited their instruments of ratification of the Abuja Treaty *after* they had deposited their instruments of ratification of the Constitutive Act of the AU (i.e., at a time when the period of ratification of the Abuja Treaty was technically closed).

The key question to consider before arriving at the conclusion that States which did not sign the Abuja Treaty during its legal existence are not members of the Yamoussoukro Decision is whether decisions of the Assembly of the AU are automatically binding upon all its Member States without any further act of ratification on their part. Article 10 of the Abuja Treaty is very clear on this issue. It provides that the decisions of the Assembly of the African Economic Community shall be binding on Member States and organs of the Community, as well as on regional economic communities.¹⁴⁷ The Constitutive Act of the AU is less clear on this question. Article 6 stipulates that the Assembly shall be the supreme organ of the Union, and Article 7 states that the Assembly shall take its decisions by consensus or, failing that, by a two-thirds majority of the Member States of the Union. However, the Constitutive Act does not explicitly state that the decisions of the Assembly are binding on all Member States. But, on the other hand, it provides in Article 23(2) for the imposition of sanctions against a Member State that fails to comply with the decisions and policies of the Union,

¹⁴⁷ The Assembly has the mandate to make a wide range of decisions which help to coordinate and harmonize the economic, scientific, technical, cultural and social policies of Member States. In addition, Article 8 of the Abuja Treaty provides the Assembly generous power to “take any action, under this Treaty, to attain the objectives of the Community”.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

such as the denial of transport and communication links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.

One strong indication about the nature and scope of applicability of decisions of the AU upon Member States can be found in Article 33 of the Rules of Procedure of the Assembly of the Union,¹⁴⁸ which states that decisions of the Assembly shall be issued as: (a) regulations; (b) directives; and, (c) recommendations, declarations, resolutions, and opinions. Regulations are applicable in all Member States which “shall take all necessary measures to implement them”. The question which then arises is whether the phrase “all measures to implement them” means formal adoption or ratification by each Member State?

Article 34(1) provides that regulations and directives shall be automatically enforceable 30 days after the date of their publication in the Official Journal of the African Union or as specified in the decision. Further, Article 34(2) provides that regulations and decisions shall be binding on Member States, Organs of the Union, and Regional Economic Communities. Two fundamental issues need to be addressed before the conclusion that Article 34 does, indeed, render any decision of the Assembly automatically enforceable after publication can be reached: (i) can the adoption of rules of procedure of the Assembly by the Assembly cure the inherent failure of the Constitutive Act to explicitly provide for

¹⁴⁸ African Union, *Rules of Procedure of the Assembly of the Union*, (Assembly of the African Union - First Ordinary Session, Durban, South Africa, 2002).

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

automatic enforceability of Assembly decisions after publication; and, (ii) what is the demonstrated practice of the Assembly in that regard?

The first question is relatively easy to answer. The Constitutive Act of the AU requires ratification by all Member States. One of the most significant provisions of the previous regime was not included in the Act namely: the automatic enforceability of decisions of the Assembly upon Member States. However, in 2002, the Assembly adopted its own rules of procedure and proclaimed therein that its decisions are automatically enforceable upon Member States. This action can be qualified as *ultra vires* given that it was clearly made in excess of the powers granted to the Assembly to adopt its own rules of procedure. Additionally, this very significant rule lacks legitimacy as it was never ratified by Member States. As the Assembly did not have these powers in the Constitutive Act, the new provision cannot be deemed to be an express or implied amendment of the Constitutive Act.¹⁴⁹

The second issue which relates to the practice of the Assembly is less clear. In spite of the fact that over the past few years, the AU Assembly has taken several decisions, there is very little evidence of their automatic enforcement upon Member States. However, a concrete lead came during the 6th

¹⁴⁹ The rules of procedure which gave the Assembly of the African Union the power of enforceability of decisions on Member States must be considered as an amendment of the original treaty. According to Article 40 of the *Vienna Convention* any proposal to amend a multilateral treaty must be notified to all the contracting States. Each State has the right to take part in (a) the discussion as to the decision to be taken in regard to such proposal, and (b) the negotiation and conclusion of any agreement for the amendment of the treaty. Article 32 of the Constitutive Act of the African Union provides that amendments shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority and submitted for ratification by all Member States in accordance with their respective constitutional procedures.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Assembly of the AU where the Assembly took notice of an intervention by the Great Socialist People's Libyan Arab Jamahiriya concerning non-submission of decisions of the African Union to the ratification process by AU Member States. The Assembly therefore called upon all Member States "to sign and ratify the Treaties, Charters, Conventions and Protocols adopted by the Assembly and request[ed] national parliaments to hold, if necessary, extraordinary sessions for their ratification".¹⁵⁰

Finally, while there is strong evidence that decisions of the AU Assembly do not have the same automatic binding effect as decisions of the AEC as provided for in the Abuja Treaty, there is yet another factor which underscores the argument that certain States which ratified the Abuja Treaty after 26 May 2001 are not bound by the Yamoussoukro Decision. If it is assumed that the Assembly of the AU was, in fact, empowered to grant its decisions the status of automatic enforceability as it did in Article 33 of the Rules of Procedure of the Assembly of the Union, then it becomes imperative to consider the date of effectiveness of this decision. The Rules of Procedure of the Assembly were adopted on 10 July 2002, during the First Ordinary Session of the African Union. According to Article 34 of the Rules of Procedure, Assembly decisions become enforceable 30 days after the date of their publication in the Official Journal of the African Union. However, three out of the four States that ratified the Abuja Treaty

¹⁵⁰

African Union, *Decisions of the 6th Ordinary Session of the Assembly of Heads of State and Government*, AU Doc. No. Assembly/AU/Dec. 108 (VI). (6th African Union Summit, Khartoum, Sudan; 2006) at 5.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

after it had been replaced by the Constitutive Act of the AU on 26 May 2001¹⁵¹ did so in August 2002, before the new rule would have taken effect. Therefore, in the unlikely event that Article 33 of the Rules of Procedure of the Assembly is recognized as valid, the only State against which a claim of automatic enforceability of decisions can validly be made would be Equatorial Guinea, since it ratified the Abuja Treaty on 20 December 2002.

As outlined above, decisions of the Assembly of the AU do not enjoy the same status as provided for decisions of the AEC in Article 10 of the Abuja Treaty. Therefore, all four States¹⁵² which ratified and/or deposited their instruments of ratification after the Constitutive Act of the AU entered into force cannot be considered Member States of the Yamoussoukro Decision. It would also not be appropriate to conclude that late ratification of the Abuja Treaty by certain States would be an indication that those States primarily intended to join the Yamoussoukro Decision framework. The Yamoussoukro Decision provides for a much simpler procedure for non-treaty States that wish to be parties to the Decision.¹⁵³ Administrative delays are more likely to have caused the late and obsolete ratification by those States.

3.3.5 Conclusion about entry into force and Member States of the Yamoussoukro Decision

¹⁵¹ Mauretania ratified on 20 November 2001; South Africa on 31 May 2001; and Swaziland ratified on 6 June 2001.

¹⁵² Equatorial Guinea, Mauritania, South Africa, and Swaziland.

¹⁵³ *Yamoussoukro Decision*, *supra* note 29, Annex 1(a).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The Abuja Treaty which formally entered into force on 12 May 1994 can be recognized as the legal basis for the Yamoussoukro Decision. All States which signed and formally ratified the Abuja Treaty during its legal existence also adhered thereby to the Yamoussoukro Decision, which became fully binding on 12 August 2002. Of the total of 54 African States, 44 signed and formally ratified the Abuja Treaty. Those States became parties to the Yamoussoukro Decision. The remaining ten States namely: Djibouti, Equatorial Guinea, Eritrea, Gabon, Madagascar, Mauritania, Morocco, Somalia, South Africa, and Swaziland cannot be considered parties to the Yamoussoukro Decision.

3.4 Elements of implementation of the Yamoussoukro Decision

3.4.1 Establishment of competition rules

Article 7 of the Yamoussoukro Decision provides that State parties must “ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territor[ies]”. This requirement to ensure fair opportunity and anti-discrimination is kept very marginal, and Article 7 does not provide any further principles or rules that would better define fair and unfair competition between the operators. The absence of any competition rules can therefore be seen as a missing element in the implementation of the Yamoussoukro Decision.

The first ordinary session of the Ministers Responsible for Air Transport, held in May 2005 under the auspices of the African Union in Sun City, South Africa, concluded that harmonization of the rules of liberalization of air

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

transport was necessary; as different sets of rules in the sub-regions were hindering the full implementation of the decision.¹⁵⁴ This conclusion was primarily based on the fact that joint draft regulations for competition in air transport services within COMESA, EAC, and SADC had already been prepared and discussed.¹⁵⁵ However, these joint competition rules had not yet been adopted by the Council of Ministers of COMESA, EAC, and SADC. Mauritius had even indicated informally that it was withdrawing from the Yamoussoukro Decision because of the failure of the SADC countries to adopt the competition rules relating to the full liberalization of air transport.¹⁵⁶

During the second session of the Ministers responsible of air transport, held in May 2006 again under the auspices of the African Union in Libreville, Republic of Gabon, the experts' meeting positively acknowledged the above mentioned joint elaboration of competition regulations by COMESA, EAC, and SADC, but it also became evident that no progress had been made in adopting these regulations among all RECs.¹⁵⁷

¹⁵⁴ African Union, *Report of the 4th Meeting of the Monitoring Body for the Implementation of the Yamoussoukro Decision (Addis Ababa, 3-4 March 2005)*, AU Doc No. AU/AT/3a (I), at para. 5.2.8 [*Report of the 4th Meeting of the Monitoring Body, Addis Ababa, 2005*].

¹⁵⁵ See generally Council of Ministers of COMESA and EAC responsible for Civil Aviation and the Committee of Ministers of Transport and Communications of SADC, *Regulations for Competition in Air Transport Services within COMESA, EAC and SADC* (2004).

¹⁵⁶ It seems that the main issue underlying the withdrawal of Mauritius, which was never done formally in accordance with Article 12.3 of the Yamoussoukro Decision, laid in the fact that Air Mauritius feared 6th Freedom traffic from Europe over the hubs of Johannesburg or Nairobi, which would be operated as 3rd and 4th Freedom traffic under the Yamoussoukro Decision. See Section 4.3 of this dissertation below.

¹⁵⁷ African Union, *Report of the Meeting of Experts on Air Transport in Sun City, South Africa 2005*, AU Doc. No. AU/AT/Exp/Rpt (I), online: AU website, <<http://www.africa->

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Finally, in 2007, the African Union drafted its own common competition rules, including special provisions on air transportation.¹⁵⁸ These competition rules, which are very similar to the draft regulations for competition in air transport services within COMESA, EAC and SADC, prohibit: anti-competitive agreements and practices; the abuse of a dominant position; as well as the grant by any Member State of any subsidy which distorts or threatens to distort competition. At the third session of the Ministers Responsible of Air Transport held by the African Union in Addis Ababa, Ethiopia, in May 2007, the Ministers noted the preparation of the draft texts concerning the harmonization of competition rules. This was based on a recommendation by the meeting of the experts for air transport of the African Union which called for harmonization of competition rules on the basis of regulations developed in the RECs.¹⁵⁹ Accordingly, the Ministers requested the African Union Commission to proceed with the process of validation and finalization.¹⁶⁰ The objective was to have these draft rules formally adopted by the Heads of State during the 9th ordinary session of the Assembly of the African Union which was held in Accra, Ghana, on 1 – 3 July 2007.

union.org/infrastructure/air%20transport%20sun%20city/Home.htm> at para. 63 [*Report of the Meeting of Experts on Air Transport in Sun City, 2005*].

¹⁵⁸ African Union, *Projet de Décision portant Règles Communes sur la concurrence et Project de Décision fixant les Exemptions aux Règles de Concurrence en Matière de Transport Aérien*, (2007).

¹⁵⁹ African Union, *Report of the Meeting of Experts in Addis Ababa, Ethiopia 2007, Third African Union Conference for Air Transport*, (Addis Ababa, Ethiopia; 2007), paras. 31 – 36 [*Report of the Meeting of Experts, Addis Ababa, 2007*].

¹⁶⁰ *Ibid.*, para. 45.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

However, the Assembly did not deal with the proposed competition rules. Instead, it decided to focus primarily on the creation of a Union Government for Africa “to accelerate the economic and political integration of the African continent”.¹⁶¹ For this purpose, the Assembly decided that: the RECs should be rationalized and strengthened; an audit of the Executive Council and other organs of the AU should be conducted; and, a Ministerial committee should be established to review and analyze the relationship between the AU, the RECs, and the national governments.¹⁶² Consequently, the issue of harmonization of competition rules remains pending to date.

3.4.2 Establishment of an arbitration procedure

Next to ensuring fair competition, the Yamoussoukro Decision addresses the settlement of disputes in Article 8. While it encourages State parties to settle disputes by negotiation, it also refers to arbitration procedures, which are provided for in Annex 2 of the Yamoussoukro Decision. There is, however, no provision on arbitration procedures in Annex 2 of the Yamoussoukro Decision, which rather defines the duties and responsibilities of the Monitoring Body, established by Article 9 of the Decision.

The first ordinary session of the Ministers Responsible of Air Transport, held in Sun City did not address the issue of missing arbitration procedures in the Yamoussoukro Decision. It did, however, consider through the

¹⁶¹ African Union, *Accra Declaration*, (July 3rd 2007), online: AU website, <www.africa-union.org/root/ua/Conferences/2007/juin/Sommet_Accra/Doc/Decisions/Accra_Declarati on.doc>, at 1.

¹⁶² *Ibid.*, at 2.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Monitoring Body, a first case concerning an apparent dispute between Egypt and Nigeria, bordering on operational difficulties encountered by Egypt in its operations in Nigeria. The case was not dealt with directly, but it was recommended that the President of the Monitoring Body should contact ECOWAS and COMESA to clarify the nature of the dispute between the civil aviation authorities of Nigeria and Egypt with a view to finding an amicable solution.¹⁶³

In similar fashion to the manner in which competition regulations were addressed during the session, the experts took note of the preparatory work done by COMESA, EAC, and SADC, on elaborating a dispute settlement mechanism. However, during the Libreville session of the Ministers Responsible for Air Transport, the implementation of a dispute settlement mechanism was linked to the outcome of a study on the creation of the then pending Executing Agency.¹⁶⁴ The Executing Agency was finally created in 2007 during the Addis Ababa session of the Ministers Responsible for Air Transport by assigning its responsibilities and duties to the African Civil Aviation Commission (AFCAC), a specialized institution of the African Union.¹⁶⁵ The arbitration procedures of the dispute settlement mechanism remain pending for the time being. However, it is

¹⁶³ *Report of the 4th Meeting of the Monitoring Body, Addis Ababa, 2005, supra note 159 para. 5.2.10.*

¹⁶⁴ *Report of the Meeting of Experts on Air Transport in Sun City, 2005, supra note 157, para. 63.*

¹⁶⁵ African Union, *Addis Ababa Resolution on Entrusting the Functions of the Executing Agency of the Yamoussoukro Decision to the African Civil Aviation Commission*, AU Doc. No. AU/EXP/AT/Res. (III), online: AU website, <http://www.africa-union.org/root/UA/Conferences/2008/avril/IE/21-25avr/REPORTS_TRANSPORT_EN.htm#> at 2 [Addis Ababa AFCAC Resolution].

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

expected that, as Executing Agency, AFCAC will play a leading role in establishing this mechanism.

3.4.3 Establishment of a Monitoring Body

The Monitoring Body was established by Article 9(1) of the Yamoussoukro Decision. Its main task is the overall supervision, follow-up and implementation of the Yamoussoukro Decision. Initially, the plan was to empanel the Monitoring Body with representatives of the ECA, OAU, AFCAC and AFRAA, who shall be assisted by representatives of sub-regional organizations. Annex 2,¹⁶⁶ adequately titled “Duties and Responsibilities of the Monitoring Body”, outlines the Monitoring Bodies’ overall duties and responsibilities.

The first meeting of the monitoring body was held in Addis Ababa, Ethiopia, in November 2000. The meeting was attended by representatives of several agencies, including the Organization of African Unity (OAU), the African Civil Aviation Commission (AFCAC), AFRAA, the Intergovernmental Agency on Development (IGAD), COMESA, and the ECA.¹⁶⁷ The meeting took note of several reports by individual organizations on their experience and ideas on rules, procedures and a proposed timetable for the implementation of the Yamoussoukro Decision. In addition, it considered and approved versions of Annex 1 (a), (b), (c),

¹⁶⁶ Instead of Annex 3 as referred to in Article 9(3)

¹⁶⁷ AFCAC is a specialized agency of the Organization of the African Unity (OAU) in the field of civil aviation. IGAD was founded on 21 March 1996 by the Heads of State and Government at the Second Extraordinary Summit in Nairobi. The objectives of this intergovernmental agency is conflict prevention, management and resolution and humanitarian affairs, infrastructure development (transport and communications), and food security and environmental protection.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and Annex 3 (formerly called Annex 2) of the Yamoussoukro Decision. It also set 31 March 2001 as the deadline for States to submit their declaration(s) to limit their rights and obligations as provided for in Articles 3 and 4 of the Yamoussoukro Decision for a period not exceeding two years.¹⁶⁸

The Monitoring Body had a few additional meetings in the subsequent years. At its fourth meeting held in Sun City, South Africa, in March 2005, representatives from the African Union, COMESA, AFRAA, the African Development Bank (ADB), and the New Partnership for African Development (NEPAD) participated. The meeting reviewed an evaluation of the progress made on the implementation of the Yamoussoukro Decision, and discussed an action plan for the way forward. It was especially noted that regional organizations, such as COMESA, had made good progress in the field of a common liberalized air transport policy, the harmonization of civil aviation regulation, and on the co-ordination of safety oversight and security programs. However, one of the main concerns raised in the deliberations was the fact that the Monitoring Body lacked sufficient resources to secure financing for the many proposed activities.¹⁶⁹

Nevertheless, and despite the fact that the Monitoring Body met only a few times after its creation by the Yamoussoukro Decision, it can be concluded that it was indeed established and is still functioning. Its

¹⁶⁸ See generally UNECA, *Report of the First Meeting of the Monitoring Body of the Yamoussoukro Decision* (Addis Ababa, Ethiopia, November 13-15 2000) UNECA Doc. No. ECA/RCID/TPT/CIVAV/MTG-1 [*Report of the First Meeting of the Monitoring Body of the Yamoussoukro Decision, Addis Ababa, 2000*].

¹⁶⁹ *Report of the 4th Meeting of the Monitoring Body, Addis Ababa, 2005, supra* note 159 at 5 and 6.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

responsibilities as set forth in Article 9 of the Yamoussoukro Decision, namely: the overall supervision, follow-up, and implementation of the Yamoussoukro Decision to assist the Sub-Committee on Air Transport composed of African Ministers responsible for Civil Aviation are quite well performed. However, the infrequent meetings of the Monitoring Body are one indication of the overall slow rate of implementation of the Yamoussoukro Decision.

3.4.4 Establishment of an Executing Agency

To ensure its successful implementation, Article 9(4) of the Yamoussoukro Decision states that an African Air Transport Executing Agency shall be established as soon as possible. The principal responsibility of the Executing Agency is defined in the same Article as the supervision and management of Africa's liberalized air transport industry. Article 9(5) stipulates that the Executing Agency shall have "sufficient powers for [sic] formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition". In addition, Article 9(6) mandates the Executing Agency to ensure consumer protection.

The creation of the Executing Agency was discussed and delayed at several meetings of the Ministers Responsible for Air Transport.¹⁷⁰ Finally, after having prepared a detailed study on the creation of the Agency, the Third

¹⁷⁰ *Report of the Meeting of Experts on Air Transport in Sun City, 2005, supra* note 157, para. 63; African Union, *Report of the Experts Meeting in Libreville Gabon 2006*, para. 61.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

African Union Conference of Ministers responsible for Air Transport, decided in Addis Ababa in May 2007 that AFCAC will be designated and entrusted with the functions of the Executing Agency as set forth in Article 9(4).¹⁷¹ However, the experts noted two concerns regarding this decision. First of all, despite the fact that AFCAC is a specialized institution of the African Union, not all Member States of the African Union are also members of AFCAC.¹⁷² Secondly, the integration of the Executing Agency into a specialized institution of the African Union does not comply entirely with the wording of Articles 9(4) to 9(6), which call for a powerful and, most significantly, an independent agency.

The experts' failure to create an independent agency was underscored (in fact driven) by their rejection of a proposal to partially fund such an agency through the collection of community aviation charges.¹⁷³ This rationale was again reflected in the deliberations of the Ministers, who concluded that AFCAC needed to be strengthened by entrusting it with the responsibilities of the Executing Agency. To address the funding issues, they called for financial support from the African Union itself and from the Member States; as well as for the secondment of national experts and the organization of meetings.¹⁷⁴

The formal creation of the Executing Agency by designation of, and assignment of its responsibilities to, AFCAC must be evaluated by examining

¹⁷¹ *Addis Ababa AFCAC Resolution*, *supra* note 165 at 2.

¹⁷² In fact, eight are not

¹⁷³ *Report of the Meeting of Experts, Addis Ababa, 2007*, *supra* note 159, para. 26.

¹⁷⁴ *Ibid.*, para. 37.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

AFCAC's past achievements. Throughout its history which extends well over forty years, AFCAC has had a mandate of encouraging cooperation throughout Africa in all civil aviation activities.¹⁷⁵ Its aims have been to promote the coordination, improved utilization and development of African air transport systems and the standardization of aircraft, flight equipment and training programs for pilots and mechanics. It has organized some working groups and seminars, and compiled statistics over the years.¹⁷⁶ However, Africa's civil aviation sector has performed rather poorly over the past forty years. In particular, attempts towards cooperation or consolidation have failed, and the standardization of aircraft, flight equipment and training programs for pilots and mechanics has never been addressed.¹⁷⁷

On the other hand, if AFCAC's current objectives are taken into account, then the assignment of the Executing Agency to AFCAC appears to be justified since those objectives fall in line with the role of the Executing Agency. In particular, the objectives include promotion of the development of the civil aviation industry in Africa in order to fulfill the objectives of the African Union Charter of 1963 and the Abuja Treaty of 1991.¹⁷⁸ Finally, AFCAC's new role of supervising and managing Africa's liberalized air transport sector under the

¹⁷⁵ AFCAC was founded on 17 January 1969 and has its headquarters in Dakar, Senegal. Today, it is part of the African Union and acts as a specialized commission.

¹⁷⁶ OAU, *Profile: The Organization of African Unity* (2000), para. 6.7.3.

¹⁷⁷ The most prominent example of a failed attempt at cooperation between airlines was the bankruptcy of Air Afrique. UNECA, *La Décision de Yamoussoukro et le transport aérien en Afrique*, *supra* note 38 at 95.

¹⁷⁸ See African Civil Aviation Commission (AFCAC), *AFAC Commission Objectives*, (Dakar, Senegal; 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Yamoussoukro Decision framework is especially supported by the widely held belief that the development of air transport in Africa depends on the liberalization of the intra-African markets.

However, the newly established/designated Executing Agency will need sufficient powers in order to enforce the competition rules and regulations once they are promulgated, and to be able to successfully arbitrate and settle disputes arising from complaints of unfair competition. As noted above, currently, neither the rules and regulations nor the arbitration procedures and the dispute settlement mechanism have been elaborated. Finally, not all Yamoussoukro Decision Member States would be equally bound by AFCAC's rulings, as only 46 of the 54 Yamoussoukro Decision Member States are currently members of AFCAC.¹⁷⁹ The remaining eight States,¹⁸⁰ six of which are full Member States of the Yamoussoukro Decision, must join AFCAC in order for it to properly perform its assigned role as the Executing Agency of the Yamoussoukro Decision.

3.4.5 Safety and Security requirements

The Yamoussoukro Decision addresses safety and security issues both directly and indirectly in several of its articles. Under Article 5(1), a State party may unilaterally limit the volume of traffic, the type of aircraft to be

¹⁷⁹ The 46 members States of AFCAC are: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroun, Central African Republic, Chad, Congo, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Liberia, Niger, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia.

¹⁸⁰ Cape Verde, Comoros, Djibouti, Equatorial Guinea, Liberia, Saharawi Arab Democratic Republic, Seychelles, and Zimbabwe

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

operated or the number of flights per week, on the basis of environmental, safety, technical or other special considerations. In Article 6(9), the eligibility criteria for a designated airline to operate under the Yamoussoukro Decision framework is that, the airline must be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO, and to respond to queries from any State to which it provides air services. In Article 6(10), a State party may revoke, suspend or limit the operating authorization of a designated airline of the other State party if the airline fails to meet the criteria of eligibility, including the maintenance of standards set by ICAO. In Article 6(11), States parties must also recognize Air Operating Certificates, Certificates of Airworthiness, Certificates of Competency and the personnel licenses issued or validated by the other States parties, and still in force, provided that the requirements for the issuance of such certificates or licenses are, at least, equal to the minimum standards set by ICAO. Finally, security is addressed in Article 6(12) where the State parties explicitly reaffirm their obligation to comply with civil aviation safety and security standards and practices.

ICAO defines safety as “a condition in which the risk of harm or damage is limited to an acceptable level”.¹⁸¹ It defines security as “a combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference”.¹⁸² Safety and security are

¹⁸¹ International Civil Aviation Organization (ICAO), *Safety Oversight Audit Manual*, ICAO Doc. 9735, AN/960 (2000) at 1-3.

¹⁸² ICAO, *Annex 17 to the Convention on International Civil Aviation – Security*, (2002). [Annex 17] at 1-1.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

addressed by appropriate regulations, which focus on preventing accidental (safety) and intentional (security) harm.¹⁸³ The Chicago Convention of 1944, the multilateral agreement that created the International Civil Aviation Organization (ICAO), gave ICAO quasi-legislative authority to promulgate standards and recommended practices (SARPs).¹⁸⁴ The SARPs, which are adopted as Annexes to the Chicago Convention, are of general binding nature for all contracting States of ICAO, unless a State takes steps to notify ICAO of differences between its domestic law and the requirements prescribed by the SARPs.¹⁸⁵ One of the mandatory functions of the Council of ICAO is to adopt SARPs.¹⁸⁶ To date, the ICAO Council has adopted 18 Annexes, which contain standards and practices covering all technical and operational aspects of aviation.¹⁸⁷ Apart from the

¹⁸³ Paul Stephen Dempsey, "Compliance & Enforcement in International Law: Achieving Global Uniformity in Aviation Safety" (2004) 30:1 N.C.J. Int. L. & Com. Reg. at 4.

¹⁸⁴ *Convention of International Civil Aviation*, (December 6 1944) 61 stat. 1180, 15 U.N.T.S. 185, reprinted in XVIII Ann. Air & Sp. L. 5, art. 1 [*Chicago Convention*].

¹⁸⁵ Article 38 of the Chicago Convention provides that States which find it impracticable to comply in all respects with any international standard of procedure, or to bring its own regulation into full accord with an international standard shall notify ICAO immediately or within sixty days in the case of amendments. The Council of ICAO shall immediately notify all other States of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

¹⁸⁶ *Chicago Convention*, *supra* note 186 Article 54(1).

¹⁸⁷ The Annexes to the Chicago Convention are:
Annex 1: Personnel Licensing
Annex 2: Rules of the Air
Annex 3: Meteorology
Annex 4: Aeronautical Charts
Annex 5: Units of Measurement to be Used in Air-Ground Communications
Annex 6: Operation of Aircraft, International Commercial Air Transport
Annex 7: Aircraft Nationality and Registration Marks
Annex 8: Airworthiness of Aircraft
Annex 9: Facilitation of International Air Transport
Annex 10: Aeronautical Telecommunications
Annex 11: Air Traffic Services
Annex 12: Search and Rescue

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

SARPs contained in the 18 Annexes, there are certain provisions of the Chicago Convention itself, which impose direct obligations upon Member States and require no implementing legislation.¹⁸⁸ These include provisions on:

- The right of non-scheduled aircraft to fly over and land for non-traffic purposes (Article 5);
- The prohibition of overflight by pilotless aircraft unless permission is granted (Article 8);
- Uniformity and non-discriminatory conditions, fees, and charges by airports (Article 15);
- Search of aircraft and inspection of certificates and documents on landing or departure (Article 16);
- Nationality and registration marks (Article 20);
- No customs duty on fuel, oil, spare parts, regular equipment, and aircraft stores (Article 24);
- Specified documents which must be carried aboard all aircraft (Article 29);

Annex 13: Aircraft Accident Inquiry

Annex 14: Aerodromes

Annex 15: Aeronautical Information Services

Annex 16: Environmental Protection

Annex 17: Security – Safeguarding International Civil Aviation Against Acts of Unlawful Interference

Annex 18: Safe Transport of Dangerous Goods by Air

See: Paul S. Dempsey, "Compliance and Enforcement in International Law: Achieving Global Uniformity in Aviation Safety" 30 N.C.J. Int. L. & Com. Reg. 1 at 13.

¹⁸⁸

Jordan J. Paust, "Self-Executing Treaties" (1988) 82:4 AJIL 760 at 776.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- Licensing requirements for pilots and crew (Article 32); and,
- Recognition of airworthiness certificates that satisfy the requirements of the Chicago Convention (Article 33).

However, there are other articles of the Chicago Convention that do require implementing legislation or regulation. These obligations include:

- The promulgation of uniform rules and regulations governing flight and the maneuver of aircraft (Article 12);
- Measures to prevent the spread of communicable diseases (Article 14);
- Facilitation and expedition of navigation to prevent unnecessary delays (Article 22);
- Establishment of immigration, customs, and clearance procedures (Article 23); and,
- Provision of air navigation facilities, operational practices and rules, and aeronautical maps and charts (Article 28).¹⁸⁹

The obligation of a State to establish the regulatory framework and to carry out the necessary oversight of the aviation sector for compliance with the regulatory standards is the most important measure for achieving acceptable levels of safety and security in any given country. According to ICAO, there is a

¹⁸⁹ *Ibid.*, at 9.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

direct correlation between poor safety oversight and high accident levels.¹⁹⁰ This correlation has been measured in terms of compliance with each of the eight individual critical safety elements set out by ICAO.¹⁹¹ On a global basis, the correlation between poor oversight and high accident rates is very strong (between 0.93 and 0.96) in four of the eight critical elements.¹⁹² A recent regional analysis conducted by ICAO confirmed the incidence of poor oversight in Africa, coupled with a strong correlation to high accident rates.¹⁹³ However, over the past many years, ICAO has maintained the “system of universal trust and mutual recognition established by the Chicago Convention”, which has resulted in many States not being in conformity with the SARPs.¹⁹⁴

¹⁹⁰ ICAO, *Universal Safety Oversight Audit Programme*, ICAO Doc. 18 E/CAR DCA - IP/03, (2003) at A6, (reproduced in Annex VI of this dissertation).

¹⁹¹ ICAO has defined eight individual critical elements, which are audited at each USOAP. These critical elements are:

1. Primary aviation legislation
2. Specific operating regulations
3. State civil aviation system and safety oversight functions
4. Technical personnel qualifications and training
5. Technical guidance, tools and provisions of safety-critical information
6. Licensing, certification, authorization, and/or approval obligations
7. Surveillance obligations
8. Resolution of safety concerns

See ICAO, *Safety Oversight Audit Manual*, ICAO Doc. 9734 AN/959 [ICAO, *Safety Oversight Audit Manual*].

¹⁹² These are: critical element number 3 (State civil aviation system and safety oversight functions); critical element 6 (Licensing, certification, authorization, and/or approval obligations); critical element 7 (Surveillance obligations); and, critical element 8 (Resolution of safety concerns) See: ICAO, *Universal Safety Oversight Audit Programme - Analysis of Audit Reports (April 2005 to May 2007)* (ICAO: Montreal, 2007) at 81.

¹⁹³ Globally the worst region, as defined by ICAO, was Western and Central Africa, followed by East and Southern Africa, when the global audit findings and accident rates between 1994 – 2006 were reviewed. See *ibid.*, at 80 (reproduced in Annex IV of this dissertation).

¹⁹⁴ Dempsey, Compliance and Enforcement in International Law, *supra* note 183 at 20.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

In 1992, the ICAO Assembly came to the realization that many contracting States “may not have the regulatory framework or financial resources to carry out the minimum requirements of the Chicago Convention and its Annexes”.¹⁹⁵ It called upon States to reaffirm their safety obligations, particularly those in Annexes 1 and 6 of the Chicago Convention. However, it quickly became apparent that it was impossible to assess the degree of implementation and compliance with SARPs, because many States had not notified ICAO of their overall compliance.¹⁹⁶ In 1994 the ICAO General Assembly established ICAO’s Safety Oversight Program, a voluntary assessment of State compliance with SARPs, which included assistance to States whose compliance was found to be deficient. In 1999, this program was commuted to the mandatory Universal Safety Oversight Audit Programme (USOAP). Back then, the programme consisted of a well structured and in depth evaluation of each ICAO contracting States’ compliance with Annexes 1, 6, and 8.¹⁹⁷ In 2002, ICAO launched the ICAO Universal Security Audit Programme (USAP), which assesses compliance with Annex 17: Security – Safeguarding International Civil Aviation against Acts of Unlawful Interference.¹⁹⁸ Finally, in 2005 ICAO extended the scope of the

¹⁹⁵ ICAO, Assembly Resolution A29-13

¹⁹⁶ Dempsey, Compliance and Enforcement in International Law, *supra* note 183 at 34.

¹⁹⁷ See ICAO, *Safety Oversight Audit Manual*, *supra* note 191.

¹⁹⁸ The launch of the Program was based on ICAO Assembly Resolution A33-1 (2001). The program objective is to promote global aviation security through the auditing of contracting States on a regular basis to determine the status of implementation of ICAO Annex 17 security standards. Apart from the results of the safety audits which are shared between contracting States (became public starting March 2008), the security audits remain strictly confidential.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

USOAP to a much more detailed audit, which includes all Annexes, except Annex 17 on security.¹⁹⁹

Aside from ICAO's safety and security audit programs, there are several other sources of information for assessing Africa's current aviation safety and security situation. In 1991, the United States Federal Aviation Administration (FAA) launched the International Aviation Safety Assessment Program (IASA). This mandatory audit program of foreign States, carried out by FAA inspectors, assesses the level of compliance with ICAO standards of countries that currently operate, or will in the near future, operate flights to the US on aircraft registered in that State. This program was established after a series of accidents and incidents occurred in the US involving foreign carriers, often from developing countries.²⁰⁰ However, as IASA only assesses countries that have current or future operations into, out of or through US territory, most African countries were never evaluated under this program.²⁰¹

Another very useful tool for assessing safety standards at the State level is the IATA Operational Safety Audit (IOSA) Program of the International

¹⁹⁹ The 35th Session of the ICAO Assembly considered the Council proposal for the continuation and expansion of the USOAP as of 2005 and resolved that the program be expanded to cover all safety-related Annexes (i.e., Annexes 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 18) and also to transit to a comprehensive systems approach for the conduct of safety oversight audits. All States are now being progressively audited under the expanded program.

²⁰⁰ Dempsey, Compliance and Enforcement in International Law, *supra* note 183 at 27.

²⁰¹ Currently, there are only 10 countries in Africa that have been assessed under IASA. Half of these are considered compliant with IACO SARPs, half are not. See Annex V below for a listing of the assessed States.
Source: Federal Aviation Administration. International Aviation Safety Assessment (IASA), *Results by Country*, (2007) online: FAA website, <http://www.faa.gov/safety/programs_initiatives/oversight/iasa/> (accessed 5 July 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Air Transport Association (IATA).²⁰² Initially, each member airline of IATA was required to become IOSA certified by the end of 2007 or risk losing its IATA membership. By the end of 2007 over 180 member airlines were IOSA registered, and the remaining airlines were granted a short extension of the deadline. With regard to Africa, however, there are currently only nine IOSA-certified carriers registered in seven African countries.²⁰³

The most recent source of information on air carrier safety is the European Union's blacklist of certain airlines. After a series of accidents which occurred in 2004 and 2005, the European Commission decided, in consultation with Member States' aviation safety authorities, to ban airlines found to be unsafe from operating in European airspace.²⁰⁴ The first list was published on 22 March 2006, and it included 50 carriers, mostly from Africa.²⁰⁵ Subsequently, the list has been updated regularly and is published in the Official Journal of the European

²⁰² IOSA aims at "being an internationally recognized and accepted evaluation system designed to assess the operational management and control systems of an airline". It aims at providing a "degree of quality, integrity and security such that mutually interested airlines and regulators can all comfortably accept IOSA audit reports". See: International Air Transport Association (IATA), *IATA Operational Safety Audit (IOSA)*, (IATA: Montreal & Geneva; 2007), online: IATA website, <<http://www.iata.org/ps/certification/iosa>> (last accessed: 5 July 2007).

²⁰³ These States are Egypt, Ethiopia, Kenya, Mauritius, Morocco, South Africa, and Tanzania. See: Annex V below. See also: *ibid*.

²⁰⁴ The list in fact bans both individual air carriers which are considered unsafe as well as some States that fail to demonstrate that they exert the necessary regulatory oversight. The latter are blacklisted by banning all carriers registered in such a State. However, this creates a false picture to the traveler because one does not know if all carriers of a given State have been checked or only those banned. Industry experts therefore criticize the list and suggest a mechanism which does not mix the evaluation and banning of individual carriers with the banning of a State. Interview with Günther Matschnigg, Senior Vice President for Safety, Operations & Infrastructure of the International Air Transport Association, held in Montreal, Canada, 25 September 2007.

²⁰⁵ Paul Stephen Dempsey, *Public International Air Law* (Montreal: McGill University Center for Research in Air and Space Law, 2006) at 61.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

Union as annexes A and B to the Commission Regulation. The list contains two parts. The first part includes all airlines banned from operating in Europe. The second part includes airlines whose operations in Europe are restricted by the imposition of specific conditions.²⁰⁶ The current list of 4 July 2007 contains a total of 156 airlines from 17 countries. Of these, 74 airlines (47%) and 9 countries (53%) are from Africa.

Another approach to assessing the overall safety situation in Africa is the comparison of accident statistics from Africa with those of other regions. According to IATA, the African continent has the worst accident statistics. In 2004, Africa accounted for 23 (22%) of the total of 103 accidents which occurred worldwide. However, Africa only accounts for 4.5% of all sectors flown globally by all fleets (i.e., both Eastern and Western built aircraft).²⁰⁷ Expressed in hull losses per million sectors flown, African carriers lost an average of 6.3 aircraft per million departures in 2004 compared to the worldwide average of 0.78 aircraft per million departures.²⁰⁸ This rate improved slightly in 2006, when African carriers lost 4.31 aircraft per million departures as compared to the worldwide average of 0.65 aircraft per million departures.²⁰⁹ This still represents an accident rate 6.6 times higher than the worldwide average. When compared to Europe's loss rate of

²⁰⁶ For the list of banned airlines and explanation, see EC, *List of Airlines banned within the EU, 2007*, online: EU website, <http://ec.europa.eu/transport/air-ban/list_en.htm>, (last accessed: 5 July 2007) [*List of Airlines banned within the EU*].

²⁰⁷ International Air Transport Association (IATA), *Safety Report - 2004 Edition* (IATA: Montreal & Geneva, April 2005) at 23.

²⁰⁸ *Ibid.*, at ix.

²⁰⁹ International Air Transport Association (IATA), *Safety Report - 2006 Edition* (IATA: Montreal & Geneva, April 2007) at 7 [*IATA Safety Report 2006 Edition*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

0.32 aircraft per million departures, the African accident rate in 2006 was 13.5 times higher; and when compared to North America's 0.49 aircraft per million departures, it was 8.8 times higher.

These bad accident statistics of 2004 and 2006 have also been confirmed by the European Aviation Safety Agency (EASA), which has published the accident rate for each region of the world for the 2000 – 2005 period.²¹⁰ According to EASA, Africa experienced 14 fatal accidents per million flights during that period, compared to Europe (1.4 accidents) or North America (only 1 accident). Considering this six year average, it can be seen that Africa had 10 times the accident rate of Europe, and 14 times the accident rate of North America.

In analyzing the cause of the high accident rates on the African continent, one needs to look at three distinct groups of carriers. First, there are the major intercontinental carriers, which operate between the African continent and Europe, Asia, or the Americas. The majority of these carriers are European, American, or Asian registered, and they have an excellent safety record.²¹¹ In fact, no major accident occurred involving any of these carriers on intercontinental operations to Africa during the past ten years (1998-2007), except one crash of a

²¹⁰ European Aviation Safety Agency (EASA), *Annual Safety Review 2006* (EASA: Cologne, 2006) at 12.

²¹¹ These carriers include Air France, British Airways, Alitalia, KLM, IBERIA, TAP Portugal, Swiss International Airlines, SN Brussels, Austrian, Virgin Atlantic, Delta, North American, Etihad, and China Southern Airlines. See: *Official Airline Guide*, June 2007.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Spanish registered regional flight between Spain and Morocco.²¹² The second group involves operators registered in African countries which operate Western-built air transport category aircraft that are currently in use in most of the developed countries.²¹³ The following table summarizes all major accidents involving this group during the past ten years:²¹⁴

Table 2: Accidents involving African carriers operating Western-built aircraft

Date	Type	Operator	Deaths	Location
10-Oct-98	Boeing 727	Congo Airlines	41	Kindu, DRC
07-Aug-99	Dornier Do-228	TACV	18	Santo Antão, Cp. Verde
31-Oct-99	Boeing 767	EgyptAir	217	Nantucket Island, USA
30-Jan-00	Airbus A310	Kenya Airways	169	Abidjan, Ivory Coast
17-Mar-01	Beech 1900	SAL Express	16	Quilemba, Angola
07-May-02	Boeing 737-500	EgyptAir	14	Tunis, Tunisia
04-Jul-02	Boeing 707	New Gomair	28	Bangui, Central Africa
06-Mar-03	Boeing 737-200	Air Algérie	102	Tamanrasset, Algeria
08-Jul-03	Boeing 737-200	Sudan Airways	116	Port Sudan, Sudan
19-Jul-03	Metroliner	Ryan Blake Charter	14	Mount Kenya, Tanzania
25-Dec-03	Boeing 727	UTA	141	Cotonou, Benin
03-Jan-04	Boeing 737-300	Flash Airlines	148	Sharm el Sheikh, Egypt
22-Oct-05	Boeing 737-200	Bellview Airlines	117	Lisa, Nigeria
10-Dec-05	DC9-30	Sosoliso Airlines	108	Port Harcourt, Nigeria
29-Oct-06	Boeing 737-200	ADC Airlines	97	Abuja, Nigeria
05-May-07	Boeing 737-800	Kenya Airways	114	Douala, Cameroun

²¹² On 25 September 1998 a BAe-146 operated by a Spanish operator, Paukn Air, crashed near Boumahfouda, Morocco, claiming 38 lives. See: Flight Safety Foundation, *Air Safety Network - Aviation Safety Database*, 2007, online: Flight Safety Foundation website, <<http://www.flightsafety.org/home.html>> (date accessed: 28 September 2007) [*Flight Safety Foundation Database*].

²¹³ These aircraft include all of the Boeing 700 series, as well as Airbus, McDonnell Douglas, British Aerospace, Dornier, Fairchild Swearingen Metroliner, Beech, and the DHC-6 Twin Otter aircraft.

²¹⁴ In this thesis, a major accident is defined as a full hull loss with ten or more fatalities. See: *Flight Safety Foundation Database*, *supra* note 212.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

15-Apr-08	DC9-51	Hewa Bora	48	Goma, DRC
02-May-08	Beechcraft 1900C	Flex Air	23	Rumbek, Sudan
10-Jun-08	Airbus A310-324	Sudan Airways	29	Khartoum, Sudan

The most accurate source of information on aircraft accidents are the official accident reports, which each State of Occurrence must initiate, provided that it is an ICAO contracting State. Annex 13 of the Chicago Convention specifies the requirements for notification and reporting of certain incidents and accidents.²¹⁵ However, many smaller countries in the developing world, especially in Africa, lack sufficient resources and qualified personnel to conduct the sometimes very complex and difficult accident investigations. Annex 13 provides that the State of Occurrence must forward a notification of an accident to:

- a) The State of Registry;
- b) The State of the Operator;
- c) The State of Design;
- d) The State of Manufacture; and
- e) ICAO, when the aircraft involved is of a maximum mass of over 2,250 kg.²¹⁶

²¹⁵ See generally ICAO, *Annex 13 to the Convention on International Civil Aviation - Aircraft Accident and Incident Investigation*, 2001 [Annex 13].

²¹⁶ *Ibid.*, para. 4.1

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

The State of Occurrence shall then institute an investigation into the circumstances of the accident and be responsible for the conduct of the investigation, but it may also chose to delegate the whole or any part of the investigation to another State by mutual agreement and consent.²¹⁷ This possibility of delegation to another State is often applied in major accidents involving new, Western-built aircraft. Both, the United States and Europe offer these services in order to uncover and understand the real causes of accidents involving aircraft built in their respective countries.²¹⁸ While this assistance certainly has an element of self-interest for the protection of their national aerospace industries built into it, it nevertheless provides the opportunity for very accurate analyses to be conducted in order to determine real causes of major aircraft accidents in Africa involving Western-built aircraft. Out of the sixteen major accidents involving Western-built aircraft that occurred during past ten years, seven accident investigations have been conducted with foreign assistance being provided to the State of Occurrence.

The following accident reports have been made available and provide a clear overall picture on the causes:

- EgyptAir Flight 990 was the regularly-scheduled Los Angeles-New York-Cairo flight. On October 31, 1999, at around 01:50 EST, Flight 990 dove into the Atlantic Ocean, about 60 miles

²¹⁷ *Ibid.*, para. 5.1

²¹⁸ For example, the French Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile lists several accident reports it prepared for foreign States which involve aircraft built by Airbus. See: online: BEA website <<http://www.bea-fr.org/anglaise/rapports/rap.htm>> (date accessed: 28 September 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

south of Nantucket Island, Massachusetts, in international waters, killing all 217 people on board. According to Annex 13, the investigation of an airplane crash in international waters is under the jurisdiction of the State of Registry of the aircraft. At the request of the Egyptian government, the U.S. National Transportation Safety Board (NTSB) took the lead in this investigation, with the Egyptian Civil Aviation Authority participating. The NTSB determined that the probable cause of the EgyptAir flight 990 accident was the airplane's departure from normal cruise flight and subsequent impact with the Atlantic Ocean as a result of the relief first officer's flight control inputs. The reason for the relief first officer's actions was not determined.²¹⁹ Nevertheless, the US lead investigation and its conclusion drew strong criticism from the Egyptian Government, which produced several alternative theories about mechanical malfunction of the aircraft in rejection of the “suicide theory” for the first officer.

- Kenya Airways Flight 481 crashed on 30 January 2000 into the sea at 21:09:24 GMT, shortly after it took-off from Abidjan with destination Lagos. Of the 179 people on board the Airbus A310 aircraft, only ten passengers survived the crash. It was

²¹⁹ US National Transportation Safety Board (NTSB), *Aircraft Accident Brief - EgyptAir Flight 990, Boeing 767-366ER, SU-GAP, 60 Miles South of Nantucket, Massachusetts, October 31, 1999*, (Washington DC: NTSB, 2002) at 67.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

determined that the cause of the accident was the pilot's action to put the aircraft into a descent after a faulty stall warning sounded immediately after takeoff. Despite the Captain's last moment order to climb, the aircraft collided with the sea. In addition, the crew did not apply maximum engine power and didn't follow the aircraft manufacturers' recommendation for recovery from approach to stall procedure.²²⁰ In addition to the crew's operational error which primarily caused the accident, the rescue operations at Abidjan Airport were criticised, because of the fact that the airport, which is located at the sea, had no maritime rescue equipment.²²¹ In fact, of the 145 bodies recovered, 15 persons had only drowning lesions and 22 persons had a combination of poly-traumatic and drowning lesions.²²² This gives ground for speculation that much more persons could have been rescued, if the rescue operations included small vessels or boats.

- On 19 July 2003, a Fairchild Metroliner II (SW4) of the South African operator Ryan Blake Air Charter collided with terrain a few hundred feet below the peak of Mount Kenya. All 12

²²⁰ Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile (BEA), *Accident which occurred on 30 January 2000 in the sea near Abidjan Airport to the Airbus 310-304 registered 5Y-BEN operated by Kenya Airways* (BEA: France) at 73.

²²¹ *Ibid.*, at 78.

²²² *Ibid.*, at 37.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

passengers and two crew members perished on impact. The flight was a charter operation carrying a prominent Atlanta (USA) based family between Nairobi and Samburu, a game park in Kenya. The probable cause of the accident was the pilot's failure to maintain situational awareness of the aircraft's proximity to the surrounding terrain, resulting in controlled flight into terrain. Contributing factors were inadequate flight planning, poor pilot briefing by the air traffic control personnel in Nairobi, poor communication between air traffic control units, and the failure of the radar controller to advise the pilot of termination of radar service. In addition, the radar system of the controller was not equipped with a minimum safe altitude warning, and there was poor civil military coordination when transiting military airspace.²²³

- Air Algérie Flight 6289, a Boeing 737-200, was a scheduled domestic passenger service of Air Algérie between Tamanrasset, Algeria and Algiers. On 6 March 2003 at 15:45 local time, the flight took off from the southern Algerian city of Tamanrasset. Shortly after lift-off, the aircraft veered off the runway and crashed 600 feet (180 m) from the centerline. 96 of the 97 passengers and all of the six crew members perished. As the probable cause of the accident the combination of a loss of

²²³

Republic of Kenya - Ministry of Transport Department of Air Accident Investigation, *Civil Aircraft Accident Report* (CAV/ACC/8/2003) at 69.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

an engine during the critical phase of the flight, followed by the non-retraction of the landing gear after the engine failure, and the Captain, as pilot non flying, taking over control of the airplane before having clearly identified the problem, was determined.²²⁴

- On 25 December 2003 a Boeing 727-223, operating as Flight 141 of the charter company Union des Transports Africains (UTA), crashed on takeoff at Cotonou Cadjèhoun Airport in Benin, killing 151 of the 163 occupants, most of them Lebanese. On takeoff roll, the aircraft overran the end of the runway, and impacted several ground structures including an occupied airport outbuilding, to finally crash on the ocean beach. The accident was caused as a result of the aircraft being severely overloaded (the exact number of passengers could never be completely determined, but the overload by cargo and passengers was estimated at around 8 tons or 10% of the total weight), and the aircraft's centre of gravity was way out of limit.²²⁵ In addition to the cause of overloading of the aircraft, the accident report elaborates in detail about the fact that the

²²⁴ Democratic People's Republic of Algeria - Ministry of Transport - National Commission of Inquiry, *Report on the accident on 6 March 2003 at Tamanrasset to the Boeing 737-200 registered 7T-VEZ operated by Air Algérie*, at 40.

²²⁵ Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile, France, *Accident survenu le 25 décembre 2003 sur l'aérodrome de Cotonou Cadjèhoun (Benin) au Boeing 727-223 immatriculé 3X-GDO exploité par l'Union des Transports Africains*, at 63.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

aircraft and the operator were registered first in Swaziland, and later in Guinea. Both of these States had an insufficient regulatory framework and apparently little or no oversight was conducted by the civil aviation authorities.²²⁶

- Flash Airlines Flight 604 was a charter flight operated by an Egyptian charter company. On 3 January 2004, Flash Air's Boeing 737 crashed into the Red Sea shortly after takeoff from Sharm el-Sheikh International Airport, killing all 135 passengers, many of them French tourists, and all 13 crew members. The flight departed at 04:44 local time from the Egyptian resort en route to Paris via Cairo. The NTSB and the French Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile (BEA) conducted a joint investigation, in support of the Egyptian authorities. Their conclusion was that the pilot suffered spatial disorientation, and the co-pilot was unwilling to challenge his more experienced superior. In addition, according to the NTSB and BEA, both pilots were insufficiently trained. The report clearly outlines that the cockpit voice recorder showed that 24 seconds passed after the airliner over-banked before the pilots initiated correcting

²²⁶

Guinea had a Civil Aviation Code at the time of the accident, but no technical regulations existed to be used as primary reference for oversight of the operator. *Ibid.*, at 44.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSOUKRO DECISION

maneuvers.²²⁷ However, Egyptian authorities disagreed with this conclusion, by attributing the cause of the accident to mechanical issues.²²⁸

- On 10 December 2005 Sosoliso Airlines Flight 1145, a scheduled service between the Nigerian cities of Abuja and Port Harcourt, crashed near the runway at Port Harcourt. Of the 110 persons on board the McDonnell Douglas DC-9-32, only two survived the impact and subsequent fire. The accident investigation, which was conducted by the Nigerian Ministry of Aviation with support by the NTSB, determined as probable cause the crew's decision to continue the approach beyond the Decision Altitude without having the runway in sight. As a result, the go-around was initiated too late and the aircraft crash-landed between the runway and the taxiway. An exposed concrete drainage structure, which is badly located at the airport near the runway, was recognized as a contributing factor to the high toll of fatalities.²²⁹

²²⁷ Egyptian Ministry of Civil Aviation, *Factual Report of Investigation of Accident: Flash Airlines flight 604, January 3, 2004, Boeing 737-300 SU-ZCF, Red Sea odd Sharm El-Sheikh, Egypt*, Exhibit C, (p. 32 of the cockpit voice recorder transcript).

²²⁸ *Ibid.*, Conclusions at 9.

²²⁹ Federal Republic of Nigeria Ministry of Aviation, *Final Report on the Accident to Sosoliso Airlines DC9-32 aircraft registered 5N-BFD at Port Harcourt International Airport on 10 December 2005*, at 23.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Three other major accidents are still under investigation, but some initial findings point to the same causes as in all of the above described cases:

- On 22 October 2005, Bellview Airlines Flight 210, a Boeing 737 aircraft with 117 people on board, crashed shortly after taking off from Lagos en route to the Nigerian capital Abuja, killing all aboard. Initial findings of the accident investigation indicate that the aircraft impacted the ground at a very high speed in a nearly vertical nose down attitude. No mechanical problems were found to date, and the cause of the accident point towards spatial disorientation of the crew.²³⁰
- Aviation Development Company Airlines (ADC) Flight 53, a scheduled passenger flight crashed on 29 October 2006 shortly after take-off from Nnamdi Azikiwe International Airport in Abuja, Nigeria, at around noon local time. Immediately after lift-off from the runway, the Boeing 737 contacted the ground, broke up and caught fire in a corn field. Of the 105 persons on board only nine survived the crash. Initial findings revealed that the aircraft entered a wind shear situation in instrument metrological conditions and the pilot flying didn't apply the correct recovery procedure. In addition, it seems that the crew

²³⁰ National Transportation Safety Board (NTSB), "Three Nigerian investigations", (Paper presented to the International Society of Air Safety Investigators, Singapore, 2007) at 13 [NTSB, Three Nigerian Investigations].

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

was not familiar with the aircraft's onboard wind shear detection system.²³¹

- On 5 May 2007 Kenya Airways Flight KQ 507 crashed in a forested swamp only 90 seconds after take-off killing all 114 persons on board. Despite the fact that the impact location was only 5 kilometers from the Douala Airport, it took search and rescue teams over 40 hours to locate the wreckage. The flight from Douala International Airport, Cameroon, to Jomo Kenyatta International Airport in Nairobi, Kenya, was to be carried-out using a six month old Boeing 737-800. No distress call was received and initial findings do not indicate any mechanical issues that could have provoked the accident. The most probable cause of the accident points towards spatial disorientation of the crew, and unfamiliarity with the 800 series cockpit of the Boeing 737 aircraft.²³²

All of the above described findings on major accidents involving African carriers during the past ten years reveal pilot error as the prime cause. In addition, in two cases (i.e., Kenya Airways in 2000 and Air Algérie in 2003), mechanical failure contributed to the crash, but if the crew had applied the recommended procedures the accident could have been avoided. In the Sosoliso

²³¹ *Ibid.*, at 51.

²³² Apparently the pilot flying did not undergo the transition training from the Boeing 737-700 to the 800 series model. (Source kept confidential until the official report has been released.)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

2005 case, poorly designed airport infrastructure contributed to the accident's high rate of fatalities. In the Kenya Airways 2000 case, the absence of adequate search and rescue equipment was a major factor.

The third group includes various African carriers who operate older Western or Eastern-built aircraft. The types of aircraft operated by the above mentioned group are usually uneconomical to operate in the Western world due to strict safety and environmental regulations. Over the past ten years, at least 29 accidents involving such aircraft have been recorded.²³³ However, many such accidents are never reported, and only a few are investigated by the authorities of the State of Occurrence. The causes of the accidents are therefore mostly unknown. The various small carriers in this group which acquire one or several old aircraft from the non-transparent aircraft supply market often operate with little or no supervision by their national Civil Aviation Authorities. Their pilots must work long hours in usually very dangerous environments, and these result in accidents of many causes.²³⁴

²³³ *Flight Safety Foundation Database, supra* note 212.

²³⁴ One of the most notorious countries of poor safety oversight is the Democratic Republic of Congo (former Zaire). This large country the size of Western Europe has only 300 miles of paved roads and depends primarily on air transportation. However, the presence of many small unregulated operators and the quasi absence of regulatory oversight have resulted in various accidents. See generally William Langewiesche, "Congo from the Cockpit" *Vanity Fair Magazine* (July 2007).

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Table 3: Accidents involving African carriers operating older Western or Eastern-built aircraft

Date	Type	Operator	Dead	Location
12-Feb-98	Antonov 26	Sudan Air Force	26	Nasir, Sudan
12-May-98	Yunshuji Y-7	Mauritanian Air Fce.	39	Nema, Mauretania
14-Dec-98	Antonov 12	Khors Air	10	Kuito, Angola
26-Dec-98	Lockheed L-100	Transafrik	14	Vila Nova, Angola
02-Feb-99	Antonov 12	Savanair	30	Luanda, Angola
03-Jun-99	Antonov 32	Sudan Air Force	50	Khartoum, Sudan
19-Apr-00	Antonov 8	Rwanda Air Force	24	Pepa, DRC
12-Aug-00	Antonov 26	Staer Airlines	27	Tshikapa, DRC
31-Oct-00	Antonov 26	ACA Ancargo Air	49	Monaquimbundo, Angola
15-Nov-00	Antonov 24	ASA Pesada	57	Luanda, Angola
04-Apr-01	Antonov 26	Sudan Air Force	14	Adar Yel, Sudan
04-May-02	BAC One-Eleven	EAS Airlines	149	Kano, Nigeria
30-Jun-03	Lockheed C-130	Algerian Air Force	15	Blida, Algeria
17-Nov-03	Antonov 12	Sarit Airlines	13	Wau, Sudan
29-Nov-03	Antonov 26	Congolese Air Force	33	Boende, DRC
08-Jun-04	HS-748	Gabon Express	19	Libreville, Gabon
05-May-05	Antonov 26	Aeroworld	10	Kisangani, DRC
18-May-05	Yunshuji Y-12	Zambian Air Force	13	Mongu, Zambia
25-May-05	Antonov 12	Victoria Air	27	Biega, DRC
16-Jul-05	Antonov 24	Equatorial Express	60	Baney, Equat. Guinea
05-Sep-05	Antonov 26	Aerocom	11	Isiro-Matari, DRC
09-Sep-05	Antonov 26	Air Kasai	13	Brazzaville, Congo
11-Feb-06	Antonov 26	Sudan Air Force	20	Aweil, Sudan
10-Apr-06	Yunshuji Y-12	Kenyan Air Force	14	Marasbit, Kenya
03-Aug-06	Antonov 28	Tracep	17	Bukavu, DRC
17-Sep-06	Dornier DO-228	Nigerian Air Force	13	Vande Ikya, Nigeria
23-Mar-07	Ilyushin 76	Transaviaexport	11	Mogadishu, Somalia
26-Aug-07	Antonov 26	GLBC	14	Kongolo, DRC
04-Oct-07	Antonov 26	Malila Airlift	49	Kinshasa, DRC

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Another field of concern with regard to air transport safety in Africa is the large number of accidents involving flights conducted by the Air Force, which in many African countries transport passengers and cargo for reward. These flights are generally regulated and supervised by the Ministry of Defense. They therefore do not need to comply with the same regulations as civilian flights.

Finally, there is a general misconception captured in the often quoted statement that Eastern-built aircraft are generally of poor technological quality, which is why there is a high accident rate in Africa.²³⁵ Africa indeed has an alarmingly high rate of accidents with Eastern-built aircraft. The hull loss rate per million departures of Eastern-built aircraft reached 54.35 in 2006 in Africa, which is ten times higher than its global average (5.61), and over 40 times higher than its current rate in the Commonwealth of Independent States (1.32), which includes most States of the former Soviet Union.²³⁶

The Interstate Aviation Committee of the Russian Federation has also compared the safety record of aircraft designed and manufactured in the former Soviet Union with the safety level of comparative aircraft built elsewhere over a 30 year period.²³⁷ The study concludes that the level of flight safety of

²³⁵ See Uche Usim "How poor business model ruined African carriers - Interview with Christian Folly-Kossi, Secretary General, African Airlines Association" *The Daily Sun* (01 October 2007).

²³⁶ *IATA Safety Report 2006 Edition*, *supra* note 209 at 20.

²³⁷ The Interstate Aviation Committee was created on 30 December 1991 by an intergovernmental Agreement on Civil Aviation and Air Space Use among various States of the former USSR. The following States have signed this Agreement: the Republics of Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

most Soviet made types of aircraft is not worse and, in some cases, is even better than the level of their Western analogues.²³⁸ This clearly demonstrates that high accident rates are primarily the result of poor safety standards, and not a consequence of operating Eastern-built and/or older aircraft.

The obligation of contracting States of ICAO to adopt and apply the regulatory framework of SARPs must translate into a strong regime of surveillance and oversight of the aviation sector of any country. The safety audits of ICAO have found an interesting correlation between poor implementation of SARPs and lack of oversight, resulting in high accidents. According to a table representing the audit findings of 179 contracting States and their accident rates,²³⁹ all regions of the World experience the same correlation (table reproduced in Annex VI).²⁴⁰ It is also notable that the two worst critical elements in Africa are lack of continued surveillance and poor resolution of safety audits.²⁴¹ In other words, when addressing high accident rates in Africa, the most important factors for improvement are compliance with SARPs and the establishment of adequate regulatory oversight regimes.

²³⁸ See generally: Interstate Aviation Committee (Russian Federation), *The State of Flight Safety of the Aircraft designed and manufactured in the former USSR for the 30 years of operation*, (information paper presented to the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety, Montreal, Canada 2006) ICAO Doc. DGCA/06-IP/48.

²³⁹ Audit findings highlight areas of non compliance with ICAO SARPs, e.g., the absence of appropriate security regulation. The seriousness of the findings made determine how unacceptable the situation in the country audited is.

²⁴⁰ ICAO, *Universal Safety Oversight Audit Programme*, at A5.

²⁴¹ *Ibid.*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

For an overall assessment of the current safety and security situation in Africa, the following elements have been evaluated in Annex V of this dissertation:

- a) ICAO Audit Report: the level of the resulting audit findings, recent improvements, and recommendations by ICAO in comparison with the World average result in 4 States rated “GOOD”, 21 States rated “MARGINAL”, and 26 States rated “POOR”;
- b) FAA IASA Program: 5 States are certified as category 1 (compliant with ICAO SARPs), and 5 States are category 2 (non compliant);
- c) EU blacklist of carriers: 9 States have one or more banned carriers registered;
- d) IATA IOSA: 7 States have carriers, which have been certified under the IATA Operational Safety Audit (IOSA);
- e) Fatal accidents: known accidents of air transport category aircraft and reported fatalities in air transport category aircraft registered in a given State since 1943.

The application of these five elements to the current aviation safety situation of African countries permits an overall rating of: (1) a good level; (2) a marginal; or, (3) a poor level of safety. This research leads to the conclusion that 6 States fall within the "GOOD" category; 16 States within the "MARGINAL"

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

category; and, 31 States are rated within the "POOR" category. In other words, currently, well over half of all African countries have poor aviation safety standards.

On a regional basis, the assessed oversight can be compared with the level of implementation by introducing operational regulation, and by building regional safety oversight capacity. However, the analysis reveals that most RECs have only taken minor steps towards regional oversight, and the majority of poor rated States can be found in all regions except North Africa (see

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Table 4 below).

The current situation of African safety oversight must be considered the single most important obstacle to the implementation of the Yamoussoukro Decision given the fact that international air services in general, and the Yamoussoukro Decision in particular, foresee the possibility of restricting or suspending air services in the event of poor safety standards. In addition, the cost of financing and insurance of aircraft become expensive if the aircraft concerned is registered in a State with poor aviation safety standards.²⁴²

²⁴² See generally Taïeb Chérif, Address by the Secretary General of ICAO at the 38th Annual General Assembly of the African Airlines Association, (Cairo, Egypt, 2006).

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

Table 4: Quality of safety oversight by RECs and steps towards regional safety oversight

<i>Reg. Economic Community</i>	<i>Safety Oversight</i>			<i>Operational Regulation</i>	<i>Regional Safety Oversight</i>
	<i>Good</i>	<i>Margi.</i>	<i>Poor</i>		
AMU	2 (40%)	2 (40%)	1 (20%)	None	None
BAG	1 (14%)	3 (43%)	3 (43%)	Pending, in preparation by COSCAP.	Ongoing COSCAP should lead to new safety agency
CEMAC	0 (0%)	1 (17%)	5 (83%)	Joint CEMAC aviation code enacted. Regulation pending.	Pending COSCAP should lead to new safety agency
COMESA	2 (10%)	6 (30%)	12 (60%)	None	None
EAC	0 (0%)	2 (40%)	3 (60%)	Prepared by CASSOA, needs to be adopted by each Member State.	Regional safety agency "CASSOA" established in 2007.
ECOWAS	2 (12%)	5 (31%)	9 (57%)	None	None
SADC	1 (7%)	8 (53%)	6 (40%)	None	None
WAEMU	0 (0%)	2 (25%)	6 (75%)	Ten safety and security regulations enacted.	Ongoing COSCAP should lead into new safety agency

3.4.6 Implementation - Condition precedent or subsequent?

Numerous meetings, conferences and workshop have been held since the Yamoussoukro Decision was initially signed in November 1999. All these meetings have included discussions about various elements of the Decision which needed to be implemented. The most recent high-level meeting of the African Union,²⁴³ for example, concluded with the following statement: “The Ministers reaffirmed the necessity to set up the Executing Agency responsible for

²⁴³ The Third Conference of Ministers Responsible for Air Transport, Addis Ababa, Ethiopia, 2007.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the economic oversight of the liberalized air transport industry in Africa with a view to speeding up the implementation of the Yamoussoukro Decision”.²⁴⁴

This statement gives the impression that certain steps needed to be taken, before the Yamoussoukro Decision can be considered *implemented*. However, the key question is: can the Yamoussoukro Decision be applied before these elements are implemented, or do the above mentioned elements (e.g., competition rules) or certain conditions (e.g. safety compliance etc) have to be in place before the Decision can be applied. Applying common law principles of contract law, this thesis seeks to examine whether on the one hand, the Yamoussoukro Decision states several conditions precedent,²⁴⁵ or, on the contrary, whether the Decision entails certain conditions subsequent²⁴⁶ such as the conclusion that a certain measure, (for instance an adequate safety oversight regime at a certain date) was not implemented as planned, while a liberalized air service agreement on the basis of the Yamoussoukro Decision was already in place and flights were operating.²⁴⁷

The first element of implementation to be considered in this regard is the *establishment of competition rules*. The provision on competition rules in Article 7 of the Yamoussoukro Decision obliges State parties to “ensure fair opportunity on non-discriminatory basis for the designated African airline, to

²⁴⁴ AU, *Report of Meeting of Ministers*, Addis Ababa, 2007, *supra* note 83.

²⁴⁵ i.e., a fact, act or event that must exist or occur before a duty of immediate performance of a promise arises.

²⁴⁶ i.e., facts which would extinguish a duty after the breach has occurred.

²⁴⁷ See note 73 *supra*.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

effectively compete in providing air transport services within their respective territories”. Strictly analyzed, and assuming that “within their respective territories” would be interpreted as a State party’s own national territory, the provision would only be applicable to flights within that territory. In other words, the provision on competition rules would only concern domestic air services among carriers of a given State. However, this would stand in contradiction with the term “designated African airline”, which is a unique term of art used to define carriers operating under the Yamoussoukro Decision.²⁴⁸ It would also not be an adequate provision to be included in the Yamoussoukro Decision, which, by definition, regulates the liberalization of “intra-African” (i.e., international) air services.

One can therefore safely assume that Article 7 in fact contemplates air services between the territories of two State parties, in the case of third and fourth freedom traffic, or, the territories of three State parties in the case of fifth freedom flights. Article 7 of the Decision creates the obligation of these concerned State parties to assure fair competition among, and non-discrimination against, the designated airlines operating between those States. This conclusion would in fact steer away from the condition precedent of establishing general competition rules which are applicable for air transport services, and place the burden of regulating competition on the bilateral relationship of State parties on an ongoing basis. If this interpretation is correct, then the application of the

²⁴⁸ Article 6.1 provides that each State party has the right to designate at least one airline to operate the intra-African air transport service in accordance with the Yamoussoukro Decision. According to Article 6.2, the designated carrier could also be from another State party.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

Yamoussoukro Decision would be possible as long as the concerned State parties of any given segment assure fair competition between the carriers they have designated to fly that segment. Applying modern principles of competition regulation, this would mainly imply that anti-competitive agreements and collusive practices between the different designated carriers would not be approved.²⁴⁹

However, the question remains as to whether the absence of any guidelines or regulations on competition hinders the application of the Yamoussoukro Decision? The answer lays in the fact that air transport in Africa has been, and is still mainly regulated on a bilateral basis. While certain RECs have recently adopted competition regulations which apply to air transportation, most new bilaterals which were negotiated on the basis of the principles of the Yamoussoukro Decision did not defer to any existing competition regulation.²⁵⁰ The case of Ethiopian airlines adequately illustrates the fact that the Yamoussoukro Decision can be applied on a bilateral basis even in the absence of competition regulation or an Executing Agency, which could intervene and arbitrate in case of a dispute. The establishment of competition rules can therefore be considered to be a condition subsequent the absence of which does not hinder the application of the Yamoussoukro Decision in any way.

²⁴⁹ The European Union defines the rules of competition in two articles: Article 81 prohibits anti-competitive agreements, decisions and related practices, and Article 82 prohibits the abuse of a dominant position. See EU, *Consolidated Versions of the Treaty on European Union and of the Treaty establishing the European Community*, [2006] O.J. C. 321E.

²⁵⁰ See below, Chapter 3.3 on Southern and East Africa (COMESA, ECA, and SADC).

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

The dispute settlement mechanism, described in Article 8 as the submission of disputes to arbitration after settlement by negotiation fails, is another important element of liberalization of air services. While the adoption of arbitration procedures still remains pending, the Executing Agency was established by designating AFCAC to perform its duties and responsibilities.²⁵¹ It is now the duty of the Executing Agency to develop the arbitration procedures in order to be in a position to arbitrate and settle disputes between Member States of the Yamoussoukro Decision. However, as stated above, the absence of the arbitration procedure has not hindered several African States from agreeing to liberalized bilateral air service agreements, which are fully in line with the principles of the Yamoussoukro Decision. So far, any disputes between States have been settled by negotiation. With the assignment of the responsibilities and duties of the Executing Agency to AFCAC the agency can be considered to have been established. No further conditions, other than the above mentioned establishment of competition rules are therefore pending.

The Monitoring Body, which is responsible for the overall supervision, follow-up and implementation of the Yamoussoukro Decision, was established in Article 9 of the Decision. While it has only met a few times since its creation, by and large, the Monitoring Body can be considered to be functional.²⁵² The question remains as to whether the performance of the

²⁵¹ See AU, *Addis Ababa AFCAC Resolution 2007*, *supra* note 82.

²⁵² There were a total of four documented meetings of the Monitoring Body held before 2005. See AU, *4th Meeting of Monitoring Body*, Addis Ababa, 2007, *supra* note 80. However, the meetings of experts at the Second and Third Sessions of the Conference of African Ministers responsible for Air Transport in 2006 and 2007 represent the

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Monitoring Body can be considered to be satisfactory enough to comply with the dictates of Article 9(3).²⁵³ Given the several complex tasks of the Monitoring Body on the one hand, and the slow overall implementation of the Yamoussoukro Decision on the other hand, it is quite apparent that the Monitoring Body's performance must be considered substandard.²⁵⁴ Nevertheless, it would be too farfetched to consider this a condition precedent for the application of the Yamoussoukro Decision, as this would only include better performance of the Monitoring Body.

Monitoring Body, even if their reports are not so titled. See AU, *Report of Libreville Experts Meeting*, 2006, *supra* note 65. See also AU, *4th Meeting of Monitoring Body*, Addis Ababa, 2007, *supra* note 80. However, according to Annex 2 of the Yamoussoukro Decision, the Monitoring Body shall meet, on a rotational basis, twice a year for the first year and thereafter as required.

²⁵³ Article 9(3) refers to those duties and responsibilities set forth in Annex 3 (which in fact is Annex 2) of the Yamoussoukro Decision.

²⁵⁴ The following duties and responsibilities of the Monitoring Body are defined in Annex 2:

- a) Prepare, for adoption by the sub committee on Air Transport, the relevant annexes to the Decision;
- b) Formulate proposals on studies, seminars, workshops and other measures aimed at enhancing and updating air transport services in Africa;
- c) Use, if necessary, experts to undertake studies related to the implementation of the Decision;
- d) Provide, on request, to interested organization and member States, technical advises for the implementation of the Decision.
- e) Receive declarations made in accordance with the Decision, notification of withdrawals of any declaration of complaints and requests and shall inform the Depository accordingly;
- f) State its views on any disputes resulting from the application and/or interpretation of the Decision and recommend solution to the dispute;
- g) State, on request of States party, its views on predatory and unfair competition practices;
- h) Request the competent national and international bodies for the support required to carry out studies, seminars, work programs and other measures aimed at enhancing and updating air transport services in Africa;
- i) Assist the OAU to organize the meeting of the sub committee on Air Transport of the Committee on Transport, Communications and Tourism.
- j) Analyze and plan for the periodic review of the Decision;
- k) Develop and formulate a coordinated implementation program of the Yamoussoukro Decision between and within sub-regions.

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Finally, probably the most significant element of concern is the prevalent poor safety and security record in the majority of African countries. High accident rates and poor safety and security ratings paint an overall discouraging picture which might seriously hinder the full application of the Yamoussoukro Decision. However, the Decision does not directly establish the requirement that all Member States must fully comply with all SARPs of ICAO, and that accident rates, for example, must remain at acceptable levels. The Decision addresses safety and security by setting down several conditions, which, if not met, mostly entail sanctions of a bilateral nature. For instance, in Article 5(1), a State party may unilaterally limit the volume of traffic for safety considerations; in Article 6(9), the eligibility criteria for a designated airline to operate under the Decision framework includes compliance with SARPs of ICAO; and, finally, in Article 6(10), a State party may revoke, suspend or limit the operating authorization of a designated airline of the other State party if the airline fails to meet the criteria of eligibility, which includes the maintenance of standards set by ICAO. Therefore, attaining and maintaining high safety standards under the Yamoussoukro Decision can clearly be seen as a condition subsequent. Traffic rights granted pursuant to the Decision could be suspended or revoked if the conclusion was subsequently reached that safety standards are not being met.

Nevertheless, it remains of great concern that over half of all African States continue to have poor safety records. Strictly applying the principles of the Chicago Convention as outlined above, aircraft registered in more than half of African countries could not even engage in international

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

scheduled air service. Finally, on a more positive note, the African Union did confirm and reaffirm its commitment to aviation security at the Third Conference of the Ministers Responsible of Air Transport, and has also planned to enhance cooperation among all Member States in this connection.²⁵⁵

3.5 Conclusion

The Yamoussoukro Decision is legally in force; 44 of the 54 African States are considered full Member States with the duties and responsibilities established in the treaty. From an operational standpoint, the implementation of the Yamoussoukro Decision has begun, as several African carriers are benefiting from Yamoussoukro Decision conforming bilaterals. While a clear majority of States would favor the full application of the Yamoussoukro Decision, a minority keeps hindering its implementation, often in order to protect their state-owned carriers.

From a policy standpoint, there are several elements of implementation, which are currently being processed by the AU or by RECs. However, none of these elements would hinder the continued application of the Yamoussoukro Decision on a bilateral basis between two or more Member States. An effective Executing Agency, as well as competition regulation and a conflict resolution system are necessary tools which need to be established and eventually brought online. Nevertheless, an increasing number of Yamoussoukro Decision

²⁵⁵ See African Union, *Declaration on Aviation Security in Africa, Report of the Third African Union Conference of Ministers responsible for Air Transport*, (Addis Ababa, Ethiopia, 2007) AU Doc. No. AU/MIN/AT/Rpt. (III) [AU, *Declaration on Aviation Security in Africa*].

CONDITIONS AND REQUIREMENTS FOR IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

conforming bilateral relationships between States may set the motivating example to set-up these missing elements.

Finally, achieving adequate safety and security oversight, as well as pushing for a deeper acceptance of airline competition among those States which still maintain and protect their non-viable State owned carriers are priorities which are probably better addressed at the initial stage by regional organizations and initiatives before they can demonstrate a full effect on the pan-African level.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

CHAPTER 4

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

It was recognized at a very early stage that the implementation of the Yamoussoukro Decision depended mainly on regional initiatives which were to be carried out by regional economic groupings. African States expressed this view at the “Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization”, which was held in Montreal in March 2004. With particular reference to competition regulation, they stated that the implementation of the Yamoussoukro Decision must be carried out through regional economic groupings. The following were listed as likely candidates for the purpose:

- The Arab Maghreb Union,
- The Economic Community of West African States (ECOWAS),
- The Central African Economic and Monetary Community (CEMAC),
- The Southern African Development Community (SADC),
and

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- The Common Market for Eastern and Southern Africa (COMESA).²⁵⁶

This chapter examines progress made in the regional implementation of the Yamoussoukro Decision focusing primarily on the achievements of the above proposed regional economic organizations. However, on occasion, other regional organizations which also play a role in the liberalization of air transport in Africa, such as the League of Arab Nations, the West African Economic and Monetary Union, and the East African Community will also be examined.

4.1 North Africa (The Arab Maghreb Union and The League of Arab Nations)

4.1.1 The Arab Maghreb Union

The Arab Maghreb Union (AMU) was created on 17 February 1989 by a treaty signed in Marrakesh, Morocco, by the leaders of Algeria, Libya, Mauritania, Morocco and Tunisia.²⁵⁷ In essence, the treaty establishing the AMU was modeled after the European Community (EC), which is today the European Union (EU). Its main objectives include: the integration of the Member States and their peoples; achieving progress and prosperity of their societies; preservation of peace; the development of a common policy in certain domains; and, the gradual achievement of free movement of persons and transfer of services, goods and

²⁵⁶ See ICAO, *Instituting Mechanisms for Fair Competition*, (Working Paper No. 87 presented at the Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization, Montreal, 2003) ICAO Doc. ATConf/5-WP/87, para. 2.2.

²⁵⁷ See *Treaty Creating the Arab Union of the Maghreb*, reprinted in (1992) 7:3 Arab Law Quarterly 205 [AMU Treaty].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

capital between their respective territories.²⁵⁸ On the international level, the treaty aims to “achieve concord among the Member States and to establish between them a close diplomatic cooperation based on dialogue”.²⁵⁹ The economic objectives include the achievement of industrial, agricultural, commercial and social development of Member States, with particular emphasis on the setting up of joint ventures and common programs.²⁶⁰

The initial idea of establishing an economic union for the Maghreb emerged with the independence of Tunisia and Morocco in 1956. This was at the height of anti-colonial struggles and the independence movement in Africa and, at that time, the main driver behind this idea was the encouragement of regional unity. The idea was initiated at a 1958 meeting held in Tangiers between the Algerian “Front de libération nationale” (FLN) and the Neo-Destour and Istiqlal parties from newly independent Tunisia and Morocco. Even then, these early discussions focused on the establishment of a North African Economic Community.²⁶¹ The outcome of this very first initiative was the creation of a joint marketing company for alfa grass, which operated for many years as a regional entity.²⁶² In 1964, the first Conference of Maghreb Economic Ministers was held in Tunis in between Algeria, Libya, Morocco and Tunisia. The result of this

²⁵⁸ *Ibid.* Art. 2 mentions “strengthening the ties of brotherhood” among the Member States.

²⁵⁹ *Ibid.*, art. 3.

²⁶⁰ *Ibid.*

²⁶¹ Ahmed Aghrout & Keith Sutton, "Regional Economic Union in the Maghreb" (1990) 28:1 *Journal of Modern African Studies* 115 at 116 [Aghrout & Sutton].

²⁶² *Ibid.* Alfa grass is a North African plant, which provides fiber to be used in paper making.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

conference was the establishment of the “Conseil Permanent Consultatif du Maghreb” (CPCM), which set for itself the objective of coordination and harmonization of development plans of the four countries, inter-regional trade, and relations with the European Community.

Clearly, the CPCM can be recognized as the predecessor of the AMU. Nevertheless, the momentum was lost soon after its creation when the new regime in Libya, headed by Colonel Muammar Qaddafi, “stalled the progress towards meaningful integration”.²⁶³ Very little progress was made in the intervening period until the late 1980s, when a new initiative reunited the parties. This took the form of the first Maghreb Summit of the five Heads of State, held at Zeralda (Algeria) in June 1988, at which the decision was made to establish the Maghreb High Commission and various specialized commissions. The Heads of State of Algeria, Libya, Mauritania, Morocco and Tunisia thereafter signed the Treaty Establishing the AMU on 17 February 1989 in Marrakech.²⁶⁴

Apart from the recognition that trade and commerce among the Maghreb States needed to be facilitated by allowing the free movement of individuals, goods, capital, and services, another factor which facilitated the push for regional integration in the Maghreb was the formation of the European Union. When Greece became a member of the EC in 1981, followed by Spain and Portugal in 1986, the Maghreb States saw their exports threatened by the

²⁶³ *Ibid.*

²⁶⁴ See Institute for Security Studies, *Profile: Arab Maghreb Union*, 2007, online: Institute for Security Studies website, <<http://www.issafrica.org>> (date accessed: 11 July 2007) [ISS, *Profile of AMU*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

announcement of the European single market, which they thought would favor EC products. In response, the Group of Inter-Maghreb Coordination was created by Algeria, Morocco, and Tunisia in September 1983 to maintain relations with the EC. This function was subsequently assigned to the AMU when it was formed in 1989.²⁶⁵

In terms of organizational structure, the AMU is headed by the Presidential Council,²⁶⁶ which is composed of the Heads of State of the Member States. The Council meets once every six months,²⁶⁷ and constitutes the supreme authority which makes decisions by unanimity by virtue of Article 6. Under Article 7, the Prime Ministers of the Member States or their homologues shall meet only when deemed necessary.²⁶⁸ At the next level are the Consultative Assembly and the Council of Foreign Affairs Ministers. The Consultative Assembly includes 30 representatives from each Member State who play an advisory role to the Council of Heads of State, and a Court of Justice, which is composed of two judges from each Member State. These have been set up respectively in Algiers and Nouakchott as per Article 12. The Council of Foreign Affairs Ministers meets regularly to prepare for the sessions of the Council of Heads of States (Article 8). In addition, it examines proposals prepared by subordinate committees and by the four specialized ministerial commissions on

²⁶⁵ Aghrout & Sutton, *supra* note 261 at 130.

²⁶⁶ See *AMU Treaty*, *supra* note 257, art. 4.

²⁶⁷ *Ibid.*, art. 5.

²⁶⁸ *Ibid.*

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

economy and finance, human resources, basic infrastructure and food security, which comprises the third level of governance of the AMU. The AMU also maintains a permanent Secretariat General which was established in Rabat in 1992. It has an annual operational budget of USD 1.7 million, provided by equal contributions from each Member State.²⁶⁹

Since 1990, the AMU has been meeting regularly and the five member countries have signed more than 30 multilateral agreements in several economic, social, and cultural areas. However, only five such agreements have been ratified by all Union members. The agreements that were ultimately adopted concern: trade and tariffs imposed upon industrial products; trade in agricultural products; investment guarantees; elimination of double taxation; and, common phytosanitary standards.²⁷⁰ Despite the execution of these significant agreements, the AMU has almost been paralyzed due to the dispute over the status of the Western Sahara. Morocco annexed the territories of this former Spanish colony in 1975. Ever since, the liberation movement “Frente Popular para la Liberación del Saguia el Hamra y Rio de Oro” (POLISARIO) which has Algerian backing has proclaimed independence.²⁷¹

The transport sector was recognized early on as an important element in achieving the stated objective of industrial, agricultural, commercial

²⁶⁹ See generally International Monetary Fund (IMF), *Directory of Economic, Commodity and Development Organizations* (Washington DC: IMF, 2006), online: IMF website, <<http://www.imf.org/np/sec/decdo/amu.htm>> (date accessed: 06 August 2007).

²⁷⁰ See generally *ISS, Profile of AMU*, *supra* note 264.

²⁷¹ Aghrout & Sutton, *supra* note 261 at 130.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and social development among the Member States. In 1969 the “Maghreb Coast Line” shipping company was created, and it operated on a limited scale until it was dissolved in 1976 due to financial problems. In 1970 the air transport committee of the AMU approved the concept of a jointly owned airline, to be called “Air Maghreb”. In the railway sector, a regional project was proposed which included a “Trans-Maghreb Express” that would link Casablanca, Algiers, and Tunis.²⁷² Despite the fact that these three initiatives never produced any tangible results, the idea of establishing joint air, land and rail transport companies was resurrected at a meeting of the Maghreb transport ministers in Tripoli in May 1989.²⁷³ However, no significant progress was achieved, and the idea of creating a joint airline seems to have completely disappeared after the bankruptcy of the former Air Afrique in 2001.

Also, the AMU and its Member States did not consider the liberalization of air transport among themselves, despite the fact that all Member States, except Morocco, were signatories to the Yamoussoukro Decision. However, the initiative to liberalize air transport came from neighboring European countries, which wanted to harmonize and gradually liberalize the transport systems in the Mediterranean Region. At a 1995 conference held in Paris, the Ministers of six Western Mediterranean countries (Spain, Italy, France, Algeria, Morocco, and Tunisia) agreed to pursue a joint policy towards harmonization and extension of the European transport system with the Maghreb transport system.

²⁷² *Ibid.*, at 117.

²⁷³ *Ibid.*, at 136.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Concerning air transport, the conference set the objectives of harmonizing air traffic control systems between Europe and the Maghreb, as well as fostering partnerships between the six countries “in the interest of gradual and controlled liberalization of the international air transport sector”.²⁷⁴

Eventually, the consultations between the Maghreb countries and their European counterparts were elevated to the level of the European Union, which began to negotiate air service agreements on behalf of its Member States.²⁷⁵ In May of 2005, the European Commission began negotiations with Morocco for an open skies agreement. The initiative of the European Commission was widely seen as the test-case for the new European aviation policy.²⁷⁶ After five rounds of negotiations in Rabat, Morocco, an agreement was initialed in Marrakech on 14 December 2005. The EU-Morocco open skies agreement has two phases. The first phase grants unrestricted third and fourth freedom rights between any point in

²⁷⁴ European Conference of Ministers of Transport (ECMT), *Towards the Development of Coordinated and Harmonised Transport Systems in the Western Mediterranean Region*, (Meeting of Ministers of Transport of Western Mediterranean Countries, Paris, 1995) at 3 and 5.

²⁷⁵ In November 2002, the Court of Justice of the European Union ruled that several member states (Denmark, Sweden, Finland, Belgium, Luxembourg, Austria, and Germany) had failed to fulfill their obligations under the EC Treaty when they agreed to individual open skies agreements with the United States of America in 1994, 1995 and 1996. See EU, *Judgment of the Court*, [2002] O.J. C. 323/2. This marked the beginning of new European Union external aviation policy which aims at: (i) bringing existing bilateral agreements into line with community law (e.g. same rights for all community operators); and, (ii) gradually adopting ambitious agreements between the community and third countries. See generally EC, *Developing the agenda for the Community's external aviation policy*, (Communication from the Commission of March 11 2005 COM(2005) 79), online: EU website, < <http://europa.eu/scadplus/leg/en/lvb/l24078.htm>>.

²⁷⁶ See EC, *EU-Morocco Euro-Mediterranean Air Transport Agreement*, (Information Note, 2005). Online: EU website, <http://ec.europa.eu/transport/air/international_aviation/country_index/doc/morocco_info_note.pdf> (date accessed: 07 August 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Morocco and any point in a country in the EU for both, Moroccan and EU carriers. The second phase, which will be instituted once the relevant European aviation legislation and regulation is implemented by Morocco, will additionally grant consecutive fifth freedom rights to Moroccan carriers in Europe, and to EU carriers “to countries involved in the Neighbourhood Policy”.²⁷⁷

The European Neighbourhood Policy (ENP) in transport, as referred to in the agreement, consists of “setting-up an integrated multimodal Euro-Mediterranean transport network, which will contribute to the strengthening of exchanges between the EU and the Mediterranean Partners, and among the Mediterranean Partners themselves”.²⁷⁸ Behind this policy is the broader objective of the EU to develop the wider European Common Aviation Area by 2010, which will include all of its 27 Member States. The open skies agreement between the EU and Morocco has a potentially significant impact on liberalization of air transport in the Maghreb region. According to the agreement, any European carrier will eventually be allowed to serve any destinations between two countries which are both part of the ENP.²⁷⁹

²⁷⁷ *Ibid.*, at 2.

²⁷⁸ See: *Ministerial Conclusions*, (Euro-Mediterranean Ministerial Conference on Transport, Marrakesh, Morocco, 2005), online: EuroMed Transport Project website, <http://www.euromedtransport.org/fileadmin/download/maincontract/fm/fm_final_report_en.pdf> at 1.

²⁷⁹ The countries listed in the ENP are: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestinian Authority, Syria, Tunisia, and Ukraine. See EC, *European Neighbourhood Policy - Who participates?* online: EU website, <http://ec.europa.eu/world/enp/partners/index_en.htm> (date accessed: 08 August 2007).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Another country which is currently evaluating its bilateral relationship with the EU is Tunisia. A recent World Bank study came to the conclusion that Tunisia would benefit immensely from a similar bilateral air service agreement with the EU.²⁸⁰ However, while Morocco's open skies agreement with the EU marks the climax of its ten year initiative to liberalize international air travel, Tunisia has not even embarked upon talks with the EU on liberalizing its air services.²⁸¹ Nevertheless, given the promising initial results of the liberalization of air services between Morocco and the EU, other North African countries will certainly follow this path in the foreseeable future.²⁸² Aside from Morocco, the other North African countries which are part of the ENP and which are likely to agree to a similar air transport agreements with the EU include Algeria, Egypt, Libya, and Tunisia. This may eventually lead to a situation where all Maghreb countries, except Mauritania, are bound to the same liberalized air transport regime, which, in phase two, will allow European carriers to operate fifth freedom flights between AMU States. Should Maghreb Member States fail to liberalize air services among themselves, the odd situation may persist where European fifth freedom flights may openly compete with AMU regional traffic which might still be restricted by traditional bilateral air service agreements.

²⁸⁰ See generally: Bart Kaminski, *Morocco's Integration into the European Common Aviation Area: Should Tunisia follow?* (Washington DC: World Bank, 2007).

²⁸¹ *Ibid.*, at 2.

²⁸² The initial impact of the liberalization is that several European discount operators, such as easyJet, Ryanair, and Aigle Azur have initiated flights between European cities (Madrid, London, Barcelona, and Paris) to several points in Morocco (Casablanca, Marrakesh, Fez, Agadir, and Oujda). At the same time, Royal Air Maroc was strengthened after a successful restructuring, and has expanded its network towards European destinations. See *ibid.*, at 12.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The Ministers of AMU seem to have recognized the need to liberalize air services in their region when they met in Skhirat, south of Rabat in April 2007. During this meeting, a committee was established to examine Morocco's proposal for an open skies agreement. At the conclusion of the meeting, the Moroccan Transport Minister Karim Ghellab said:

For certain Maghreb countries, the liberalization of air transport will require a period of reflection, but I think the 2008 date is reasonable.²⁸³

This statement was supported by Driss Benhima, the Director General of Royal Air Maroc (RAM), who stressed the urgency of liberalizing the air transport sector stating:

As Europe creates an open air space in which Morocco is a part, it seems more and more anachronistic that there is not a similar Maghreb open skies deal.²⁸⁴

However, while the need for liberalization of air services within the AMU has finally been recognized, no consideration of the Yamoussoukro Decision and the liberalization of air traffic to sub-Saharan Africa is currently envisaged. Nevertheless, RAM has continuously expanded its operations towards the South.²⁸⁵ In addition, RAM has recently acquired a 51% stake each in Air

²⁸³ Amin Sabooni, "Maghreb Countries Plan Open Skies" *Iran Daily* (04 April 2007), online: Iran Daily website, <<http://irandaily.ir/1386/2808/html/ieconomy.htm>> (date accessed: 06 August 2007) at 11.

²⁸⁴ See generally: "Maghreb Countries plan Open Skies Deal" *Middle East Online*, online: Middle East Online website, <<http://www.middle-east-online.com/English/mauritania/?id=20194>> (date accessed: 06 August 2007).

²⁸⁵ On its schedule for the Summer of 2007, RAM flew to 15 sub-Saharan destinations, which included Abidjan, Accra, Agadir, Bamako, Brazzaville, Conakry, Cotonou, Dakar, Douala, Freetown, Libreville, Lomé, Malabo, Niamey, and Ouagadougou. See Royal Air

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Senegal International, Air Gabon International, and Air Mauritanie, and this gives the carrier a unique opportunity to expand into the sub-Saharan Africa region despite the fact that Morocco did not join the Yamoussoukro Decision.²⁸⁶

It may be concluded that the Maghreb region is confronted with the growing reality of having to move decisively towards liberalizing air services as a result both of the consequences of an opening and participation in the European market, as well as an important market potential in sub-Sahara Africa. Because most AMU countries are bound to the Yamoussoukro Decision, which eventually will press for its implementation in the region, the AMU is well advised to continue in the path of liberalizing air services among its Member States first. This would also provide additional leverage when negotiating for instance with a supra-national body such as the African Union about the terms of implementation of the Yamoussoukro Decision in the region.

4.1.2 The League of Arab States

The League of Arab States, or Arab League, was founded in Cairo, Egypt, on 22 March 1945, by a treaty which was signed by the Heads of State of seven Arab nations.²⁸⁷ As stated in Article 2 of the treaty, the purpose, is to

Maroc Time table, online: Royal Air Maroc website,
<http://www.royalairmaroc.com/eng/Navigation_New.asp?Rub=03&LRub=E-Services&SRub=08&LSRub=Timetable%20PDF> (date accessed: 09 August 2007).

²⁸⁶ See generally Ursula Schmeling, "Royal Air Maroc (RAM) - Competition on the upswing" (2007) *International Transport Journal*, online: <<http://www.transportjournal.ch/e/itz/itz/artikel.php?id=14182>> (date accessed: 09 August 2007).

²⁸⁷ These were Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria, and Yemen. See League of Arab States, *Pact of the League of Arab States*, reprinted in (1992) 7:2 Arab Law Quarterly 148 [*Pact of the League of Arab States*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

strengthen relations between the Member States; to coordinate policies among the Member States and to safeguard their independence and sovereignty; and, to deal with issues of general concern which are in the interest of the Arab countries.²⁸⁸ Subsequently, the Arab League has extended its membership base continuously over the years to include a total of 22 Arab States and two observing nations.²⁸⁹

In terms of organization, the Arab League is structured on six levels, which include: (i) the Council of the League, (ii) the Permanent Committees, (iii) the General Secretariat, (iv) the Common Defense Council, (v) the Economic and Social Council, and (vi) the Specialized Organizations of the League. The Council of the League which is at the highest level is charged with implementation of the objectives of the League. It has the following tasks:

- a. Following up on the proper implementation of agreements reached among Member States in economic, social, cultural, health and other affairs;²⁹⁰

²⁸⁸ *Ibid.*, art. 2.

²⁸⁹ The Member States are Arab Republic Of Egypt (since 1945), Republic Of Iraq (1945), The Hashemite Kingdom Of Jordan (1945), Republic Of Lebanon (1945), Kingdom Of Saudi Arabia (1945), Arab Republic Of Syria (1945), Republic Of Yemen (1945), Socialist People's Libyan Arab Jamahiriya (1953), Republic Of Sudan (1956), Kingdom Of Morocco (1958), Republic Of Tunisia (1958), State Of Kuwait (1961), Democratic And Popular Republic Of Algeria (1962), United Arab Emirates (1971), Kingdom Of Bahrain (1971), State Of Qatar (1971), Sultanate Of Oman (1971), Islamic Republic Of Mauritania (1973), Republic Of Somalia (1974), State Of Palestine (1976), Republic Of Djibouti (1977), and the Federal Islamic Republic Of Comoros (1993). The observer States are the State of Eritrea (since) and the Republic of India (2007). See: Arab League, "About the Arab League – Member States", online: Arab League website, <http://www.arableagueonline.org/las/english/level2_en.jsp?level_id=11> (date accessed: 09 August 2007).

²⁹⁰ See *Pact of the League of Arab States*, *supra* note 287, arts. 2 and 3.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- b. Resolving disputes that may arise between Arab countries peacefully;²⁹¹
- c. Taking necessary action to defend any Arab country if subjected to aggression;²⁹²
- d. Coordination of cooperation with other International Organizations;²⁹³
- e. Appointing of the Secretary General;²⁹⁴
- f. Approving the League's Budget;²⁹⁵ and,
- g. Enacting the bylaws of the Secretariat.²⁹⁶

The second level of the League is constituted by the Permanent Committees, which were established in accordance with Article 4 to deal with specified subjects listed in Article 2. Each committee includes representatives of all Member States. These subjects are:

- a. Economic and financial affairs including trade, customs, currency, agriculture and industry;
- b. Communications including railways, highways, aviation, maritime and post & telegrams;

²⁹¹ *Ibid.*, art. 5.

²⁹² *Ibid.*, art. 6.

²⁹³ *Ibid.*, art. 3.

²⁹⁴ *Ibid.*, art. 12.

²⁹⁵ *Ibid.*, art. 13.

²⁹⁶ *Ibid.*, art. 12.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- c. Cultural affairs;
- d. Citizenship affairs including passports, visas and recovery of convicted criminals;
- e. Social affairs; and,
- f. Health affairs.

The General Secretariat is the next level and can be considered to be the backbone of the League. According to Article 12, it is composed of the Secretary-General, Assistant Secretaries, and an appropriate number of officials, which currently translates into eight Executive Divisions and several of supporting units. The Secretary General has the right to attend the meetings of the Council of the League. He is particularly expected to intervene at the Council when any issue which might affect relations among the members of the League or with third countries comes up. The Secretary-General is also responsible for the execution of the decisions made by the council, and functions as the chief executive of the entire staff of the League. Article 12 specifies that he shall have the rank of an Ambassador, and the Assistant Secretaries the rank of Ministers Plenipotentiary. The role and political influence of the Secretary General of the Arab League has grown over the years, and he has become an influential representative in the international political arena. He has acted as the mediator in several cases involving disputes among Arab States, and he coordinates positions of the Arab States on various international issues.²⁹⁷

²⁹⁷

As an examples of the influential role of the Secretary General see Tim Niblock, *Pariah States & Sanctions in the Middle East: Iraq, Libya, Sudan*. (Boulder, CO: Lynne Rienner, 2001).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The Arab League also has two specialized councils which were both established in 1950: the Common Defence Council and the Economic and Social Council.²⁹⁸ Of particular significance is the fact that the treaties which established the two councils also stipulate that decisions taken by two thirds majority are binding on all members. Moreover, in the common defense treaty, any armed aggression against any one or more member state is to be considered as an aggression on all members, and must be dealt with in accordance with the right of individual and common self-defense. In 1957, the Arab League and its Economic Council approved an Economic Unity Agreement, which contained specific provisions that called for the free movement of goods, labor, and capital, as well as for the freedom to own and inherit property and the right to work and establish residence in any Arab country. Finally, in 1965 the Arab League approved yet another economic agreement establishing the Arab Common Market. However, the Economic Unity agreement was only ratified by thirteen countries and the Arab Common Market received the ratification of only five countries despite the fact that the Economic Council comprises all members States of the Arab League.²⁹⁹

On the lowest operational level, there are over 20 specialized organizations of the Arab League, which constitute its core activity and operational structure. These organizations include:

²⁹⁸ The *Joint Defense and Economic Cooperation Treaty* was adopted by the Arab League in 1950, after the defeat of the Arab states by Israel in 1948. It created a ministerial-level Arab Economic Council to promote economic cooperation and coordination in order to raise living standards in the Arab countries. See Abbas Alnasrawi, *Arab Nationalism, Oil and the Political Economy of Dependency*. (New York: Greenwood Press, 1991) at 56.

²⁹⁹ *Ibid.*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- The Arab Telecommunication Union (created in 1957)
- The Council of Arab Economic Unity (1964)
- The Arab Organization for Social Defence Against Crime (1965)
- The Civil Aviation Council for Arab States (1967)
- The Arab Organization for Standardization and Metrology (1968)
- The Organization for Arab Petroleum Exporting Countries (OAPEC, 1968)
- The Arab States Broadcasting Union (1969)
- The Arab Organization of Administrative Sciences (1969)
- The Arab League Educational, Cultural, and scientific Organization (1970)
- The Arab Centre for Studies of Arid Zones and Dry Lands (1971)
- The Arab Fund for Economic and Social Development (1971)
- The Arab Labour Organization (1972)
- The Arab Organization for Agricultural Development (1972)
- The Arab Postal Union (1972)
- The Inter-Arab Investment Guarantee Corporation (1975)
- The Arab Academy for Navigation (1975)
- The Arab Bank for Economic Development in Africa (1975)
- The Arab Monetary Fund (AMF, 1977)

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- The Arab Satellite Communications Organization (Arab SAT, 1978)
- The Arab Organization for Mineral Resources (1979)
- Arab Industrial Development Organization (1980)³⁰⁰

In its early years, the activities of the Arab League were concentrated primarily on economic, cultural and social programs. In 1959, it held the first petroleum congress and, in 1964, it established the Arab League Educational, Cultural, and Scientific Organization. However, the Arab League was weakened over the years by disputes on several political issues. The early problems arose in relation to the recognition of the Palestine Liberation Organization (PLO) against the objection of Jordan, and Egypt's separate peace treaty with Israel on 26 March 1979, which led to the suspension of Egypt's membership and transfer of the League's headquarters from Cairo to Tunis. However, nine years later, Egypt was readmitted to membership, and headquarters returned to Cairo in 1990. More recent tensions within the Arab League arose over the Kuwait crisis in 1990, and about the invitation extended by Saudi Arabia to the USA allowing foreign military build-up in that country. This issue created a quite deep divide among its member countries and this paralyzed the Arab League during the eruption of the gulf crisis.³⁰¹ Subsequently, the future of the Arab League as a regional organization became highly uncertain. However, this seems

³⁰⁰ See: League of Arab States, "About the Arab League - Current general structure and administrative Organization - Arab Specialized Organizations", online: Arab League website, <<http://www.arableagueonline.org/>> (date accessed: 13 August 2007).

³⁰¹ See generally: Charles L. Geddes, *A Documentary History of the Arab-Israeli Conflict* (New York: Praeger Publishers, 1991) [Geddes].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

to have changed significantly when the Arab League displayed renewed unity and regained respect within the Arab world during the Israeli-Lebanese war which occurred in summer of 2006.

The air transport sector was dealt with by the Civil Aviation Council of the Arab States created in 1967. The original aim of this council was: to study the “principles, techniques, and economics relating to air transport”; to study international standards, practices and agreements; and, to recommend the adoption of such agreements which were in the interest of Arab States.³⁰² The council further anticipated the preparation and adoption of a uniform advanced air law for Arab States, an English-French-Arabic lexicon of civil aviation terminology, and the conclusion of various agreements on air transport, transit rights, and search and rescue.³⁰³ The Civil Aviation Council even established a dispute settlement mechanism as provided for in Article 10 of the agreement.³⁰⁴ Despite the strong initial momentum of the Arab States aimed at unifying and harmonizing their air transport sectors, and eventually at the creation of a common Arab aviation market, there is little evidence that the Civil Aviation Council achieved major progress towards that objective.

In 1995, about thirty years after the creation of the council, a new initiative was launched when the Arab League States created a new entity called

³⁰² Dorothy Peaslee Xydis & Amos Jenkins Peaslee, *International governmental organizations: constitutional documents*, rev. 3d ed. (The Hague: M. Nijhoff, 1976) at 265 [*Peaslee, Constitutional Documents*].

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

“The Arab Organization for Civil Aviation”. The main objective of the new organization was to provide the civil aviation authorities of the Arab League Member States a joint framework for the development of air transport services between the Arab countries, and to ensure safety in the sector. It specifically aimed at promoting and developing cooperation and coordination between the Arab States.³⁰⁵ The organization, which has its own General Assembly, Executive Board, and independent budget, enjoyed a certain level of independence in the promotion of cooperation and integration of the air transport activities of the member Countries.³⁰⁶ However, it remained bound to rules approved by three councils: the Economic and Social Council; the Arab League Council; and, the Arab Transportation Ministers Council, with respect to “Pan-Arab Action Organizations”. It is also mandated to carry out the implementation of resolutions and programs of these councils, and must coordinate with the General Secretariat of the Arab League.³⁰⁷ These restrictions clearly indicate that the Arab League is deciding on policy issues for the air transport sector at the very highest level. However, the objectives and mandate of the implementing unit (i.e., the Arab Organization for Civil Aviation) are very similar to those of the Civil Aviation

³⁰⁵ Hassan Radhi, "The Arab Organisation for Civil Aviation" (1996) 11:3 Arab Law Quarterly 285 at 285 [Radhi].

³⁰⁶ For example, the Arab Organisation for Civil Aviation may promote the integration between Arab airline companies and consolidate arrangements between the member countries wherever they contribute to implementing the regional plans issued by the International Civil Aviation Organisation relating to aerial navigation supplies and services. See *Ibid.*, at 286.

³⁰⁷ *Ibid.*, at 292.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Council of the Arab States, which, over the course of thirty years, did not achieve much progress.

Arab League Open-Skies Agreement

The Arab Civil Aviation Commission (ACAC), which emerged out of the Arab Organization for Civil Aviation, has continuously pushed for cooperation and liberalization of the civil aviation sector in the Arab world.³⁰⁸ This initiative was based on a 1999 agreement of the Council of Arab Transport Ministers to liberalize intra-Arab air services over a period of five years by gradually reducing restrictions for carriers of the Member States of ACAC. This resulted the signing of seventeen “open skies” agreements among ACAC States, including Bahrain, Jordan, Lebanon, Morocco, Oman, Qatar, Syria, and the United Arab Emirates.³⁰⁹ In addition, a multi-lateral agreement on the liberalization of air transport between the Arab States was signed by several Arab League countries on 19 December 2004, under auspices of ACAC.³¹⁰

The agreement, which aims at liberalizing regional air services, has its fundament in the Agreement on Facilitating and Developing Trade between the Arab Countries (“The Agreement on Arab Free Trade”), which was adopted by

³⁰⁸ ACAC serves similar objectives as the former council and is based in Rabat, Morocco. It acts as the specialized organization for of the Arab League and is based on a treaty.

³⁰⁹ See: Assad Kotaite, *Address of the President of ICAO to the Eight Session of the General Assembly of ACAC*, (Marrakech, Morocco, 2006).

³¹⁰ These countries included Bahrain, Egypt, Iraq, Jordan, Lebanon, Oman, Palestine, Somalia, Sudan, Syria, Tunisia, and Yemen. Arab Civil Aviation Commission, *Agreement on the Liberalisation of Air Transport between the Arab States*, (Damascus, 2004) [*Arab League Open-Skies Agreement*].

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the Economic and Social Council on 27 February 1981.³¹¹ Article 18 of this agreement provides for cooperation between the State parties of the Arab League to facilitate all means of transport and communication between them on a preferential basis.³¹² The preamble of the Arab League Open-Skies Agreement specifically seeks to achieve greater liberalization of air transport services between the Arab countries, by “coordinating Arab air transport policies in order to eliminate any obstacles to the development of Arab air transport”. The preamble encourages “the gradual liberalization of air transport within a regional and multilateral framework”. In Article 4, the agreement provides the following concrete traffic rights for any air transport company which has been designated in accordance with the agreement:

1. the right to transit through any of the territories of the other State parties;
2. the right to land in any in any of the territories of the other State parties for non-commercial purposes; and
3. the right to embark and disembark passengers, cargo and mail, whether separately or combined, to and from any of the territories of the State parties.

The first two traffic rights represent in fact the first two freedoms of the air as described in the International Air Services Transit Agreement of

³¹¹ Arab League, *Agreement of Arab Free Trade Area*, (Tunis, 1981) [*Agreement of Arab Free Trade Area*].

³¹² *Ibid.*, preamble.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

1944, which was signed by 125 countries.³¹³ Most of the Arab League States have already ratified the Transit Agreement and are obliged to grant these first two freedoms. However, for eight Arab League States, this will become a new obligation if they sign and ratify the agreement.³¹⁴ The third right to be granted under the agreement is arguably much broader. While the Yamoussoukro Decision clearly defines the rights granted therein in its Article 3 as first, second, third, fourth and fifth freedoms, the Arab League Open-Skies Agreement is less clear on what freedoms beyond the first two are granted. “To and from” a point in a State party clearly includes third and fourth freedom flights, which are based on air traffic between two parties. However, the agreement seems to go beyond these freedoms as it includes traffic “to and from any of the territories of the State parties”. It can be concluded that fifth freedom rights are included, because any destination within the territories of the State parties beyond the initial destination is included. The agreement even seems to grant seventh freedom rights as it does not specify that traffic needs to be routed back over the initial State party's departure point. The only freedom, which is clearly excluded, is “cabotage”, the eighth freedom, as passengers, cargo, or mail, must embark and disembark to and from “any of the territories of State parties”.

The Arab League Open-Skies Agreement has other provisions which fall in line with the provisions of the Yamoussoukro Decision. Article 5 entitles each State party to designate one or more air transport companies to

³¹³ ICAO, *International Air Services Transit Agreement*, 7th December 1944, ICAO Doc. 7500 [*Transit Agreement*].

³¹⁴ These are Comoros, Djibouti, Libya, Qatar, Saudi Arabia, Sudan, Yemen, and the State of Palestine, which is not a member State of ICAO.

REGIONAL IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

benefit from the provisions of the agreement. In order to qualify, the company must be substantially owned or effectively controlled by one or more State parties or their citizens, and the main place of business must be in one of the State parties. In similar fashion as the Yamoussoukro Decision, Article 7 provides for freedom of capacity by stating that each designated air transport company is entitled to operate the capacity and number of flights it considers adequate, and that no State party may unilaterally restrict capacity, number of flights, types of aircraft or air transport rights, except on a non-discriminatory basis for certain environmental or technical reasons when air safety or security is affected.³¹⁵

In terms of tariffs, the Arab League Open-Skies Agreement provides a more complete and comprehensive framework than the Yamoussoukro Decision. According to Article 8 of the agreement, tariffs for air transportation of passengers, cargo and mail, must be determined in accordance with Annex 1 of the agreement. Annex 1, titled “Criteria and Procedures for fixing tariffs”, states that the designated air transport company should determine its tariffs for air transportation on the basis of commercial considerations. With respect to the criteria, the Annex states that tariffs must be fixed at reasonable levels, “having regard to all the relevant factors and, in particular, operating costs and types of services, a reasonable profit and the competition in the market”. The tariffs do not require approval by the Civil Aviation Authorities, but they must be filed thirty days prior to the date they come into force. However, the Civil Aviation Authority of any State party may intervene to prevent discriminatory practices and to protect

³¹⁵ This text is very similar to that of Article 5 of the Yamoussoukro Decision.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the consumers. Discriminatory practices are further defined as situations in which tariffs are considered prejudicial to the air transport company of a State party, in which case the Civil Aviation Authority of that country might object. The consumer protection provisions aim at ensuring fair competition, and are defined in Annex 2.

The fair competition provisions prohibit carriers from different State parties from benefiting from special agreements concluded between them in order adversely affect competition. The consumer protection provisions of Annex 1 also provide certain guarantees that should eliminate unfair practices which prevent minimum of market participation. They are listed in Annex 3 and include such practices as the imposition of excessively low tariffs, “price dumping”, or the provision of excess capacity on the market, which are intended to drive other participants out of the market.

Finally, Annex 1 refers to the dispute resolution mechanism of Article 30 of the agreement which shall be invoked if an objection to a tariff for scheduled air transport is raised, and the matter cannot be solved by consultations between the two State parties. The dispute settlement mechanism shall be applied in the event that any disagreement between two or more States parties arises concerning the interpretation or application of the provisions of the agreement and its annexes. If the parties involved cannot resolve the matter through negotiation, the issue must then be submitted to the Director General of the Arab Civil Aviation Commission. If his efforts as intermediary fail, an arbitration tribunal would be established consisting of three arbitrators. The decision of this tribunal

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

shall be final and there is no right of appeal. The States parties are bound to the decision, and measures may be invoked to ensure compliance with the arbitral decision by the carrier concerned.

Overall, the Arab League Open-Skies Agreement provides the same or, in the sense of potentially granting seventh freedom rights, even greater liberalization of air services than the Yamoussoukro Decision. It clearly defines the competition rules and the conflict resolution procedure. While the agreement goes much farther than the Yamoussoukro Decision in many aspects, its provisions generally do not stand in conflict with the Yamoussoukro Decision. However, so far the agreement has only been ratified by Jordan (30 June 2005), the United Arab Emirates (28 November 2006), Syria (24 May 2005), Palestine (23 October 2005), Lebanon (14 June 2006), and Yemen (24 October 2005).³¹⁶ Nevertheless, the agreement has been in force since 18 February 2007, when in accordance with Article 38, the required five countries deposited their instruments of ratification. In addition, several other countries have announced that their ratification process is underway.³¹⁷

4.1.3 Conclusion: Arab States and the Yamoussoukro Decision

Of the six Arab States on the African continent,³¹⁸ four are State parties to the Yamoussoukro Decision. Only Morocco (which has never signed

³¹⁶ Mohamed El Alj, *Liste des pays ayant ratifié la Convention sur la Liberalisation du Transport Aerien* (Arab Civil Aviation Commission, 10 October 2007).

³¹⁷ These are Bahrain, Oman, Qatar, and Egypt. See *ibid.*

³¹⁸ These are Algeria, Egypt, Libya, Morocco, Tunisia, and Mauritania.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the Yamoussoukro Decision), and Mauritania (which deposited its ratification instruments too late), are not considered members of the Yamoussoukro Decision. However, Morocco has pursued an open skies policy by agreeing to an open skies agreement with the European Union, and has called for liberalization within the AMU.³¹⁹ On the other hand, all African Arab States have state-owned carriers and, with the exception of Morocco, seem to have displayed some form of protective action in the past, which resulted in a general opposition to liberalization. This may also explain why none of the African Arab States have so far ratified the Arab League Open-Skies Agreement, despite the fact that it would eventually provide them with access to a huge market in the Arab world of the Middle East.

Notwithstanding the foregoing, the renewed drive of the Arab League towards liberalization of air services, as well as the Arab League Open-Skies Agreement which is in force, are strong pillars on which liberalization of air services among the African Arab States can be built. Being potentially bound by two liberalization agreements (i.e., the Arab League Open-Skies Agreement and the Yamoussoukro Decision), African Arab States must recognize the market potential, rather than be concerned about the threat of competition to their own carriers. Three of the Maghreb States operate modern and competitive carriers, and have a good safety rating (Egypt, Morocco, and Tunisia: see Annex V). Primarily, these States should jointly act as the driving force towards

³¹⁹ The “Open Skies” policy of Morocco with both Europe and many Sub-Saharan countries is a key element for the development of its sixth freedom traffic, which is primarily focused on service between Africa and Europe. See Figure 3: Top international routes between Sub-Saharan Africa and North Africa.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

liberalization. This is especially the case, as the Maghreb market may soon see European carriers operating between two or more North African ENP States which have signed an open skies agreement. In addition the Arab League will certainly continue to develop a stronger momentum for ratification of its Open-Skies Agreement. This will result in many African Arab States being faced with a push towards gradual liberalization of their air services. It would therefore be advantageous for these States to take control of the steps towards liberalization by actively cooperating with the Arab League and its Commission for Aviation to implement liberalization.

Finally, the Arab League may also approach the African Union as well as neighboring sub-regional groupings such as the WAEMU or COMESA in order to negotiate and implement an agreement between the organizations which would further liberalize air services.³²⁰ This step would eventually become the final “implementation” of the Yamoussoukro Decision in the African Arab regions.

4.2 West & Central Africa (ECOWAS, WAEMU, BAG, and CEMAC)

West Africa

West African States can be grouped into several economic and/or political organizations. The largest, in terms of Member States, is the Economic Community of West African States, which includes all 15 West African States.

³²⁰ The Arab League States have signed an agreement for collective negotiations with regional and sub-regional groupings. See Arab Civil Aviation Commission, *Agreement on the Mechanism for Arab Collective Negotiations with Regional and Sub-Regional Groupings*, (2004).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

However, in terms of air transport policy and the implementation of the Yamoussoukro Decision, the West African States divided themselves into two distinct groupings at a very early stage. The French speaking West African Economic and Monetary Union includes eight States, and the Banjul Accord Group of States is comprised of seven predominantly English speaking countries. Nevertheless, all three organizations play a central role in the implementation of the Yamoussoukro Decision, and are therefore examined below.

4.2.1 Economic Community of West African States (ECOWAS)

The Economic Community of West African States (ECOWAS) is a regional group of initially fifteen countries which was founded in 1975 by the treaty of Lagos.³²¹ The creation of the new economic community, which spread from Cape Verde in the West to Mauritania in the North and Nigeria in the South-East, was initially seen as a great achievement.³²² After three years of negotiations, the Heads of State of the respective countries agreed to establish an organization which would not only include very small States on the same footing as the largest nation, Nigeria, but would also unite all West African States irrespective of the language spoken.³²³ From the early days, its mission was the

³²¹ The founding States of ECOWAS included Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Cape Verde joined in 1976.

³²² Adebayo Adedeji, "ECOWAS: A Retrospective Journey" in Adekeye Adebajo & Ismail Rashid, eds., *West Africa's Security Challenges* (Boulder CO,: Lynne Rienner Publishers, 2004) at 32 [Adedeji].

³²³ The main languages are English and French. In addition, Portuguese is spoken in Guinea-Bissau, and Arabic in Mauritania. Mauritania is often referred to as a North and not a West African country. Nevertheless, it was a founding member of ECOWAS, which it left in 2002.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

promotion of economic cooperation and integration, to be achieved through trade liberalization; the establishment of a customs union; and, even the establishment of a proposed fund for economic compensation between the Member States.³²⁴ ECOWAS swiftly established its Secretariat in Lagos and called for a first meeting of the Council of Ministers in Accra in July 1976. In assessing the loss of revenue by certain Member States as a result of trade liberalization, the meeting ran into an unexpected controversy which was never fully resolved. As a result, the initial expectations and enthusiasm about the mission of ECOWAS started to fade away.³²⁵ ECOWAS then began to focus on peace keeping operations for which it gained some international recognition.³²⁶ Nevertheless, in 1990, ECOWAS introduced its trade liberalization scheme, which consisted in the abolition, among Member States, of customs duties levied on imports and exports; in the adoption of a common external tariff and trade policy, and the removal of obstacles between Member States allowing free movement of persons, goods,

³²⁴ Adedeji, *supra* note 322 at 34.

³²⁵ *Ibid.*, at 33.

³²⁶ ECOWAS was the first regional organisation to intervene militarily to resolve a conflict in the post-cold war period. It set up the Economic Community Monitoring Group (ECOMOG) in 1990 to resolve the Liberian civil war. It began its peace-keeping operations in December 1989 when Libyan backed rebels invaded the country from Cote d'Ivoire. The war ended in 1996. However, President Charles Taylor's autocratic and dysfunctional government led to a new rebellion in 1999. Overall, more than 200,000 people are estimated to have been killed in the civil wars since 1998. In 2006 former President Charles Taylor was arrested and extradited to the International Criminal Court at The Hague, Netherlands, to face 17 counts of alleged war crimes. See "LIBERIA: Charles Taylor On Trial" (2007) 44:6 Africa Research Bulletin: Political, Social and Cultural Series, 17107B at 17107B.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

services and capital; and, in securing the right of residence and establishment for all citizens of Member States.³²⁷

After years of lack of political will which resulted in many protocols not being ratified by Member States, ECOWAS eventually began to gain the desired level of acceptance.³²⁸ This resulted in the May 1990 establishment of a committee mandated to review the treaty of Lagos and to propose a revised version. In July 1993, a revised version of the treaty was discussed and agreed upon at the Cotonou Summit of ECOWAS in Benin. All sixteen Member States, represented by their Heads of State, signed the revised treaty.³²⁹ The revised treaty reaffirms the original goal of promoting economic cooperation and integration.³³⁰ In addition, it also calls for the “harmonization and co-ordination of national policies and the promotion of integration programs, projects and activities particularly in food, [...] transport and communications [...]”.³³¹ The most significant modification introduced by the revised treaty is the principle that decisions made by the Authority of ECOWAS, and Regulations issued by the ECOWAS Council of Ministers, have binding force “on the Member States and on the institutions of the Community”.³³² The revised treaty also

³²⁷ Emmanuel Obuah, *The Context of Development through a Regional Cooperation Strategy: the case study of ECOWAS* (University of Sussex) at 14.

³²⁸ *Ibid.*, at 18.

³²⁹ See Economic Community of West African States (ECOWAS), *Revised Treaty*, (Executive Secretariat of ECOWAS, Abuja, Nigeria, 1993) [*Revised ECOWAS Treaty*].

³³⁰ *Ibid.*, art. 3, para. 1.

³³¹ *Ibid.*, art. 3, para. 2(a).

³³² *Ibid.*, art. 9, para. 4, & art. 12, para. 3.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

specifically addresses air transport by referring to the harmonious integration of the physical infrastructure of Member States, and to the promotion and facilitation of the movement of persons, goods and services within the Community.³³³ It specifically mandates Member States to:

[...] encourage co-operation in flight-scheduling, leasing of aircraft and granting and joint use of fifth freedom rights to airlines of the region, [and to] promote the development of regional air transport services and endeavour to promote their efficiency and profitability [...]³³⁴

The stated objectives of airline cooperation and the promotion of the regional development of air services including the objective of granting fifth freedom rights to carriers of the region are all principles which were enshrined in the Yamoussoukro Declaration of 1988. Given the new powers of ECOWAS and its declared policy objectives on air transportation, it could have been expected that this regional organization would play a major role in the preparation of the Yamoussoukro Decision, which was adopted six years after the signing of the revised treaty. However, ECOWAS soon faced imminent division as its Member States began to deal with air transport matters under the auspices of two separate regional groupings. The French speaking countries established the West African Economic and Monetary Union in 1994, while the Anglophone States organized themselves under the Banjul Accord in 1997. Both sub-regional organizations began implementing a range of regulations, and subsequently liberalized their air

³³³ *Ibid.*, art. 32, paragraph 1.

³³⁴ *Ibid.*, art. 32, para. 1, (f) and (g)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

service markets either through a common policy or by a multilateral agreement among Member States (see sections 4.2.2 and 4.2.3 below).

Nevertheless, based on the fact that the Yamoussoukro Decision encouraged the sub-regional and regional organizations to “pursue and to intensify their efforts in the implementation of the Decision”, the West and Central African States mandated ECOWAS and the Economic and Monetary Community of Central Africa (CEMAC) to implement their air transport policy as defined in the Memorandum of Understanding signed in Yamoussoukro on 14 November 1999.³³⁵ In March 2001, the Ministers responsible for civil aviation of the 23 West and Central African countries met in Bamako, Mali, to discuss steps towards implementation. At that meeting, an action plan (called the “Bamako Action Plan”) was developed which aimed at: (i) strengthening the capacity of civil aviation authorities to effectively exercise economic and technical regulation of civil aviation; (ii) harmonizing the legal and institutional framework for air transport; and, (iii) exploring options on mechanisms to ensure that the oversight of the industry is carried out on a cost-effective, sustainable basis, at both the state and regional levels.³³⁶ Based on that action plan, project secretariats at ECOWAS and CEMAC were established, and several studies were initiated.³³⁷

³³⁵ *Yamoussoukro Decision*, *supra* note 29 art. 12.2. See also: ECOWAS, *Air Transport Policy in Economic Community of West African States*, (Working Paper presented at the 36th Session of the Assembly of the International Civil Aviation Organization, Montreal, 2007) ICAO Doc. A36-WP/350 EC/44 at 1 [ECOWAS, *Air Transport Policy in Economic Community of West African States*].

³³⁶ ECOWAS and CEMAC, *Implementation of the Yamoussoukro Decision on the Liberalisation of Air Transport Markets in Africa, Project for West and Central Africa - Report of Activities Jan 2001 - Nov 2004*, (Third Meeting of the Coordination and Monitoring Committee for the Implementation of the Yamoussoukro Decision in West

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

In February 2003 the Council of Ministers for the Implementation of the Yamoussoukro Decision met in Lomé, Togo, for their second meeting. However, despite the fact that strong declarations were made in support of the Yamoussoukro Decision (even to the extent of requesting the Ministers of Foreign Affairs of Member States to take urgent practical measures to fast-track the exchange of diplomatic notes within the framework of the designation of airlines), no significant progress had been made in taking concrete steps towards implementation.³³⁸ This notwithstanding, the Council of Ministers established an Air Transport Economic Regulation Harmonization Committee which would steer the process of developing common air transport economic regulations for the two regions of West and Central Africa, and also periodically monitor the implementation of the Yamoussoukro Decision at the State level. Furthermore, in order to address the safety issues identified at the Bamako meeting in 2001, the Council also created three sub-regional state groupings for the implementation of the Cooperative Development of Operational Safety and Continued Airworthiness

and Central Africa, Libreville, Gabon, 2004), ECOWAS Doc No. YDP.PD/RPT-CMC (01) 02-03 at 4 [ECOWAS and CEMAC, *Report of Activities Jan 2001 – Nov 2004*].

³³⁷ The project secretariats and several studies were financed by two grants from the World Bank totaling USD 800,000. See: International Bank for Reconstruction and Development (IBRD), *Grant for the Implementation of Air Transport Agenda in West and Central Africa*, (IDF Grant No. TF027394). See also: IBRD, *Grant for Building Capacity for Implementing a Program for Liberalization of Air Transport Services in West and Central Africa*, (IDF Grant No. TF051220).

³³⁸ Concrete steps would include the adoption of new regulations for the liberalization of air services, which would be confirmed by the Heads of State of ECOWAS, and subsequently become binding for all Member States. See generally: Council of Ministers for the Implementation of the Yamoussoukro Decision on Air Transport Liberalization in West and Central Africa, *Resolution of the Second Ordinary Session*, (Second Meeting of the Council of Ministers Lomé, Togo, 2003).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Program (COSCAP).³³⁹ Finally, the air transport project secretariat of ECOWAS carried out two regional assessments of the implementation of the Yamoussoukro Decision in fulfillment of the requirements for periodic evaluation and monitoring of the implementation of the Decision.³⁴⁰ A new action plan, called the Lomé Action Plan, was adopted and it focused again on achieving improvements in economic regulation, safety and security.

In November 2004 the Coordinating Committee and the Council Ministers responsible for civil aviation held their third Meeting in Libreville, Gabon. At that meeting, regulations on denied boarding, airport slots, and ground handling were adopted. In addition, the importance of the implementation of the COSCAP programs in the three respective regions as well as the recommendation to create autonomous Civil Aviation Authorities was retained as part of the conclusions of the meetings. Several others studies on competition rules, market access, air carrier licensing, and air carrier liability were prepared by the project secretariat.³⁴¹ Despite the several Ministerial meetings, the various studies and reports prepared, and the immense financial support provided by international donors such as the World Bank and the African Development Bank, ECOWAS has not adopted any legally binding instrument or regulations which can be

³³⁹ See note 356 *infra*, at 9.

³⁴⁰ ECOWAS and CEMAC, *Report of Activities Jan 2001 – Nov 2004*, *supra* note 336 at 5.

³⁴¹ ECOWAS, *Air Transport Policy in Economic Community of West African States*, *supra* note 335 at 2.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

classified as a step towards the implementation of the Yamoussoukro Decision.³⁴²

It seems that the other two sub-regional entities, the West African Economic and Monetary Union and the Banjul Accord Group have been more successful in implementing some of the required regulatory changes among their respective Member States.

4.2.2 The West African Economic and Monetary Union (WAEMU)

The West African Economic and Monetary Union (WAEMU), also known in French as “*Union économique et monétaire ouest-africaine*” (UEMOA) is a customs and monetary union between some of the members of Economic Community of West African States (ECOWAS). It has its roots in the treaty establishing the West African Monetary Union (WAMU), signed on 12 May 1962.³⁴³ The treaty entered into force on 2 November 1962 and it established the basis for issuing and managing the common currency known as the “Communauté Financière Africaine” (CFA) franc.³⁴⁴ This currency was originally introduced by France in 1948 for use in all French colonies, and its value remained pegged to the French franc for nearly fifty years.³⁴⁵ A new Central Bank of West African

³⁴² A formal decision by the Authority of Heads of State of Government of ECOWAS is necessary for any regulation or decision of ECOWAS to be binding upon its Member States. See *Revised ECOWAS Treaty*, *supra* note 329, arts. 9(4), and 12(3).

³⁴³ See Amos Jenkins Peaslee, *International Governmental Organizations* (The Hague: Martinus Nijhoff, 1974) at 1371 [*Peaslee*].

³⁴⁴ *Ibid.*, at 1368.

³⁴⁵ Between 1945 and 1958, CFA stood for “Colonies françaises d'Afrique” (French colonies of Africa). Thereafter it stood for “Communauté française d'Afrique” (French community of Africa), which existed between 1958 (establishment of the French Fifth Republic) and the independence of these African countries at the beginning of the 1960s. The term CFA in connection with the currency “franc” continues until today. There are two regional currencies denominated by the CFA: the Central African franc and West African franc.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

States was created for the WAMU Region and it acted in the interest of the economies of the monetary union. The WAMU initially consisted of seven West African States but was expanded in 1984 with the adhesion of Mali.³⁴⁶ The initial WAMU is generally seen as a success; for many years, it was defined and driven by the strong economy of Côte d'Ivoire which accounted for about 40% of the economic output of the region.³⁴⁷ However, in the mid-1980s, the WAMU started to disintegrate, due to serious economic pressure from a structural decline in commodity prices and also the nominal appreciation of the French franc against the US dollar. Both resulted in a serious deterioration of WAMU economies, and in 1994 the CFA franc was devaluated by a factor of 50%.³⁴⁸

In response to the financial crisis and devaluation of the CFA franc, the West African member countries dissolved the WAMU, and on 10 January 1994 founded the West African Economic and Monetary Union in its place. The Treaty establishing WAEMU was signed at Dakar, Senegal, by the Heads of State and Government of Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, and Togo. It quickly entered into force on 1 August 1994 after

³⁴⁶ These were Dahomey (today Benin), Ivory Coast, Mauretania, Niger, Senegal, Togo, and Upper Volta (today Burkina Faso). In 1973 Mauretania withdrew from the treaty, and in 1984, Mali became a new member. *Peaslee, supra* note 343.

³⁴⁷ See generally: Philipp C. Rother, "Money Demand in the West African Economic and Monetary Union - The Problems of Aggregation" (1999) 8:3 *Journal of African Economies* 422 [Rother].

³⁴⁸ See: Pierre Van den Boogaerde & Charalambos Tsangarides, "Ten Years after the CFA Franc Devaluation: Progress toward Regional Integration in the WAEMU" (2005) IMF Working Paper No. WP/05/145, at 4 [Boogaerde & Tsangarides].

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ratification by all seven member States.³⁴⁹ On 2 May 1997, Guinea-Bissau became the WAEMU's eighth Member State. The treaty was slightly modified in 2003 to reflect some minor administrative and procedural changes.³⁵⁰

The overall objectives of the WAEMU are stated in Article 4 of the treaty. They are very similar to the objectives of the European Union; they aim at establishing a common market.³⁵¹ The main objectives include:

- a) Achievement of greater economic competitiveness through open and competitive markets, along with the rationalization and harmonization of the legal environment;
- b) Convergence of macroeconomic policies of member countries by a multilateral procedure of surveillance;
- c) Creation of a common market between the Member States on the basis of free movement of goods, services, and capital, as well as the right to be employed or to establish a business activity with common external tariffs and a common commercial policy;
- d) Coordination of national sectoral policies in human resources, regional planning and development, transport and

³⁴⁹ West Africa Economic and Monetary Union (WAEMU), *Traité portant création de l'Union Economique et Monétaire Ouest Africaine (UEMOA)*, (Dakar, Senegal, 1994) [1994 UEMOA Treaty].

³⁵⁰ See: the current version the West Africa Economic and Monetary Union Treaty, *Traité modifié de l'Union Economique et Monétaire Ouest Africaine (UEMOA)*, 2003 [2003 UEMOA Treaty].

³⁵¹ See: *Treaty establishing the European Union*, [2002] O.J. C. 325/33, arts. 2 and 3 [EU Treaty].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

telecommunications, environment, agriculture, energy, industry and mining; and,

- e) Harmonization of fiscal policies to the extent necessary to ensure the efficiency of the common market.

It is notable that the treaty of the WAEMU includes a subsidiary principle in Article 5 similar to that of the EU, although Article 5 does not specifically use the term “subsidiary”.³⁵² The WAEMU subsidiary principle provides that the Union shall prepare minimal directives and core regulations which must be finalized based on specific requirements and constitutional rules of each Member State.

In terms of organizational structure, the WAEMU is structured on six levels, with assigned powers and responsibilities:

- 1) The Assembly of Heads of State (Article 17) which defines the strategy and the main principles of the policy of the Union in accordance with the subsidiary principle enshrined in Article 5. It meets once a year and acts by deciding on amendments or annexes to the treaty. These amendments or annexes become binding upon the organs and Member States of the Union without further ratification (Article 19).
- 2) The Council of Ministers which meets twice every year is in charge of implementing the strategy and policy as defined by the Council of Heads of State (Article 20). In addition, the

³⁵² *Ibid.*, art. 5.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Council of Ministers is empowered to take decisions on issues which do not fall under the competence of the Assembly of Heads of State. However, these decisions only become definitive after consultations with the Ministers in charge of the economy, finance, and planning (Article 23). Nevertheless, once the Council of Ministers has adopted a decision, it takes precedence over any contradictory national law or regulation of a Member State of the Union (Article 6).

- 3) The Commission of the WAEMU is the executive arm which implements decisions taken by the Assembly of Heads of State and by the Council of Ministers (Article 26). It further prepares recommendations and opinions on matters that are dealt with by the Assembly and Council; it develops an action program for the Parliaments; and manages the budget of the Union. At the same level, but independent of the Commission, are the WAEMU Court of Justice and the Court of Auditors. The Court of Justice is mandated to deal with issues of interpretation of, and legal compliance with, the treaty.³⁵³ The Court of Auditors is in charge of examining and confirming the accounts and the usage of public funds of the Union, as well as

³⁵³

Additional Protocol Number 1, (2003) Bulletins Officiels de l'UEMOA

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

those of public or private entities that benefit from public financing.³⁵⁴

- 4) The specialized and autonomous organizations of the WAEMU (Article 41) include the Central Bank of the West African States (BCEAO), and the West African Development Bank (BOAD). Their independence is specifically guaranteed, and the type of intervention and powers that the Assembly, Council of Ministers, and the Commission may exercise with regard to these entities are restricted and well defined (Article 42).
- 5) The regional advisory committee is to be established by members of parliamentary advisory panels of all Member States. Its tasks and responsibilities are to be defined by the Assembly of Heads of State (Article 40).
- 6) The last level consists of the Member States and their people. On the one hand, the independence of Member States is maintained by the subsidiary principle (Article 5), and the basic rights of the people are addressed in the treaty of the WAEMU by guaranteeing respect of the UN Universal Declaration of Human Rights of 1948 as well as the African Charter on Human and Peoples' Rights which was adopted on 27 June 1981 (Article 3). On the other hand, decisions made by organs of the WAEMU supersede contradictory national laws or

³⁵⁴

Ibid., art. 23.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

regulations of Member States, and thus limit their powers (Article 6).

The significant advantage of the WAEMU in terms of implementing any internal Union decision, or an external treaty, is the fact that the legal instruments are guided by two strong basic principles:

- The principle of immediate and direct applicability which renders community legislation automatically incorporated into domestic legislation of Member States as soon as it is published. This requires no additional domestic legislative action and any individual can directly invoke community law.³⁵⁵
- The principle of primacy of community law over domestic law which is stated in Article 6.

These two principles constitute a favorable legal framework, which facilitates the timely implementation of decisions taken at the different levels of the WAEMU. They also prevent the occurrence of the abusive situation in which certain countries agree at the Union level to the adoption of new laws or regulations only to turn around and stall their implementation at the national level. As outlined above in Chapter 3, the AU does not have such powers.

³⁵⁵ United Nations Conference on Trade and Development (UNCTAD), *Voluntary Peer Review of Competition Policy: West African Economic and Monetary Union, Benin and Senegal* by Guy Charrier & Abou Saïb Coulibaly (New York and Geneva: United Nations, 2007) at 4.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Consequently, all of its decisions, directives, and agreements are subject to ratification by its Member States.

The Common Air Transport Program of the WAEMU States

The involvement of the WAEMU in air transport matters stems from Article 4 of the treaty, which sets as an objective of the Union the “coordination of national sectoral policies in [...] transport and telecommunications, [...]” To achieve this objective, the Council of Ministers of the WAEMU adopted on 27 June 2002 a common air transport program which can be regarded as a sectoral strategy incorporating an implementation action plan applicable to all the Member States.³⁵⁶

The first objective of the common air transport program is to open the territory of the WAEMU to the outside World.³⁵⁷ To achieve this, a safe, orderly and efficient air transport system which promotes efficient civil aviation management and the competitiveness of air transport enterprises must be established in the WAEMU region.³⁵⁸ The Union aims internally at the objective of rendering air transportation cheap and accessible to its population; increasing commercial exchanges and tourist flows so as to stimulate economic growth; and, supporting the integration of the Member States as well. However, the program

³⁵⁶ WAEMU, *Commun du Transport Aérien des Etats Membres de l'UEMOA* (2002), subsequently incorporated into and adopted as part of: WAEMU, *Décision portant adoption du programme commun du transport aérien des Etats membres de l'UEMOA*, (2002) WAEMU Doc. No. 08/2002:CM/UEMOA, Bulletins officiels de l'UEMOA [WAEMU, *Décision portant adoption du programme commun du transport aérien des Etats membres de l'UEMOA*].

³⁵⁷ The original text uses the French expression “désenclaver le territoire”. See: *ibid.*, at 11.

³⁵⁸ *Ibid.*

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

acknowledges that Member States are becoming marginalized in Africa's air transport market, and that many are "incapable of ensuring an orderly development of their civil aviation activities".³⁵⁹ To address the objective and challenges stated, the program has been focused on the following four main areas: (i) infrastructure and equipment; (ii) harmonization of air transport regulations; (iii) enhancement of air transport systems; and, (iv) liberalization of air transport services.³⁶⁰

The first axis of the program (i.e., infrastructure and equipment), focuses on compliance with ICAO SARPs with regard to air navigation and aviation meteorology infrastructure and facilities.³⁶¹ This includes the implementation of ICAO's Regional Air Navigation Plan (AFI/7 (RAN) PIRG), which requires full coverage of the WAEMU airspace with communication, surveillance, and air traffic management systems. In terms of the enhancement of safety and security, the program aims at implementing the recommendations received from ICAO and the US FAA following the conduct of audits, and also to implement the COSCAP project which is seen as a transition towards a common agency for aviation safety oversight.³⁶² In addition, several additional

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*, at 12

³⁶¹ *Ibid.*

³⁶² The Cooperative Development of Operational Safety and Continued Airworthiness Program (COSCAP) is a regional initiative of ICAO, aimed at improving aviation oversight with a regional approach. Several COSCAP programs were initiated in Africa, Asia, and Latin America. Most of these programs are financed by the contracting States of ICAO, or by development partners such as the African Development Bank or the European Union. See ICAO, *Regionalization of Safety*, (Working Paper presented at the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. Montreal, Canada, 2006), ICAO Doc. DGCA/06-WP/31.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

improvements in related areas such as search and rescue, bird hazard control, facilitation, aviation medicine, and environmental protection are to be addressed under this axis.³⁶³

The second axis (i.e., harmonization of air transport regulations) aims at the adoption by the Union of a common legal framework which regulates access to air transport markets, aircraft operations, competition rules and consumer protection, as well as all safety and security issues. In addition, it specifically seeks to facilitate State compliance with ICAO SARPs by urging the “signing and ratification of international air law instruments by Member States on the Commission’s recommendation”.³⁶⁴ The third axis (i.e., enhancement of air transport systems) is to be achieved through several measures. These include, *inter alia*, promotion of the adoption of common regulations in the statutes establishing and/or addressing civil aviation authorities in Member States, aimed at providing legal and financial autonomy. Further, under this axis, the need to strengthen aviation cooperation with several international or regional organizations, such as ICAO, IATA, ECOWAS, CEMAC, as well as with donors, such as the EU, France, and the United States is identified. Other actions, such as: the creation of an air transport databank; promotion of investments in the Union’s

³⁶³ WAEMU, *Décision portant adoption du programme commun du transport aérien des Etats membres de l’UEMOA*, *supra*, note 356 at 14.

³⁶⁴ *Ibid.*, at 15.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

air transport sector; the establishment of an air transport development fund; and, measures for the development of aviation human resources, are also planned.³⁶⁵

The most relevant measures for the implementation of the Yamoussoukro Decision are found in the fourth axis (i.e., liberalization of air transport services). The two main elements of liberalization of air services in the WAEMU are: (i) the disengagement of the governments of Member States from the “industrial and commercial air transport sector”, which is defined as airlines, airports, ground handling, and catering; and, (ii) the full liberalization of access to the air transport sector by allowing, in the long-term, cabotage, or eighth freedom flights for WAEMU carriers. Additional actions planned for the implementation of these two important steps include: the development of common competition regulations; the enhancement of facilitation by the elimination of restrictions upon free movement of persons and goods; and, the adoption of consumer protection regulations.³⁶⁶

To facilitate the implementation of the common air transport program it was planned that a common air transport legal framework shall be prepared and adopted in three phases.³⁶⁷ The first phase was to be completed before March 2002, and it included the adoption of: (i) regulations on market access; (ii) regulations on air carrier certification; (iii) regulations on passengers, freight and mail; and, (iv) regulations on accident and incident investigations. The

³⁶⁵ *Ibid.*, at 16.

³⁶⁶ *Ibid.*, at 17.

³⁶⁷ *Ibid.*, at 21.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

second phase was also to be implemented before December 2002 and it encompassed the adoption of (i) competition regulations and, (ii) consumer protection regulations. The third and final phase entailed the adoption of: (i) regulations on facilitation and the creation of regional and national facilitation committees; and, (ii) the Aviation Code of the Union.

In addition, the program also set clear deliverables for the COSCAP project in order to address the safety and security challenges that a common air transport market must regulate and supervise.³⁶⁸ These include: (i) basic legislation on aviation safety; (ii) regulation of air transport and organization of civil aviation; (iii) personnel licensing and training; (iv) aircraft operations and airworthiness; (v) transport of dangerous goods by air; (vi) bird hazard control; and, (vii) the concept of a future regional agency for aviation safety oversight.

WAEMU has made progress in implementation by promulgating several regulations in the five years following the adoption of the common air transport program. The table below (see Table 5 below) gives an overview of all aviation related laws and regulations that have been adopted and enacted accordingly. In sum, the WAEMU has adopted most of the necessary regulations for the Union-wide implementation of the air transport liberalization program, which, at the same time comply with or exceed the provisions and requirements of the Yamoussoukro Decision.

The most significant regulations are:

³⁶⁸ *Ibid.*, at 23.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- Traffic rights (Yamoussoukro Decision Article 3): Regulation No. 24/2002 on conditions for market access of air carriers within WAEMU grants all freedoms, including cabotage, to designated carriers. This regulation clearly exceeds the requirements of the Yamoussoukro Decision, which only requires the grant of third, fourth, and fifth freedom traffic rights.
- Tariffs (Yamoussoukro Decision Article 4): Regulation No. 07/2002 on air services tariffs for passengers, freight, and mail within WAEMU allows carriers to freely fix tariffs, and to file them with the relevant authorities only 24 hours in advance. The Yamoussoukro Decision requires filing of tariffs at least 30 days in advance.
- Competition regulation (Yamoussoukro Decision Article 7): Regulation No. 24/2002 on conditions for market access of air carriers makes the exercise of traffic rights subject to competition legislation. Enforcement action may be taken by the Commission. Regulation No. 2/2002 outlines the Union's competition regulations which are applicable to the air transport sector. The Yamoussoukro Decision provides in Article 6 that State parties shall ensure competition and this is achieved in the implementation of this WAEMU regulation.³⁶⁹

³⁶⁹

In May 2002, the Council of Ministers of the WAEMU adopted the Community Competition Law, which is comprised of five parts: (i) control of anti-competitive

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- Safety and Security (Yamoussoukro Decision Article 6.12): A total of ten safety and security related regulations have been adopted to address the safety and security challenges of the region (see table 2).³⁷⁰ However, while the necessary texts are in place, the overall safety and security situation remains unsatisfactory. According to the assessment in Annex V, the safety situation is rated poor in six, and fair in only two of the eight Member States in the Union. The Commission of WAEMU has signed and launched in conjunction with ICAO, an implementation program which should build the necessary

behavior within the WAEMU; (ii) rules and procedures related to the control of cartels and abuse of dominant position within the WAEMU; (iii) the control of State aids within the WAEMU; (iv) transparency of the financial relationship between Member States and public enterprises, and between public enterprises and international or foreign organizations; and, (v) the cooperation between the WAEMU Commission and national authorities in the enforcement of law. According to a ruling by the WAEMU Court of Justice (opinion 003/2000/CJ/WAEMU), the WAEMU Commission has exclusive authority to implement these provisions concerning competition. National competition authorities still do enforce national competition laws where they exist, but Community competition law takes precedent when in conflict with national law. See: WAEMU, *Règlement relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA*, (2002) 02/2002:CM/UEMOA, Bulletins officiels de l'UEMOA.

³⁷⁰

Directive No. 05/2002 on investigation of aviation accidents and incidents; Regulation No. 06/2002 on air carrier certification; Regulation No. 01/2004 on the legal status of Civil Aviation Authorities of Member States; Regulation No. 06/2005 on licensing, training, and supervision of aeronautical personnel; Regulation No. 07/2005 on aircraft airworthiness certification; Regulation No. 08/2005 on medical requirements for licensing of aeronautical personnel; Regulation No. 09/2005 on operational requirements for commercial operators and air carrier certification; Regulation No. 10/2005 on certification of aircraft maintenance and repair organisations; Regulation No. 11/2005 on security of civil aviation in Member States; and Regulation No. 13/2005 on a regional mechanism for the supervision of aviation safety.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

technical and human capacity, and eventually lead to the establishment of a regional safety oversight agency.³⁷¹

In addition to addressing the requirements of the Yamoussoukro Decision, the WAEMU has also addressed some consumer protection and carrier liability issues. Regulation No. 03/2003 provides for specific compensation for damages arising from denial of embarkation, flight cancellation, or major flight delays (see Table 5 below). The texts, as well as the predefined amounts, are very similar to the European Regulation on compensation and assistance to passengers in the event of denied boarding, cancellation, or long delay of flights.³⁷² A similar approach was made by the WAEMU when it issued Regulation No. 02/2003 on air carrier liability in the event of an accident. This regulation is tailored after the Montreal Convention of 1999, and its Article 21 provides for strict carrier liability for damages up to 100,000 SDRs, and the liability of the carrier is presumed above this limit unless the carrier is able to prove that the damage was not caused by its own negligence or any other action or oversight attributable to the carrier,

³⁷¹ The MOU on the Cooperative Development of Operational Safety and Continued Airworthiness Program (COSCAP) was signed in March 2003. See: WAEMU, *Protocole d'Accord entre L'Union Économique et Monétaire Ouest Africaine et l'Organisation de l'Aviation Civile Internationale (OACI) relatif à la mise en oeuvre du Projet "COSCAP" pour la Supervision de la Sécurité Aérienne dans les États Membres de l'UEMOA*, (2003) Bulletins officiels de l'UEMOA.

³⁷² For example, the EU sets the compensation for passenger delay to €250 for flights of less than 1,500km €400 for flights of between 1,500 and 3,500km; and, €600 for flights of more than 3,500km. The WAEMU fixes the compensation at CFA100,000 or CFA200,000 (about €150 in economy or €300 in business class) for flights less than 2,500km; and CFA 400,000 or CFA800,000 (about €600 in economy or €1200 in business class) for flights of more than 2,500km. See EC, *Regulation (EC) No. 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91*, [2004] O.J. L. 46/1 [EC Denied Boarding Regulation].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

its employees or agents; or that the damage resulted from the negligence or any other detrimental action or oversight of a third party.³⁷³ This regulation is significant because, among the WAEMU States, only Benin has signed and ratified the Montreal Convention.³⁷⁴ Thus, the simple adoption of Regulation No. 02/2003 by the WAEMU Council of Ministers has effectively bound all WAEMU Member States to the main principles of the Montreal Convention. Another provision that was also incorporated in Regulation No. 02/2003 is the requirement for advance payment of 15,000 SDRs by the carrier in the event of death of a passenger; a requirement which has its roots in a similar earlier European regulation.³⁷⁵

It can be concluded that the WAEMU has established most of the necessary regulatory framework to implement the main provisions of the Yamoussoukro Decision within the territories of its member States, and has even gone beyond the requirements of the Yamoussoukro Decision in terms of market access. However, the integration of the WAEMU air service market into the broader continental African region covered by the Yamoussoukro Decision is not effectively addressed. Despite the fact that the preamble to each WAEMU air transport-related regulation includes a reference to the Yamoussoukro Decision, it

³⁷³ WAEMU, *Décision portant adoption du programme commun du transport aérien des Etats membres de l'UEMOA*, *supra* note 356 at 65.

³⁷⁴ See *Convention for the Unification of Certain Rules for International Carriage by Air*, 28 May 1999, ICAO Doc. 9740 [*Montreal Convention*]. Of the other seven member countries of WAEMU, five (i.e., Burkina Faso, Ivory Coast, Niger, Senegal, and Togo) have signed but not ratified the Convention, and the remaining two (Guinea-Bissau and Mali) have never signed the Convention.

³⁷⁵ See EC, *Council Regulation (EC) No 2027/97 of 9 October 1997 on Air Carrier Liability in the Event of Accidents*, [1997] O.J. L. 285, art. 5

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

also effectively limits the scope of application of the air transport policy to the territory of the WAEMU.³⁷⁶ The only reference to air traffic of non-Member States of the Union is found in Article 5 of Regulation No. 24/2002, which empowers Member States of the Union to grant traffic rights to outside carriers in order to maintain intra-community links.³⁷⁷ This includes the grant of fifth freedom rights to carriers of non-Member States to destinations within the WAEMU. As the provision is based on “international agreements in force”, it can be applied to any Member State of the Yamoussoukro Decision. However, while Article 3 of the Yamoussoukro Decision strongly states that “State parties grant to each other the free exercise of the rights of the first, second, third fourth, and fifth freedoms of the air”, WAEMU Regulation No. 24/2002 only provides that non-WAEMU carriers “may be authorized by a Member State to operate traffic rights [...] on intercommunity links”. This indicates that the WAEMU has reservations about the full, continent-wide implementation of the Yamoussoukro Decision. Nevertheless, its full liberalization of air services within its territory must be considered as a successful step towards the ultimate implementation of the Yamoussoukro Decision. A future regulation of the Council of Ministers which

³⁷⁶ WAEMU Regulation No. 07/2002/CM/UEMOA titled *Passengers, Freight and Cargo, and Mail Tariffs applicable to Air Services within, from and to WAEMU Member States*, provides in its preamble as follows: “Considering the Decision dated 14 November 1999 relating to the implementation of the Yamoussoukro Decision on the liberalization of air transport markets access in Africa signed on 12 July 2000 by the current Chairperson of OAU”, but limits its scope in the same preamble: “Anxious to promote the development of a safe, orderly and efficient air transport within the Union”.

³⁷⁷ Regulation No. 24/2002/CM/UEMOA, titled *Determining for WAEMU Air Carriers conditions of Access to Intercommunity Air Links*, grants the right to Member States “under international agreements in force” to allow non-Member States of the Union to operate on intra-community links. Certain conditions, such as comparable treatment by the other carrier’s State are included.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

clarifies the access of non-WAEMU, Yamoussoukro Decision Member States carriers would finalize this step.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Table 5: Aviation Laws and Regulations adopted and enacted by WAEMU³⁷⁸

Name of Regulation	Date adopted	Summary of Major Provisions
Regulation No. 06/2002 on air carrier certification within WAEMU	27 June 2002 in Dakar, Senegal, by the Council of Ministers.	<ul style="list-style-type: none"> Article 4: Conditions for carrier certification include: (i) place of business in Member State; (ii) air transport as the main activity; and, (iii) majority ownership and control of the carrier is held by Member States or nationals thereof. Article 5: Carrier must be able to: (i) cover liabilities within a 24 hour period; and, (ii) finance the fixed and operating costs of the first three months of operations in accordance with its stated business plan. Article 6: Management must be appropriately trained and of good moral standing. Article 7: Liability insurance requirement for air carriers. Article 9: Registration of aircraft in Member State, but exceptions may be granted for leased aircraft. Article 10/13: Issuance of air operator certificate with an initial validity of one year; thereafter, three years. Article 12: Certification to be published in official bulletin by State and Union.
Regulation No. 07/2002	27 June 2002 in	<ul style="list-style-type: none"> Article 3: The Union's carriers shall freely fix tariffs for the transportation by air

³⁷⁸

Source: Bulletins officiels de l'Union Économique et Monétaire Ouest Africaine, online: WAEMU website, <<http://www.uemoa.int/actes/Default.htm>> (date accessed: 23 August 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
on tariffs of air service for passengers, freight, and mail within WAEMU	Dakar, Senegal, by the Council of Ministers.	<p>of passengers, freight, and mail.</p> <ul style="list-style-type: none"> Article 4: Tariffs for transportation of passengers under public service regulations may be regulated in accordance with Regulation No. 24/2002 of WAEMU. Article 5: Tariffs must be filed with the Member State concerned at least 24 hours in advance, except in case of alignment on an existing tariff. Article 7: A Member State may suspend a tariff if considered excessively high or abnormally low; suspension must be notified to the Commission of WAEMU, and to any other Member State concerned; the Commission and the other State may approve or disapprove the proposed tariff; in case of disapproval, consultations between all parties shall seek be resorted to; if no conclusive settlement is reached, the matter should be submitted to the Council of Ministers for a final decision by rule making. Article 9/10: The Commission shall consult with air carriers and users on air fares and rates once a year, and shall submit a report on enforcement of this regulation every two years which shall be published in the official bulletin of the Union.
Regulation No. 24/2002 on conditions for market access of air carriers	18 November 2002 in Ouagadougou,	<ul style="list-style-type: none"> Article 3: Union air carriers are entitled to be designated by their Member States to operate intra-community traffic (cabotage). Article 4: Public service obligations may be issued by one or several Member

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
within WAEMU	Burkina Faso, by the Council of Ministers.	<p>States by decision based on general interest for territorial development; restrictions or obligations imposed on carriers must be notified to the Commission for publication in the official bulletin of the Union.</p> <ul style="list-style-type: none"> Article 5: Traffic rights to non-Member States of the Union shall be granted based on international agreements; however, a third party State which operates to the territory of a Member State of the Union must grant the same treatment (access) to the Union's carriers. Article 6: The exercise of traffic rights is subject to competition legislation, as well as to national or Union regulations on safety, security, environmental protection and slot allocation. Article 8: Member States may suspend the granting of cabotage rights during a transitional period until 31 December 2005 at the very latest. Article 9: Necessary enforcement action may be taken by the Commission.
Directive No. 05/2002 on investigation of aviation accidents and incidents within WAEMU	27 June 2002 in Dakar, Senegal, by the Council of Ministers.	<ul style="list-style-type: none"> Article 3/4: Accidents or serious incidents which occur in the territory of the Union or involve an aircraft registered in a Member State must be investigated. Article 6: Each Member States must enact national legislation for the creation of a permanent or ad hoc accident investigation entity in accordance with the relevant provisions of Annex 13 of the Chicago convention.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		<ul style="list-style-type: none"> Article 7/8: A report incorporating relevant air safety recommendations shall be prepared following each accident and incident investigation.
Regulation No. 02/2003 on air carrier liability in case of an accident	20 March 2003 in Ouagadougou, Burkina Faso, by the Council of Ministers.	<ul style="list-style-type: none"> Article 3: An air carrier cannot limit its liability except for damages above 100,000 Special Drawing Rights (SDR), provided the carrier proves that the damage is not caused by its negligence or other wrongful act or omission of the carrier or its servants or agents, or the damage is solely due to the negligence of a third party. Article 5: Advance payment of at least 15,000 SDR within fifteen days in the event of death of a person entitled to compensation. Article 6: Passengers must be informed about the liability of the carrier. Article 7: Jurisdiction according to plaintiff's choice in any Union Member State, carrier's domicile or place of establishment, or the court of the final destination.
Regulation No. 03/2003 for compensation due to denial of embarkation, flight cancellation, or major flight delays	20 March 2003 in Ouagadougou, Burkina Faso, by the Council of Ministers.	<ul style="list-style-type: none"> Article 3: Carrier must determine and communicate its embarkation rules. Article 4: Passenger has several choices when embarkation is denied, and is entitled to minimum compensation according to class and distance of the leg. Article 6: Several options are provided, including full refund of paid ticket in case of cancelled flight.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		<ul style="list-style-type: none"> Article 7/8: Major delays defined as more than three hours on trips of less than 2,000 kilometers, and more than five hours for longer trips.
Regulation No. 04/2003 on common rules for slot allocation at the Union's airports.	20 March 2003 in Ouagadougou, Burkina Faso, by the Council of Ministers.	<ul style="list-style-type: none"> Article 3: Definition of a “coordinated airport” when carriers representing the largest share of traffic and/or capacity are considered insufficient by authorities. Article 4: Designation of an airport coordinator by Member State who shall act in a transparent, neutral and non-discriminatory way. Article 5: Coordinating committee shall be established involving different users and operators, as well as the authorities. Article 6: Airport capacity must be determined twice a year by the relevant authorities of the concerned Member State.
Regulation No. 01/2003 on ground handling market access at Union's airports	20 March 2003 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 4: Member States must grant free access to their ground handling market, provided the service provided meets certain financial and operational criteria. Article 5: Centralized infrastructure may be exempt from ground handling operations of a service provider (e.g. joint fuel distribution system). Article 7/8: User and advisory committees to be created for implementation. Article 10: Member States must define the selection process for the provider. Article 11: Number of service providers may be limited when justified by a low

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		<p>level of activity, space constraints, or safety and security considerations; the State must inform the Commission which in turn must approve or rejects the limitation.</p> <ul style="list-style-type: none"> Article 15: Member States must implement the directive by enacting the necessary legislation as well as regulatory and administrative provisions for enforcement.
Regulation No. 01/2004 on the legal status of Civil Aviation Authorities of Member States	17 September 2004 in Lomé, Togo, by the Council of Ministers	<ul style="list-style-type: none"> Article 3: The CAA must be a public legal entity with financial autonomy, reporting to the Ministry in charge of civil aviation. Article 4: The mission of the CAA must include the implementation of the government's civil aviation policy, negotiation of bilaterals, development of technical regulations according to SARPs, regulatory and operational supervision of civil aviation with regard to safety and security, supervision of airport and air navigation services, and ensuring training and development of the sector. Article 5: The minimal organizational structure includes a Board of Directors and a Directorate General. Article 9: Financial resources of the CAA are to be provided by policy sector budgetary allocation, or from air navigation services, fees for services rendered, from concession income, and from loans, subsidies or grants. Article 16: An appropriate remuneration system must be implemented in order to

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		recruit and retain qualified personnel who demonstrate professional integrity.
Regulation No. 06/2005 on licensing, training, and supervision of aeronautical personnel	16 September 2005 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 2: The licensing of aeronautical personnel, the requirements for the certification of flight training centers, and the certification of instructors and examiners are outlined in this regulation and its annex. Article 3: The regulation is applicable for licensing, training, authorization, and certification by Civil Aviation Authorities of the Member States of the Union. Article 4: Member States, the Commission, and the Union's supervisory entity must cooperate in the implementation of this regulation. Article 7: National regulations on licensing, training, and supervision of aeronautical personnel which are not contradictory to the specifications in the annex of this regulation remain valid.
Regulation No. 07/2005 on aircraft airworthiness certification	16 September 2005 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 2: Certificates of aircraft airworthiness are to be delivered according to the joint technical regulations. Article 3: The regulation applies to all aircraft registered in a Member State. Article 4: Member States, the Commission, and the Union's supervisory entity must cooperate in the implementation of this regulation. Article 7: National regulations on airworthiness which are not contradictory to

THE IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		the technical specifications in the annex of this regulation remain valid.
Regulation No. 08/2005 on medical requirements for licensing of aeronautical personnel	16 September 2005 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 2: The medical requirements for the licensing of aeronautical personnel in Member States are outlined in the present regulation and its annex. Article 3: The regulation applies to all licensing of aeronautical personnel by Civil Aviation Authorities of the Member States of the Union. Article 4: Member States, the Commission, and the Union's supervisory entity must cooperate in the implementation of this regulation. Article 7: National regulations on medical requirements for licensing of aeronautical personnel which are not contradictory to the specifications in the annex of this regulation remain valid.
Regulation No. 09/2005 on operational requirements for commercial operators and air carrier certification	16 September 2005 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 2: The certification of commercial operators and air carriers is to be done according to the joint requirements of this regulation and its annex. Article 3: The regulation does not apply to state aircraft of Member States. Article 4: Member States, the Commission, and the Union's supervisory entity must cooperate in the implementation of this regulation. Article 7: National regulations on operational requirements for commercial operators and air carrier certification which are not contradictory to the

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		requirements in the annex of this regulation remain valid.
Regulation No. 10/2005 on certification of aircraft maintenance and repair organizations	16 September 2005 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 2: The requirements of certification of aircraft maintenance and repair organizations are set forth in this regulation and its annex. Article 3: The regulation applies to all aircraft maintenance and repair organizations which are domiciled in the Union, or which are carrying out maintenance on an aircraft registered in the Union. Article 4: Member States, the Commission, and the Union's supervisory entity must cooperate in the implementation of this regulation. Article 7: National regulations on certification of aircraft maintenance and repair organizations which are not contradictory to the requirements in the annex of this regulation remain valid.
Regulation No. 11/2005 on security of civil aviation in Member States	16 September 2005 in Ouagadougou, Burkina Faso, by the Council of Ministers	<ul style="list-style-type: none"> Article 2: The purpose of the regulation is to assure the security of passengers, crew, ground personnel, and the public, by protecting them from acts of unlawful interference against civil aviation. The regulation also provides a common basis of interpretation and application of Annex 17 of the Chicago Convention. Article 3: The provisions of the regulation are applicable to all international airports of the Union.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
		<ul style="list-style-type: none"> Article 5: Joint security norms are issued in the form of executing regulations by the Commission on the basis of Annex 17 of the Chicago Convention. Article 6: Member States may apply rules or regulations which are stricter than those set forth in this regulation. Article 7: Each Member State must establish a national organization for security of civil aviation, and must develop a national program of aviation security to be headed and implemented by a national aviation security committee. Article 8: Each Member State must establish a coordinating unit which implements the security measures at all airports to which this regulation applies. Article 12: A consultative committee for aviation security is to be established by the Union. The committee is to be headed by the Commission. Article 15: The Commission will initiate inspections of Member States on the implementation and conformity of their national security programs six months after the regulation comes into force.
Regulation No. 13/2005 on a regional mechanism for the supervision of	16 September 2005 in Ouagadougou, Burkina Faso, by	<ul style="list-style-type: none"> Article 2: A regional mechanism for the supervision of aviation safety is to be developed in order to assist Member States in executing their duty of regulatory oversight of the civil aviation sector. The COSCAP project builds upon these

REGIONAL IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

Name of Regulation	Date adopted	Summary of Major Provisions
aviation safety	the Council of Ministers	<p>objectives by establishing a regional safety oversight entity.</p> <ul style="list-style-type: none"> Article 3: The Commission of the Union will coordinate the activities of the COSCAP project during the transitory two year period starting from July 2005, after which the regional safety oversight entity should become operational. Article 4: The coordination activities of the Commission are to be carried out in accordance to the memorandum of understanding between ICAO and WAEMU. Article 7: Participation in the regional safety oversight mechanism is open to any ICAO contracting State.
Regulation No. 01/2007 on the adoption of a Civil Aviation Code of the WAEMU		<ul style="list-style-type: none"> Article 1: A Civil Aviation Code of the WAEMU outlined in the annex of this regulation is adopted. Article 2: The regulation will enter into force following its signature and publication in the Official Bulletin of the WAEMU.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

4.2.3 The Banjul Accord Group of States

The Banjul Accord Group (BAG) was created on 29 January 2004 when seven West African States signed the Banjul Accord Group Agreement.³⁷⁹ This new agreement builds on the initial Banjul Accord which was established in 1997.³⁸⁰ The initial Banjul Accord primarily aimed at ensuring and accelerating the implementation of the Yamoussoukro Declaration of 1988. Accordingly, the Banjul Accord of 1997 states as its prime objective the safeguarding of international air transport in the region, and the promotion and encouragement of cooperation among national carriers. In like manner as the Yamoussoukro Declaration, the integration of airlines into larger entities - even joint multinational carriers - became the declared objective of the Banjul Accord of 1997.³⁸¹ Cooperation among airlines was envisaged at three levels: (i) the provision and management of air traffic services; (ii) the establishment and exercise of safety oversight procedures; and, (iii) the establishment of a coordinated multinational approach for the negotiation of agreements with respect to the granting of air traffic rights.³⁸² However, just like the Yamoussoukro Declaration, the initial Banjul Accord did not liberalize traffic rights, but

³⁷⁹ The signatory States included the Republic of Cape Verde, the Republic of The Gambia, the Republic of Ghana, the Republic of Guinea, the Republic of Liberia, the Federal Republic of Nigeria, and the Republic of Sierra Leone. See *Agreement to establish the Banjul Accord Group and implement the Banjul Accord for the accelerated implementation of the Yamoussoukro Declaration*, 4 April 1997 (entered into force in 2004) at 19 [*Banjul Accord Group Agreement*].

³⁸⁰ Banjul Accord Group (BAG), *Memorandum of Understanding of the Second Consultative Meeting of the Group of Directors of Civil Aviation and Airline Executives of the Banjul Accord Member States of 26 November 1997*, Appendix A. [*Banjul Accord Group MOU*]

³⁸¹ *Yamoussoukro Declaration*, *supra* note 44, at 2.

³⁸² *Banjul Accord Group Agreement*, *supra* note 379, preamble, para. 5.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

primarily maintained the view that African air carriers would co-operate, and this would eventually lead to the elimination of the need for granting traffic rights.³⁸³ The Banjul Accord of 1997 became an integral part of a Memorandum of Understanding (MOU) which was signed on 26 November 1997 between the Civil Aviation Authorities of four West African States and nine airlines.³⁸⁴ Although this MOU did not include all Member States of the initial Banjul Accord, it was one of the very few attempts to establish cooperation among air carriers; the declared objective of the Yamoussoukro Declaration. In reality however, there is no evidence that either the MOU or the Banjul Accord ever resulted in any operational cooperation between carriers of the Western African region.

The Banjul Accord Group Agreement of 2004 explicitly states that its objective is the Implementation of the [Yamoussoukro] Declaration and the [Yamoussoukro] Decision.³⁸⁵ In addition, Member States have agreed thereunder to enter into joint ventures and/or cooperative arrangements to foster the development of international civil aviation among Member States, non Member States and organizations.³⁸⁶ However, while the Yamoussoukro Decision is, in fact, titled the “Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in

³⁸³ *Yamoussoukro Declaration*, *supra* note 44, at 2.

³⁸⁴ The States included the Republic of Cape Verde, the Republic of The Gambia, the Republic of Ghana, and the Federal Republic of Nigeria. The signatory airlines were Air Dabia, Cape Verde Airlines, Ghana Airways, MUK Air, Far Airways, Bellview Airlines, Gambia International Airlines, Mahfooz Aviation Ltd., and Nigeria Airways.

³⁸⁵ *Banjul Accord Group Agreement*, *supra* note 379, art. 3.1.

³⁸⁶ *Ibid.*, arts. 3.2 and 3.3

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Africa”, the Banjul Accord Group Agreement seems to only emphasize the aspect of airline cooperation rather than focus primarily on liberalization and free competition as stipulated in the Yamoussoukro Decision. By agreeing to implement both the Declaration as well as the Decision, the Banjul Accord Group Agreement creates a certain contradiction or confusion about its real focus with regard to the development of air services. The kernel of the issue lays in the fact that the policy focus clearly shifted from cooperation between airlines to liberalized competition in the eleven years between the signing of the Yamoussoukro Declaration and the making of the Yamoussoukro Decision. Nevertheless, the Plenary of the Banjul Accord Group produced two additional documents aside from the Banjul Accord Group Agreement. The first is a Multilateral Air Services Agreement and the second is a Memorandum of Understanding for the implementation of a technical cooperation³⁸⁷ project.

The Multilateral Air Services Agreement (MASA) was signed on 29 January 2004 by all seven West African States which had signed the Banjul Accord Group Agreement. In essence, this MASA is an identical application of the Yamoussoukro Decision for the BAG Member States:

- Traffic rights (Yamoussoukro Decision Article 3): First and second freedom rights are granted without any conditions or restrictions. Third, fourth and fifth freedom rights are granted for any scheduled and non scheduled passenger, cargo, and mail flights that are conducted in the territory of the contracting

³⁸⁷

Ibid.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

States.³⁸⁸ It is interesting to note that the MASA also stipulates that each contracting State may enjoy fifth freedom traffic rights in respect of other African States in accordance with the Yamoussoukro Decision.³⁸⁹ As all BAG Member States are, in fact, also Member States of the Yamoussoukro Decision, this can be interpreted as an acknowledgement and reaffirmation of the Yamoussoukro Decision by the BAG. However, this provision does not extend to those African States which cannot be considered to be Member States of the Yamoussoukro Decision.³⁹⁰

- Designation of carrier(s) (Yamoussoukro Decision Article 6):
Each contracting State may designate one or more airlines to operate on the specified routes in accordance with the MASA. The carriers can be from another contracting State, and the designation may only be refused if the chosen airline does not conform to the eligibility criteria as defined in Article 6(9) of the Yamoussoukro Decision.³⁹¹
- Tariffs (Yamoussoukro Decision Article 4): Tariffs are to be freely established on the basis of commercial considerations,

³⁸⁸ BAG, *Multilateral Air Service Agreement for the Banjul Accord Group*, (2004), art. II(1) [*Multilateral Air Service Agreement for the Banjul Accord Group*].

³⁸⁹ *Ibid.*, art. II(2).

³⁹⁰ See Annex III of this dissertation – African Country Overview

³⁹¹ *Multilateral Air Service Agreement for the Banjul Accord Group*, *supra* note 388, art. III.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and are not subject to approval by regulatory authorities.³⁹²

However, contracting parties may intervene in the event that tariffs are found to be discriminatory (unreasonably high, restrictive, or artificially low). Upon request by the other contracting State, the tariffs may have to be notified to its aeronautical authority no more than 30 days before the proposed date of effectiveness. If a contracting State considers an announced tariff inconsistent with the above mentioned principles, it must initiate consultations with the other contracting States in order to settle the matter. If no mutual agreement can be arrived at between the parties, the existing tariff shall continue in effect.³⁹³ There are no provisions in the MASA that address prior existing tariffs.

- Capacity and Frequency (Yamoussoukro Decision Article 5):
Except for safety, security and environmental concerns, no restrictions shall be imposed on the frequency, capacity, and/or the type of aircraft used in air services under the agreement.³⁹⁴

Aside from granting traffic rights in line with the dictates of the Yamoussoukro Decision, the BAG MASA also puts a strong emphasis on safety and security which exceeds the principles of the Yamoussoukro Decision. For

³⁹² *Ibid.*, art. XII(1).

³⁹³ *Ibid.*, art. XII(4).

³⁹⁴ *Ibid.*, art. II(4).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

example, while the State parties of the Yamoussoukro Decision only reaffirm their obligation to comply with the civil aviation safety standards and practices recommended by ICAO,³⁹⁵ the contracting States to the MASA may request consultations concerning Safety Standards relating to aeronautical facilities and services, air crews, aircraft and operations of their designated airlines maintained by any other contracting State.³⁹⁶ In addition, each contracting party may withhold, revoke, or limit the operating authorization or technical permission of an airline designated by the other contracting Party in the event that the other contracting Party does not take such appropriate corrective action.³⁹⁷ This unusually strong rule gives to BAG States the right to revoke the operating permit of the designated airline of another BAG State and thus, effectively ground its operations.

The BAG Member States also acknowledged that the existing level of regulatory safety oversight in the region did not meet the required international standards. To address the shortcomings, the BAG signed a Memorandum of Understanding for the implementation of a technical cooperation project. This project was subsequently launched and is being carried out under the management of the Technical Cooperation Bureau of ICAO.³⁹⁸

³⁹⁵ *Yamoussoukro Decision*, *supra* note 29 art. 6.12(c).

³⁹⁶ *Multilateral Air Service Agreement for the Banjul Accord Group*, *supra* note 388, art. VII(1).

³⁹⁷ *Ibid.*, art. VII(2).

³⁹⁸ BAG, *Memorandum of Understanding for the Implementation of a Co-operative Development of Operational Safety and Continuing Airworthiness Project for the Banjul Accord Group* (COSCAP-BAG), (2004). The COSCAP focuses primarily on the preparation of required technical regulations, as well as on capacity building for

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

With respect to security, the MASA also goes far beyond the requirements of the Yamoussoukro Decision. While under Article 6(12) of the Yamoussoukro Decision, the State parties merely reaffirm their respective obligations to protect the security of civil aviation in accordance with Annex 17 of the Chicago Convention, the BAG MASA specifically obliges contracting Parties to act in conformity with the provisions of the three international aviation security treaties, namely: the Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 November 1970; and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³⁹⁹ In addition, the MASA obligates contracting Parties to provide assistance in preventing or in acting upon unlawful acts against the safety of aircraft, passengers and crew, airports, and air navigation facilities.⁴⁰⁰ The relatively strong focus of the BAG Agreement on security as compared to the Yamoussoukro Decision may be explained by the fact that the latter was signed before, and the

regulatory supervision. The cost of the Program is borne by international donors, such as the African Development Bank, the French Cooperation, and the European Union.

³⁹⁹ All of the BAG Member States have signed and ratified all three conventions. See: ICAO, *Status of the Convention on Offences and Certain other Acts Committed on Board Aircraft*, online: ICAO website, <<http://www.icao.int/icao/en/leb/Tokyo.pdf>>; ICAO, *Status of the Convention for the Suppression of Unlawful Seizure of Aircraft*, online: ICAO website, <<http://www.icao.int/icao/en/leb/Hague.pdf>>; and, ICAO, *Status of Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, online: ICAO website, <<http://www.icao.int/icao/en/leb/Mtl71.pdf>> (date accessed: 12 October 2007).

⁴⁰⁰ *Multilateral Air Service Agreement for the Banjul Accord Group*, *supra* note 388, art. VIII.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

former two years after, the fateful events of 11 September of 2001⁴⁰¹ which triggered a strong renewed focus on aviation security worldwide.

Finally, any disputes that may arise between two or more contracting Parties in relation to the interpretation or application of the MASA should primarily be settled by negotiation.⁴⁰² If the parties fail to reach a settlement by negotiation, they may refer the matter to arbitration using the mechanism set forth in Article XVII of the MASA, or to any other arbitration mechanism existing within the African Union framework.⁴⁰³ The MASA clearly outlines the arbitration procedure including the appointment of arbitrators and the establishment of procedural rules. The clear definition of an arbitration procedure as well as the option of deferring to the African Union is a consequence of the fact that the BAG is not an international body which possesses the necessary infrastructure, human resources, and regulations (such as the WAEMU for example). Nevertheless, in many cases, the settlement of disputes by negotiation or by arbitration may be a more effective way to deal with disputes arising from a fast moving and ever dynamic industry as air transportation.⁴⁰⁴

⁴⁰¹ On 11 September 2001, four aircraft were hijacked on the East coast of the United States. Three of these flights were deliberately flown into the World Trade Centre in New York, and the Pentagon in Washington DC, while the fourth aircraft crashed in an open field. This terrorist act resulted in over 3000 fatalities. Immediately thereafter, the international aviation community reacted by introducing strict new security regulations and procedures around the world.

⁴⁰² *Multilateral Air Service Agreement for the Banjul Accord Group*, *supra* note 388, art. XVI.

⁴⁰³ *Ibid.*, art. XVI(2).

⁴⁰⁴ Mr. Girma Wake, Chief Executive Officer of Ethiopian Airlines, confirmed that there were some pending issues concerning the denial of fifth freedom traffic rights by Kenya. However, rather than approaching the AU to settle the matter, he considers direct

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

In conclusion, through a multilateral air services agreement executed by all Member States, the BAG has established a liberalized regime which is fully compatible with the provisions and obligations of the Yamoussoukro Decision. Its clear obligations, its focus on safety and security, and its simplified dispute settlement mechanism, should be an inspiration for the BAG to implement the Yamoussoukro Decision within its region. It can also serve as a good example of the fact that the liberalization of air transport markets may not require all the costly and complicated institutional supervisory mechanisms such as the Executing Agency and the Monitoring Body required in the Yamoussoukro Decision.

Central Africa

4.2.4 The Economic and Monetary Community of Central Africa (CEMAC)

The Economic and Monetary Community of Central Africa (also known as CEMAC from the acronym of its French name “*Communauté Économique et Monétaire de l'Afrique Centrale*”) is the organization of Central African States which was established to promote economic integration among countries that share a common currency, the CFA franc.⁴⁰⁵ The legal basis of CEMAC is a treaty which was signed in 1994 between Cameroon, the Central

negotiations with the Kenyan authorities a much more effective means of reaching a solution. Interview held with Mr. Girma Wake, Chief Executive Officer of Ethiopian, on 25 April 2007 in Addis Ababa.

⁴⁰⁵ Although Central African CFA francs and West African CFA francs have the same monetary value against other currencies, West African CFA coins and banknotes are not accepted in countries using Central African CFA francs, and vice versa. See Boogaerde & Tsangarides, *supra*, note 348 at 4.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

African Republic, Chad, the Republic of the Congo, Equatorial Guinea, and Gabon.⁴⁰⁶ As an organization, CEMAC became the successor of the former Customs and Economic Union of Central Africa (UDEAC), which it completely replaced in June 1999.⁴⁰⁷

As a community, the main objectives of CEMAC are very similar to those of the WAEMU. The overall goal is the harmonized development of Member States within the institutional framework of CEMAC's two main institutions, the Economic Union (*Union Economique de l'Afrique Centrale* (UEAC)) and the Monetary Union (*Union Monétaire de l'Afrique Centrale* (UMAC)).⁴⁰⁸ More specific objectives are stated in Article 2 of the Convention governing the UEAC as follows:

- a) Strengthening of economic and financial competitiveness by harmonization of the respective regulatory frameworks;
- b) Convergence of the overall macroeconomic policy through the coordination of economic and monetary policies of Member States to assure an improved economic outcome;

⁴⁰⁶ *Traité instituant la Communauté Économique et Monétaire de l'Afrique Centrale*, (1994). The annex to this treaty includes the Convention Governing the Economic Union of Central Africa, which was created by article 2 of this treaty [*CEMAC Treaty*].

⁴⁰⁷ The Customs and Economic Union of Central Africa (also known as UDEAC from its French name "Union Douanière et Économique de l'Afrique Centrale") was established by a treaty signed in Brazzaville, Congo, in 1966. It created a customs union with a free trade area between members and a common external tariff for imports from other countries. The Member States were Cameroon, Central African Republic, Chad, Republic of the Congo, Equatorial Guinea, and Gabon.

⁴⁰⁸ *CEMAC Treaty*, *supra*, note 406, art. 1, which created four institutions: the Economic Union, the Monetary Union, the Community Parliament, and the Community Court of Justice, which consists of the Court of Justice and the Court of Auditors.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- c) Creation of a common market on the basis of free movement of goods, services, and capital; and,
- d) Coordination of national sectoral policies of Member States in agriculture, livestock, fishery, industry, trade, tourism, transport, telecommunications, energy, environment, research, and education.

To achieve the set objectives, CEMAC has established the following organizational structure:

- a) The Conference of Heads of States which is described as the supreme body of the Community. It determines the policy of CEMAC and governs the decision-making bodies of the two constituent unions, UEAC and UMAC, by means of supplementary Acts.⁴⁰⁹ These Acts are considered to be supplementary to the treaty without modifying same. The Supplementary Acts are, however, binding on the community institutions and organs as well as on the Member States.⁴¹⁰
- b) The Council of Ministers of the UEAC, charged with the responsibility of directing the UEAC, consists primarily of the Ministers in charge of Finance and Economic Affairs of the Member States. Each national delegation can have no more

⁴⁰⁹ *Protocol Additionnel au Traité de CEMAC Relative au System Institutionnel et Juridique Communautaire*, (1996) art. 3 [CEMAC Additional Protocol].

⁴¹⁰ *Ibid.*, art. 21.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

than three members, and has one vote.⁴¹¹ The council governs by means of regulations, directives, decisions, recommendations or opinions which are of general application.⁴¹²

c) The Ministerial Committee of the UMAC which is charged with the responsibility of governing the UMAC. It is composed of two Ministers from each Member State, with a Minister of Finance as head of delegation. Its main role is to examine the economic trends within the Member States and to ensure coherence with the common monetary policy. In similar fashion as the Council of Ministers of the UEAC, the Ministerial Committee of the UMAC governs by means of regulations, directives, decisions, recommendations or opinions which are of general application.⁴¹³

d) The Executive Secretariat which is headed by an Executive Secretary who is the principal executive officer of the UEAC.⁴¹⁴

e) The Inter-State Committees⁴¹⁵

⁴¹¹ *Ibid.*, arts. 8 and 9.

⁴¹² *Ibid.*, arts. 20 and 21 state that the regulations are binding and directly applicable on all Member States. However, the basic regulations are only directly binding with respect to certain aspects. These are defined as specifically being addressed to certain Member States requiring them to accomplish a stated purpose while leaving them free to select the form in which, and the means by which that purpose is to be achieved. Such decisions are binding only for Member States or entities which are specifically named in the regulation.

⁴¹³ *Ibid.*, art. 20.

⁴¹⁴ *Ibid.*, art. 16.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- f) The Central Bank of Central Africa (BEAC)⁴¹⁶
- g) The Banking Commission of Central Africa (COBAC)⁴¹⁷
- h) The Development Finance Corporation (IFD).

As an institution, CEMAC has a separate and distinct legal personality based on public law. It has its own equity, budget, organs, and agents. This is specifically confirmed by Article 35 of the Annex to the treaty which, in essence, states that CEMAC is to be recognized as full and legally independent entity by all Member States regardless of any contradictory rules or regulations.⁴¹⁸ CEMAC is also empowered by the treaty to sign agreements of cooperation with international, regional, or sub-regional organizations.⁴¹⁹ Member States, on the other hand, are called upon to contribute towards reaching the general objectives of the community, and to “assure all internal measures to secure the implementation of their community obligations”.⁴²⁰ Finally, the institutional treaty and all its annexes are considered to be the “constitutional basis” of the Community and this entails certain limitations of autonomy for the Member

⁴¹⁵ *Ibid.*

⁴¹⁶ *Ibid.*

⁴¹⁷ *Ibid.*

⁴¹⁸ *CEMAC Treaty, supra* note 406, art. 35 of the Annex.

⁴¹⁹ *Ibid.*, art. 36.

⁴²⁰ See arts. 8 and 10 of the Convention regulating UEAC and UMAC.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

States.⁴²¹ Overall, it can be concluded that the legal and regulatory basis of CEMAC is sufficiently well structured to enable the community act as an entity.

CEMAC's separate and distinct legal entity, coupled with the fact that decisions taken by the Conference of Heads of States, and regulations or directives taken by the Council of Ministers are legally binding upon Member States, constitute the necessary powers of the Community to establish and implement a community-wide regulatory framework. CEMAC is also entitled to engage in international agreements with third parties. Both are tools required for the regional implementation of the Yamoussoukro Decision.

The Air Transport Program of the CEMAC States

Earlier on, the objectives of the CEMAC States included the development of the air transport sector of the region. This basis for this was the specific objective stated in Article 2 of the Convention governing the UECA, of “coordinating national sectoral policies of Member States in [...] trade, tourism, transport [...]”. The three measures that were taken in this connection in the CEMAC region before the advent of the Yamoussoukro Decision are:

- 1) The Agreement on Air Transport of CEMAC Member States
- 2) The Civil Aviation Code of the CEMAC Community
- 3) Joint CEMAC Competition Regulations.

⁴²¹ In simulating the application of the principles governing the European Community, CEMAC Member States must apply community law without any further national rulemaking procedure. It is recognized that Member States of CEMAC limit their jurisdiction in certain domains, which have been assigned to the Community. See generally: Pierre Kamto, *La Mise en Œuvre du Droit Communautaire dans les Etats Membres de la CEMAC*, (Institut international de droit d'expression et d'inspiration françaises (I.D.E.F.), 2002) [Kamtoh].

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

The Agreement on Air Transport of CEMAC Member States was adopted by the Council of Ministers on 18 August 1999 and it aims at developing the CEMAC intra-community air transport sector in order to establish greater access within the region, and to promote economic and commercial relations between Member States.⁴²² It provides for the creation of an entity to supervise flight safety, and it fosters technical and commercial cooperation among air carriers of the Community.⁴²³ Several provisions of the Agreement, such as those dealing with the designation of participating carriers, or the freedoms of the air are similar (sometimes even identical) to those of the Yamoussoukro Decision:

- Designation of carrier(s) (Yamoussoukro Decision Article 6):

Each Member State designates two carriers to participate in the intra-community air service market. The carriers can be of another Member State [of CEMAC], and the designation has to be communicated to the Executive Secretariat of the Community which must publish the selection in the Official Bulletin of CEMAC.⁴²⁴ The Member States must grant to all carriers the same treatment and access to infrastructure and equipment, and may not charge preferential fees to their own carriers.⁴²⁵

⁴²² CEMAC, *Règlement portant adoption de l'Accord relatif au Transport Aérien entre les Etats membres de la CEMAC*, (1999), art. 2.

⁴²³ *Ibid.*

⁴²⁴ *Ibid.*, art. 4

⁴²⁵ *Ibid.*, art. 5

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- Traffic rights (Yamoussoukro Decision Article 3): First and second freedom rights are granted without conditions.⁴²⁶ Third and fourth freedom rights are granted for any scheduled passenger, cargo, and mail flights that are conducted within the CEMAC region.⁴²⁷ Fifth freedom rights were initially restricted to 40% of the previous annual capacity (reserving 60% to third and fourth freedom operators on the same leg), but became fully liberalized for Community operators after a two year transition period which ended in August 2001.⁴²⁸ Sixth and seventh freedoms are not mentioned, but eighth freedom rights or Cabotage is possible if a Member State specifically grants this right to a designated carrier of another Member State.⁴²⁹
- Tariffs (Yamoussoukro Decision Article 4): Tariffs are freely determined on the basis of commercial considerations. They must be communicated to the Civil Aviation Authorities of the respective States at least 60 days in advance. Carriers must, however, comply with the competition regulations of the community.⁴³⁰

⁴²⁶ *Ibid.*, art. 11

⁴²⁷ *Ibid.*, art. 12

⁴²⁸ *Ibid.*, art. 13

⁴²⁹ *Ibid.*, art. 16

⁴³⁰ *Ibid.*, art. 18

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- Capacity and Frequency (Yamoussoukro Decision Article 5):

The Member States must grant a maximum of frequencies.

However, the designated carriers must coordinate their schedules.⁴³¹ No restriction of capacity or type of aircraft shall be imposed. Nevertheless, in the event of great a disparity between capacity and type of aircraft, the carriers must enter into commercial arrangements between themselves.⁴³²

In addition to the above mentioned basic rules of the CEMAC Agreement on Air Transport, additional provisions set forth certain requirements for the implementation of the intra-community liberalization of the sector. These include the establishment of an Executing Agency which shall be designated and supervised by the Council of Ministers in charge of civil aviation. The agency will be responsible for the implementation and supervision of the liberalized air transport policy.⁴³³ However, the power to impose sanctions (such as the revocation or suspension of granted traffic rights) against carriers is reserved to the Council of Ministers, after considering the recommendations of the Executing Agency.⁴³⁴ Finally, the agreement permits non-Member States of CEMAC to join the framework thereby established, and to participate in its air transport market.⁴³⁵

⁴³¹ *Ibid.*, art. 14

⁴³² *Ibid.*, art. 15

⁴³³ *Ibid.*, art. 21

⁴³⁴ *Ibid.*, art. 23

⁴³⁵ *Ibid.*, art. 24

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Existing bilaterals between Member States and participating non-Member States remain valid and may have to be modified in order to bring them into compliance with the provisions of the agreement.⁴³⁶ Member States also have the right to terminate their rights and obligations by opting out of the agreement.⁴³⁷

Given the objective of establishing a coordinated and harmonized legal framework for the air transport sector, the Council of Ministers adopted a Civil Aviation Code for the CEMAC Community in July 2000.⁴³⁸ The Code has since become legislation in all Member States of the community, replacing obsolete or contradictory national aviation legislation.⁴³⁹ However, certain domains are not covered by the Code and Member States are therefore allowed to regulate those areas at the national level by themselves.⁴⁴⁰ It is structured into ten main sections as follows:

- a) General provisions defining the scope and applicability of the code;
- b) Supervision of the civil aviation sector and the requirement of autonomous civil aviation authorities;
- c) Regulations relating to aircraft, including requirements for registration, nationality and ownership, airworthiness, operations, and liability insurance;

⁴³⁶ *Ibid.*, art. 25

⁴³⁷ *Ibid.*

⁴³⁸ CEMAC, *Règlement portant adoption du Code de l'Aviation Civile de la CEMAC*, (2000).

⁴³⁹ *Ibid.*, art. 335.

⁴⁴⁰ *Ibid.*, art. 333.

THE IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

- d) Regulation of air navigation;
- e) Regulation of airports, airport operations, and facilitation;
- f) Public air transport and on demand operators, including requirements for certification, ownership requirements, and access to markets;
- g) Personnel licensing;
- h) Aviation security;
- i) Environmental protection; and
- j) Criminal and civil enforcement.

In terms of the Yamoussoukro Decision, all the major provisions of the Agreement on Air Transport of CEMAC Member States have been incorporated in the Code. These include, in particular, regulations on:

- a) Market access: Liberalization of scheduled air services within the community notably, first to fifth freedom rights (Article 214), and full liberalization of cargo and on demand traffic (Article 219);
- b) Tariffs: Free, but “reasonable” tariff fixing by carriers, to be filed 60 days in advance (Article 219), and prohibition of anticompetitive practices such as dumping, with the possibility of temporary intervention on tariffs by authorities (Article 215);
- c) Frequency and capacity: No restriction on frequency and capacity (Article 219), but the requirement of coordination of

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

commercial activities among operators and approval of their programs by authorities (Article 209);

- d) Designation and establishment: Single or multiple designation of operator(s) by each Member State (Article 205), subject to the requirements of community ownership and minimum standards for technical, financial, and managerial qualification (Article 204);
- e) Competition: Code of conduct for carriers which aims at developing a sound competitive environment by prohibiting all forms of price and capacity dumping (Article 215), as well as discrimination against a given designated carrier by another Member State (Article 216).

The third element of liberalization of air services among the CEMAC Member States is the joint competition regulations, which were adopted by the Council of Ministers on 25 June 1999.⁴⁴¹ The competition regulations are of general nature and apply to all domains or industries of the CEMAC common market. Their primary objective is to prevent any form of interference with free and efficient competition.⁴⁴² The provisions of the regulations which are applicable to the air transport sector include those that prohibit: (i) anticompetitive agreements between suppliers; (ii) market domination through mergers; and, (iii) the abuse of a dominant position.

⁴⁴¹ CEMAC, *Réglementation des Pratiques Commerciales Anticoncurrentielles*, (1999) [CEMAC Antitrust Regulations].

⁴⁴² *Ibid.*, preamble and art. 2

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The provision on anticompetitive agreements between suppliers prohibits any price fixing, limitation of production, market segmentation with competitors, or any other practices that prevent efficient competition.⁴⁴³ However, in situations where such an agreement could lead to a more efficient market organization, certain agreements or coordinating measures between market participants may be exempted from the application of this provision.⁴⁴⁴ The prohibition of market domination through mergers applies to any merger or acquisition of independent enterprises which leads to the elimination of a competitive environment.⁴⁴⁵ It is applicable to cases of market concentration within the CEMAC community, defined as involving two entities each having an annual turnover of CFA 1 billion or controlling more than 30% of a given market.⁴⁴⁶ The provisions dealing with abuse of a dominant market position prohibit the maintenance of abusive pricing practices, as well as severe production cuts aimed at stimulating demand.⁴⁴⁷ A dominant market position is again defined as control of more than 30% of a given market.⁴⁴⁸

A specialized CEMAC Monitoring Body is established under the joint competition regulations, and it is charged with the responsibility of

⁴⁴³ *Ibid.*, art. 3

⁴⁴⁴ Both the Yamoussoukro Decision (Article 5) and CEMAC's Civil Aviation Code (Article 14) state that the designated carriers must coordinate their schedules. In the spirit of the competition regulation, the requirement for coordination is justified as long as it leads to a more efficient market development.

⁴⁴⁵ *CEMAC Antitrust Regulations*, *supra* note 441, art. 5

⁴⁴⁶ *Ibid.*, art. 6

⁴⁴⁷ *Ibid.*, art. 16

⁴⁴⁸ *Ibid.*, art. 15

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

controlling and supervising the market, and ensuring that participants respect the provisions of the regulations.⁴⁴⁹ The Monitoring Body is composed of an Executive Secretariat which investigates anticompetitive practices, and it reports to a Regional Council. The Regional Council in turn considers and renders judgments concerning cases of alleged anticompetitive practices.⁴⁵⁰ Sanctions that may be imposed against an entity found guilty of infringing the joint competition regulations include fines of up to 5% of turnover achieved in the common market during the past year, or 75% of the profits accruing from the prohibited practice.⁴⁵¹ In addition, the Regional Council may order the dissolution of a merger which is found to be anticompetitive.⁴⁵² Appeals against decisions rendered by the Regional Council lie to an arbitration court comprising three arbitrators each appointed by a different party or entity.⁴⁵³

In conclusion it can be stated that, in similar manner as WAEMU, CEMAC has implemented within its territory most of the necessary regulatory framework required under the main provisions of the Yamoussoukro Decision. CEMAC Member States can therefore be considered as part of the Yamoussoukro Decision, which is therefore applicable within their respective territories.

⁴⁴⁹ *Ibid.*, art. 17

⁴⁵⁰ *Ibid.*, art. 19

⁴⁵¹ *Ibid.*, art. 37

⁴⁵² *Ibid.*, art. 39

⁴⁵³ *Ibid.*, art. 24

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

4.3 Southern and Eastern Africa (COMESA, SADC, and EAC)

There are three regional economic communities in Southern and Eastern Africa that address the air transport sector. The largest in terms of Member States and territory covered is the Common Market for Eastern and Southern Africa (COMESA), which currently includes 20 countries stretching from Egypt in the North to Zimbabwe in the South. The next regional economic community is the Southern African Development Community which comprises 15 Member States from the Southern part of Africa. The smallest regional economic organization is the East African Community which consists of five Eastern African States. It is significant to note that the membership of these communities easily overlaps, with most countries belonging to two of them.⁴⁵⁴ Nevertheless, starting at a very early stage, each regional economic community has addressed liberalization of air services within its respective membership over the years.

4.3.1 The Common Market for Eastern and Southern Africa (COMESA)

COMESA has its origins in the Preferential Trade Area (PTA) for Eastern and Southern Africa which was established in 1981. Its principal objectives included: increasing economic and commercial cooperation between Member States; harmonizing tariffs; and, reducing trade barriers, with the eventual goal of establishing a common market.⁴⁵⁵ Its headquarters were located

⁴⁵⁴ For example, in East Africa Burundi, Kenya, Rwanda and Uganda are members of COMESA and the EAC. In Southern Africa ten countries are members of COMESA and SADC: Angola, the Democratic Republic of the Congo, Malawi, Madagascar, Mauritius, the Seychelles, Swaziland, Tanzania, Zambia, and Zimbabwe.

⁴⁵⁵ The PTA was created based on the framework of the Lagos Plan of Action of the Organization of African Unity. See generally Organization of African Unity. Lagos Plan of Action for the Economic Development of Africa, 1980-2000.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

in Lusaka, Zambia. The United Nations Economic Commission for Africa had supported a constellation of the PTA which would have been included all eighteen Southern and Eastern African States, including the African Indian Ocean Islands. However, due to several local disputes (for example the border dispute between Kenya and Tanzania following the termination of the East African Community in 1978), six of those countries never signed the treaty.⁴⁵⁶ On 8 December 1994, the PTA was formally replaced by the COMESA treaty upon ratification of the latter by 11 signatory States. The establishment of COMESA was a direct fulfillment of the requirements of Article 29 the Treaty for the Establishment of the PTA, which provided for the transformation of the PTA into a common market ten years after its entry into force, and eventually into an Economic Community.⁴⁵⁷

COMESA is Africa's largest regional economic organization covering a large area of Eastern Africa. It currently includes 20 Member States, 15 of which were Signatory States to the former PTA treaty.⁴⁵⁸ The principal aims and objectives of COMESA are stated in Article 3 of the treaty,⁴⁵⁹ and they

⁴⁵⁶ Jacqueline Matthews, "Economic Integration in Southern Africa: Progress or Decline?" (1984) 52:3 South African Journal of Economics 171 at 174.

⁴⁵⁷ Common Market for Eastern and Southern Africa (COMESA), *COMESA in Brief*, 3rd. ed. (COMESA: Lusaka, 2007) at 1 [*COMESA in Brief*].

⁴⁵⁸ The Member States are Angola (21 Dec 1981), Burundi (21 Dec 1981), Comoros (21 Dec 1981), Democratic Republic of the Congo (21 Dec 1981), Djibouti (21 Dec 1981), Egypt (6 Jan 1999), Eritrea (1994), Ethiopia (21 Dec 1981), Kenya (21 Dec 1981), Libya (3 June 2005 at the 10th Summit of COMESA), Madagascar (21 Dec 1981), Malawi (21 Dec 1981), Mauritius (21 Dec 1981), Rwanda (21 Dec 1981), Seychelles (2001), Sudan (21 Dec 1981), Swaziland (21 Dec 1981), Uganda (21 Dec 1981), Zambia (21 Dec 1981), and Zimbabwe (21 Dec 1981). See *Ibid.*, at cover page.

⁴⁵⁹ COMESA, *Agreement establishing the Common Market for Eastern and Southern Africa (COMESA)*, (1994), online: COMESA website, <<http://about.comesa.int/language/overview/comesa-treaty>> [*COMESA Treaty*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

include: (a) sustainable growth and development of the Member States; (b) joint adoption of supporting macro-economic policies and programs; (c) the creation of an enabling environment for foreign, cross-border and domestic investments; (d) the promotion of peace, security and stability among Member States; (e) the strengthening of relations between the common market and the rest of the world; and, (f) contribution towards the establishment and realization of the objectives of the African Economic Community.

In order to achieve these objectives, a set of specific undertakings were agreed upon in Article 4. These undertaking are: (a) the establishment of a customs union; (b) the adoption of a bond guarantee scheme; (c) the simplification and harmonization of trade documents and procedures; (d) the establishment of regulation for the re-exportation of goods from third countries within the common market; (e) the establishment of rules of origin for products originating in Member States; and, (f) the grant of a temporary exemption for Lesotho, Namibia and Swaziland from the full application of specific provisions of the treaty. Article 4 continues to list specific undertakings in several specialized fields such as transport and communications, industry and energy. In the field of transport, the undertaking focuses on regulations for facilitating transit trade within the common market.⁴⁶⁰

The organizational structure of COMESA is as follows:⁴⁶¹

⁴⁶⁰ *Ibid.*, art. 4(2)(b)

⁴⁶¹ *Ibid.*, art. 7(1)

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- a) The Authority, which consists of the Heads of State or Government of the Member States. It is the supreme policy organ of the Common Market, and is responsible for the general policy, direction and performance of the executive functions. The directives and decisions of the Authority are binding on the Member States and on all other organs of the Common Market.⁴⁶²
- b) The Council of Ministers, which comprises Ministers designated by each Member State.⁴⁶³ The responsibility of the Council include: monitoring of the Common Market; recommending policies to the Authority; directing subordinate organs; issuing regulations and directives within the provisions of the treaty; approving the budgets of the Secretariat and the Court; as well as several other administrative matters.⁴⁶⁴ In terms of applicability of regulations, directives and decisions of the Council of Ministers, the treaty clearly states that these are binding on Member States and on all subordinate organs, other than the Court.⁴⁶⁵

⁴⁶² *Ibid.*, art. 8(2)

⁴⁶³ *Ibid.*, art. 9(2)

⁴⁶⁴ *Ibid.*, art. 9(2)(a) – (k)

⁴⁶⁵ *Ibid.*, art. 9(3) and art. 10.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- c) The Court of Justice, which shall ensure adherence to law in the interpretation and application of the treaty.⁴⁶⁶
- d) The Committee of Governors of Central Banks which is responsible for programs and action plans in the field of finance and monetary co-operation.⁴⁶⁷
- e) The Intergovernmental Committees which are responsible for programs and action plans in all sectors, except the field of finance and monetary co-operation.⁴⁶⁸
- f) The Technical Committees which are responsible for the implementation of programs in their respective sectors according to established time-tables.⁴⁶⁹
- g) The Secretariat and the Secretary General which provide administrative support and assistance to the other organs of the Common Market.⁴⁷⁰
- h) The Consultative Committee, which shall consist of representatives of the business community and other interest groups from Member States, and which will provide a link and

⁴⁶⁶ *Ibid.*, art. 19

⁴⁶⁷ *Ibid.*, art. 13

⁴⁶⁸ *Ibid.*, art. 14

⁴⁶⁹ *Ibid.*, art. 16

⁴⁷⁰ *Ibid.*, art. 17

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

facilitate dialogue between the business community and organs
of the Common Market.⁴⁷¹

COMESA has launched and implemented several programs since its inception in 1994. In 2000, the COMESA Free Trade Area a declared prelude to the pending Customs Union was established.⁴⁷² To support trade liberalization various technical harmonization projects were implemented, such as: harmonized road transit charges; a common carrier's license; joint customs bond guarantee schemes; and, telecommunications interconnectivity. Liberalization of air transport services are also addressed under the main objective of trade facilitation among Member States.⁴⁷³

The COMESA Air Transport Liberalization Program

COMESA's policy on air transport was already well established in the COMESA treaty. Article 84 of the treaty engages Member States to develop coordinated and complementary transport and communications policies. In order to facilitate movement of inter-State traffic and to promote greater movement of persons, goods and services within the Common Market, Member States are further engaged to maintain, upgrade, and rehabilitate the roads, railways and harbors in their territories.⁴⁷⁴ The essence of the air transport policy is outlined in Article 87 which appears to have been drafted in line with the Yamoussoukro

⁴⁷¹ *Ibid.*, art. 18

⁴⁷² *COMESA in Brief*, *supra* note 457 at 3.

⁴⁷³ *Ibid.*, at 8.

⁴⁷⁴ *COMESA Treaty*, *supra* note 459, art. 84(a)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Declaration of 1988. The main focus of Article 87 is co-operation between operators in the Common Market. It provides for:

the establishment of joint ventures for co-operation in the use of equipment, in the pooling of aircraft maintenance and training facilities, in the acquisition and use of fuel and spare parts, in insurance schemes, in the coordination of flight schedules and the improvement of managerial techniques and skills.⁴⁷⁵

However, it further obliges Member States to liberalize the granting of air traffic rights for passenger and cargo operations; to harmonize civil aviation rules and regulations by implementing the provisions of the Chicago Convention; to establish common measures for the facilitation of passenger and cargo air services; to develop and maintain a common navigation and communication infrastructure for airspace management; and, to harmonize rates, rules, and regulations on scheduled air transport services to be applied equally among all participants.⁴⁷⁶

In 1999, practically in parallel with the African Economic Communities' initiation of the Yamoussoukro Decision, COMESA's Council of Ministers issued the "Regulation for the Implementation of the Liberalised Air Transport Industry".⁴⁷⁷ The regulation was issued as a directive titled "Legal Notice No.2" which became binding on the Member States and on all subordinate organs of the Common Market.⁴⁷⁸ Legal Notice No. 2 aims at liberalizing air

⁴⁷⁵ *Ibid.*, art. 87(1)

⁴⁷⁶ *Ibid.*, art. 87(3).

⁴⁷⁷ COMESA, *Legal Notice No. 2* (1999) [*COMESA Legal Notice No. 2 of 1999*].

⁴⁷⁸ *COMESA Treaty*, *supra* note 459, arts. 9(2)(c) and 9(3).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

transport services as a step towards the creation of a free trade area which will guarantee the free movement of goods and services produced within COMESA, as well as the removal of all tariff and non-tariff barriers.⁴⁷⁹ However, despite of the fact that Legal Notice No. 2 exceeds the scope of liberalization required by the Yamoussoukro Decision, it does not mention the Yamoussoukro Decision as the basis or source of inspiration for COMESA's new air transport policy.

According to Legal Notice No. 2, air transportation within COMESA was to be liberalized in two phases. Initiated in October 1999, phase I introduced: (i) free movement of intra-COMESA air cargo and non-scheduled passenger services; (ii) free movement of intra-COMESA scheduled passenger services with a frequency limit of up to two daily frequencies between any city pair; and, (iii) multiple designation and the elimination of capacity restrictions.⁴⁸⁰ It is significant to note that fifth freedom rights, which are considered essential in many liberalization policies including the Yamoussoukro Decision, were already being granted in Phase I of COMESA's liberalization. During that phase, fifth freedom rights were limited to 30% of existing capacity on routes where third and fourth freedom flights were provided, but no restrictions were placed on fifth freedom traffic on routes where no third and fourth freedom flights were being conducted by another operator.⁴⁸¹

⁴⁷⁹ *COMESA Legal Notice No. 2 of 1999, supra* note 477, preamble.

⁴⁸⁰ *Ibid.*, art. 2.

⁴⁸¹ *Ibid.*, art. 5(a)

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

The peak of liberalization of air transportation within COMESA was reached one year after the commencement of Phase I. In October 2000, Phase II took effect and, in essence, it introduced free movement into intra-COMESA air transport services.⁴⁸² Phase II has liberalized air services within COMESA far beyond the scope envisaged by the Yamoussoukro Decision by implementing the following elements:

- Market Access (Yamoussoukro Decision Article 6): Any air carrier is eligible, provided it is substantially owned and effectively controlled by a COMESA Member State or its nationals. It must demonstrate financial, managerial and technical ability to perform the services, which is also a condition for receiving an air operator's certificate.⁴⁸³ However, in contrast to the Yamoussoukro Decision where traffic rights are notified on a bilateral basis between two or, in the case of fifth freedom flights, three countries, COMESA carriers are able to operate between any destination within the common market. Carriers can also use aircraft registered in, and owned by, any COMESA State or its nationals.⁴⁸⁴
- Traffic rights (Yamoussoukro Decision Article 3): There is the principle of free movement of intra-COMESA air transport

⁴⁸² *Ibid.*, art. 5(b)

⁴⁸³ *Ibid.*, art. 3

⁴⁸⁴ *Ibid.*, art. 4

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

services.⁴⁸⁵ This explicitly includes Cabotage rights which were excluded only during the pendency of Phase I.

- Tariffs (Yamoussoukro Decision Article 4): No specific regulations are made in respect of tariffs for air services. However, the preamble of Legal Notice No. 2 mentions the fact that all COMESA Member States have agreed to the removal of all tariff and non-tariff barriers in order to facilitate the establishment of a full free trade area. It may therefore be safely implied that air services would also be free of any tariff regulation.
- Capacity and Frequency (Yamoussoukro Decision Article 5): No restriction of capacity shall be imposed in Phase II. This is explicitly mentioned in the case of fifth freedom rights despite the fact that traffic in the Common Market, including Cabotage, is free.⁴⁸⁶ In terms of equipment, there is another explicit rule that states that no restriction on type and capacity of aircraft shall be made.⁴⁸⁷ Nevertheless, in like manner as Article 11(4) of the Yamoussoukro Decision, COMESA carriers are encouraged to establish intra-COMESA airline alliances and commercial arrangements, as long as these

⁴⁸⁵ *Ibid.*, art. 2(b)

⁴⁸⁶ *Ibid.*, art. 5(2)(c)

⁴⁸⁷ *Ibid.*, art. 7

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

arrangements do not undermine COMESA competition rules and regulations.⁴⁸⁸

Despite the very clear and concise liberalization program provided for in Legal Notice No. 2, its adoption was stalled in 2001 when the Council of Ministers of COMESA decided to “defer the implementation of Phase II to await the preparation of competition regulations”.⁴⁸⁹ Subsequently, the implementation of a liberalized air services regime within COMESA as specified in Phase II was suspended for several years. By 2004, only twelve Member States had implemented Phase I, and Djibouti was the only to have opened its airspace to COMESA carriers in line with Legal Notice No. 2.⁴⁹⁰ Indeed, Legal Notice No. 2 was silent on issues of fair competition and the procedure for dealing with disputes resulting from liberalization of international air traffic in the region. In addition to the missing competition regulations, several other elements were subsequently identified in order to “successfully complete this regional air transport liberalization agenda”.⁴⁹¹ These elements included:

1. the adoption of a COMESA Air Transport Policy;

⁴⁸⁸ *Ibid.*, art. 6

⁴⁸⁹ COMESA, *The Development and Implementation of Competition Regulations in Eastern and Southern Africa*, (presented to the Meeting of African Ministers responsible for Air Transport, Sun City, South Africa, 2005) at 3.

⁴⁹⁰ COMESA, *Report and Decisions, 17th Meeting of the COMESA Council of Ministers*. (Kampala, Uganda; 2004) at 22.

⁴⁹¹ COMESA, *The COMESA Air Transport Liberalization Experience*, (Working paper presented to the Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization, Montreal, Canada, 2003), online: ICAO website: < www.icao.int/icao/en/atb/atconf5/Seminar/Marawa.pdf - 2003-03-26> at 7.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

2. the implementation provisions for the air transport competition rules;
3. the creation of a joint institutional and monitoring mechanism for the liberalization and competition rules;
4. the drafting of a memorandum for the Court of Justice and Tribunal on the jurisdiction and enforcement of decisions under the competition rules;
5. the drafting of a standardized mechanism for entry into the market and for enjoying the rights enshrined in Legal Notice No. 2 and in the Yamoussoukro Decision;
6. the sensitization of airlines and other key stakeholders to the implementation of the Legal Notice and the Yamoussoukro Decision;
7. the drafting of a comprehensive regulation on consumer protection in the air transport sector;
8. the harmonization of the regulatory framework; and,
9. the incorporation of all council regulations into individual State legal and administrative procedures.⁴⁹²

The key question which arises is whether the implementation of the above mentioned regional air transport liberalization agenda is a condition

⁴⁹²

Ibid.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

precedent to the liberalization according to Legal Notice No. 2. In view of the fact that the Yamoussoukro Decision itself does not contain detailed competition regulations or any of the other above mentioned regulations, it can be stated that the application of a liberalized air transport policy may benefit from, but does not depend upon, the *a priori* existence of such conditions. As noted in Chapter 3.4.6 above, air transport relations between African States and the liberalization of the sector are, to a large extent, still addressed within the bilateral framework, even more so between Member States of the Yamoussoukro Decision. There is, therefore, no reason why the principles of Legal Notice No. 2 could not have been applied by agreeing to new bilaterals that conform to both the elements thereof and those of the Yamoussoukro Decision.⁴⁹³

In any event, COMESA directed its efforts towards preparing specialized competition regulations for the air transport sector despite the fact that it already had draft general competition regulations that could have been adapted or extended to apply to the sector.⁴⁹⁴ A first draft of the specialized air transport competition regulations was issued. However, soon thereafter, COMESA

⁴⁹³ Legal Notice No. 2 does not refer to bilateral relationships between States. In Article 2(b) it aims primarily at achieving free movement of intra-COMESA air transport services. On the other hand, Article 2 of the Yamoussoukro Decision, titled Scope of Application, provides that the Yamoussoukro Decision has precedence over any multilateral or bilateral agreements on air services between State Parties which are incompatible with the Decision. However, provisions which are included in these agreements and which are not incompatible with this Decision remain valid and are supplementary to the Decision. Article 10.5 provides that State Parties shall not be precluded from maintaining or developing on a bilateral basis or amongst themselves, arrangements more flexible than those contained herein. A bilateral solution among COMESA Member States could therefore at least provide a temporary solution which would allow the application of the principles of liberalization as agreed upon in both, Legal Notice No. 2 and the Yamoussoukro Decision.

⁴⁹⁴ COMESA, *Draft COMESA Competition Regulations*, (2003).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

recognized the need to develop common regulations for the entire Eastern and South African region where Member States jointly belonged to a number of regional economic communities. Subsequently, the COMESA Draft Competition Regulations and those prepared by SADC were considered together and a common draft was adopted by a joint ministerial meeting of COMESA, EAC and SADC ministers responsible for civil aviation in September 2002.⁴⁹⁵

The Draft Regulations for Competition in Air Transport Services within COMESA, EAC and SADC include three main provisions. The first prohibits any anti-competitive agreements and practices (such as price fixing; limiting or controlling markets; providing excessive capacity or frequency of services; and, dividing markets or sources of supply), or agreements that place trading partners into a competitive disadvantage by applying dissimilar conditions to similar transactions.⁴⁹⁶ The second provision aims at forestalling the abuse of a dominant position which typically occurs when a carrier introduces unfair trading conditions to the prejudice of competitors (such as excessively low or high prices), limits capacity or markets to the prejudice of consumers, including excessive pricing or over- and under-supply on certain routes to drive out competitors, or when applying dissimilar conditions to similar transactions with other trading parties effectively placing them into a disadvantaged competitive

⁴⁹⁵ COMESA, *The Development and Implementation of Competition Regulations in Eastern and Southern Africa*, *supra* note 489 at 3.

⁴⁹⁶ *Regulations for Competition in Air Transport Services within COMESA, EAC and SADC* prepared by Council of Ministers of COMESA and EAC responsible for Civil Aviation and the Committee of Ministers of Transport and Communications of SADC, art. 4.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

position.⁴⁹⁷ The third provision reminds Member States not to discriminate in national legislation or administrative measures against carriers or associations of carriers of other Member States.⁴⁹⁸

The application and enforcement of the joint competition regulation is entrusted to the regional competition authorities.⁴⁹⁹ These are responsible for investigating violations of the rules, as well as for granting, refusing or revoking exemptions. However, the Council of Ministers responsible for Civil Aviation of COMESA, EAC, and SADC are required to establish a joint body responsible for monitoring the implementation of the Yamoussoukro Decision and the joint competition regulations.⁵⁰⁰

The adoption of both the COMESA and SADC draft Competition Regulations by the joint ministerial meeting of COMESA, EAC and SADC in September 2002, and the adoption of the resulting common draft regulations by the SADC and COMESA Council of Ministers in 2004, was seen primarily as a policy decision.⁵⁰¹ It remained well understood that the application or implementation of the principles of Legal Notice No. 2 of 1999 depended on the finalization of the pending competition regulations and their “implementation”. In November 2006, the COMESA, SADC, and EAC Ministers responsible for Civil

⁴⁹⁷ *Ibid.*, art. 5

⁴⁹⁸ *Ibid.*, art. 6

⁴⁹⁹ *Ibid.*, art. 9(1)

⁵⁰⁰ *Ibid.*, art. 9(2)

⁵⁰¹ Interview with Mr. Amos Marawa, Director Infrastructure Development, COMESA, in Lusaka, Zambia, on 28 March 2007.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Aviation jointly adopted the “Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services within COMESA, EAC, and SADC”.⁵⁰² However, according to these guidelines the implementation of the competition regulations includes the establishment of the Joint Competition Authority which will be responsible for monitoring of implementation of the Yamoussoukro Decision and regulations governing competition in air transport services within the regional economic communities.⁵⁰³ Despite the fact that the speedy establishment of the Joint Competition Authority was formally agreed upon at the 12th Summit of the COMESA Authority in May 2007, the implementation of the joint competition regulations remains pending in all three regional economic communities (i.e., COMESA, SADC, and EAC).

In conclusion, it is unfortunate that over six years after COMESA liberalized air services within the territories of its Member States by instituting Phase II of Legal Notice No. 2, the application of this liberalization remains incomplete. Currently, the understanding of all COMSEA Member States is that the Joint Competition Authority must be established before liberalization of air services can be brought to full completion.

4.3.2 Southern African Development Community (SADC)

The origin of the Southern African Development Community (SADC) can be traced back to the 1960s and 1970s, when the leaders of black-majority ruled countries and national liberation movements coordinated their

⁵⁰² Southern African Development Community (SADC), *Status of the Implementation of the Yamoussoukro Decision in SADC and EAC as of 04 May 2007*, at 1.

⁵⁰³ *Ibid.*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

efforts on a political and military level to bring an end to colonial and white-minority rule in southern Africa. The initial grouping formed as a result was the so called Front Line States, an informal organization founded in the mid-1970s with the goal to achieve black-majority rule in South Africa. Its members included Angola, Botswana, Lesotho, Mozambique, Tanzania, Zambia, and Zimbabwe.⁵⁰⁴ On 1 April 1980, these nine southern African nations issued the Lusaka Declaration which paved the way for the establishment of the Southern African Development Coordination Conference (SADCC) on 17 August 1981 in Maseru, Botswana.⁵⁰⁵ However, the SADCC was not an authority formally established on the basis of a treaty. It was the main outcome of a conference of independent Southern African States the primary objective of which was to reduce their dependency on South Africa by coordinating interstate projects in a decentralized manner. Soon thereafter, the SADCC became a victim of its own limitations stemming from the fact that the decentralized set-up had no clear lines of reporting and accountability; necessary tools in the implementation of regional projects.⁵⁰⁶

⁵⁰⁴ Ian H. Rowlands, "Mapping the Prospects for Regional Co-operation in Southern Africa" (1998) 19:5 Third World Quarterly 917 at 926 [Rowlands].

⁵⁰⁵ Balefi Tsie, "States and Markets in the Southern African Development Community (SADC): Beyond the Neo-Liberal Paradigm" (1996) 22:1 Journal of Southern African Studies 75 at 84 [Tsie].

⁵⁰⁶ Ibbo Mandaza & Arne Tostensen, *In Search of a Common Future - from the Conference to the Community* (Gaborone, Botswana: Southern African Development Community (SADC), 1994) at 109.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

On 17 August 1992, the Southern African Development Community was formally established by a treaty.⁵⁰⁷ This treaty, which basically transformed SADCC into SADC, was later called the Windhoek Declaration, and was adopted by the founding members of SADCC and then newly independent Namibia. The main objectives of SADC include development and economic growth, poverty alleviation, and the enhancement of the standard and quality of life of the peoples of Southern Africa while supporting the socially disadvantaged through regional integration.⁵⁰⁸ SADC also aims at evolving common political values, systems and institutions, promoting and defending peace and security. To achieve these objectives, SADC is mandated to harmonize political and socio-economic policies and plans of Member States. This is to be achieved by mobilizing the peoples of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region, and to participate fully in the implementation of the program and projects of SADC.⁵⁰⁹

While these objectives are generally not very specific as compared to the concrete measures prescribed for the other African RECs, they at least included the development of policies aimed at the progressive elimination of obstacles to free movement of capital and labour, goods and services, and of the peoples of the region among Member States.⁵¹⁰ On 14 August 2001, the 1992

⁵⁰⁷ *Treaty of the Southern African Development Community*, (1992) online: SADC website, <<http://www.sadc.int/>> [SADC Treaty].

⁵⁰⁸ *Ibid.*, art. 5(1)

⁵⁰⁹ *Ibid.*, art. 5(2)

⁵¹⁰ *Ibid.*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

SADC treaty was amended by overhauling some of the structures, policies and procedures of SADC. One of the major changes thereby achieved was the institutionalization of political and security cooperation in the Organization's Politics, Defense and Security directorate.⁵¹¹ Currently, SADC is comprised of 15 Member States,⁵¹² and it maintains its headquarters in Gaborone, Botswana.

Based on its original treaty of 1992, and following the adoption at the Extraordinary Summit in 2001 of the Report on the Restructuring of SADC Institutions, the principal institutions of SADC are currently as follows:

- a) The Summit, which consists of Heads of State or Government, and which is the ultimate policy-making institution of SADC. It is responsible for the overall policy direction and control of functions of the Community. The Summit usually meets once a year in a Member State at which a new Chairperson and Deputy are elected. Unless otherwise specifically provided in

⁵¹¹ In early 2000 SADC, encountered some difficulties with regard to the implementation of institutional reforms for the transformation of SADCC into SADC. In March 2001 the Heads of States and Governments of SADC approved the restructuring of SADC institutions at their Extraordinary Summit in Windhoek, Namibia. Subsequently, 21 sectors were grouped into clusters under four new Directorates at the SADC Secretariat. In addition, two roadmaps were developed: the Regional Indicative Strategic Development Plan and the Strategic Indicative Plan for the Organ on Politics, Defense and Security. See: SADC, *Major Achievements and Challenges* (Gaborone, Botswana: SADC Secretariat, 2005) at 13 [SADC, *Major Achievements and Challenges*].

⁵¹² Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia, Zimbabwe, Namibia (31 March 1990), South Africa (30 August 1994), Mauritius (28 August 1995), Democratic Republic of the Congo (8 September 1997), Madagascar (18 August 2005), and Seychelles (15 August 2007).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the Treaty, decisions of the Summit are made by consensus, and are binding on all Member States.⁵¹³

b) The Council, which consists of Ministers from each Member State, usually those responsible for their country's economic planning or finance. The Council is responsible for overseeing the functioning and development of SADC, and for ensuring that policies are properly implemented. The Council advises the Summit on matters of overall policy and approves strategies and work programs for the SADC. One of the primary tasks of the Council is the definition of sectoral areas of cooperation, and the allocation of responsibility for coordinating sectoral activities to Member States. The Council meets at least once a year in order to review progress achieved by its subordinate institutions.⁵¹⁴

c) The Standing Committee of Officials, which is composed of one Permanent Secretary or an official of equivalent rank of each Member State. Usually, the official originates from a Ministry responsible for economic planning or finance. The Standing Committee of Officials is the technical advisory

⁵¹³ *SADC Treaty*, *supra* note 507, art. 10.

⁵¹⁴ *Ibid.*, art. 11

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

committee to the Council, and it also meets at least once a year.⁵¹⁵

- d) The Secretariat, which is the executive institution of SADC. It is responsible for strategic planning and management of programs of the SADC, and the implementation of decisions of the Summit and the Council. It is headed by the Executive Secretary who is appointed by the Summit. In addition, it is charged with organizing and managing SADC meetings, as well as with financial and general administration, representation, and promotion of SADC.⁵¹⁶
- e) The Tribunal, which is constituted to ensure adherence to, and the proper interpretation of the provisions of, the Treaty and subsidiary instruments. Decisions of this Tribunal are final and binding.⁵¹⁷

In addition to these formal institutions, SADC created a number of additional bodies and structures during the restructuring of 2001. The most significant is the so called Troika system, which consists of the Chair, Incoming Chair, and the Outgoing Chair, and which operates at the level of the Summit, the

⁵¹⁵ *Ibid.*, art. 13

⁵¹⁶ *Ibid.*, art. 14

⁵¹⁷ *Ibid.*, art. 16

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Organ on Politics, Defence and Security, the Council, and the Standing Committee of Officials.⁵¹⁸

In terms of decision making and their applicability to Member States, the SADC Treaty provides in Article 4 that Member States are expected to demonstrate their commitment to act in accordance with a set of principles. These include: sovereignty and equality of all Member States; solidarity; peace and security; human rights; democracy; rule of law; and, the peaceful settlement of disputes. However, only decisions made by the Summit are legally binding on Member States, unless otherwise specifically provided in the Treaty. To enforce decisions made by the Council, or to make Member States fulfill their obligations under the treaty (such as the implementation of policies or the settling of arrears of contributions owed to SADC), the SADC treaty empowers the Council to determine and impose sanctions against Member States.⁵¹⁹

For purposes of fostering the development and implementation of the main objectives of the SADC treaty, certain areas of co-operation have been defined in which Member States are expected to coordinate, rationalize and harmonize their overall macro-economic and sectoral policies and strategies.⁵²⁰ These areas include, *inter alia*, infrastructure and services, industry, trade, investments and finance, international relations, and peace and security.⁵²¹ In

⁵¹⁸ SADC, *Major Achievements and Challenges*, *supra* note 511 at 17.

⁵¹⁹ *SADC Treaty*, *supra* note 507, art. 33

⁵²⁰ *Ibid.*, art. 21(1) and (2).

⁵²¹ *Ibid.*, art. 21(3)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

order to better define policies in these areas of co-operation, the Member States are encouraged to conclude specific protocols to spell out the objectives and scope of co-operation and integration in any given sector.⁵²² These protocols are subject to approval by the Summit on the recommendation of the Council, and, once approved, they become an integral part of the SADC treaty. However, apart from the decisions of the Summit which are generally applicable on Member States without any further ratification, each Protocol must be signed and ratified by each Member State that intends to become party thereto.⁵²³ In addition to the initial treaty, SADC Member States have signed over 37 additional Protocols in a variety of sectors since 1992.⁵²⁴ Of these, 26 have reached the necessary quorum and entered into force.

The objectives and development priorities of the transport sector of the SADC region were defined in a rather early protocol signed in 1996, and which came into force two years later.⁵²⁵ The SADC Protocol on Transport deals with a variety of transport sectors including integrated transport (logistics), road

⁵²² *Ibid.*, art. 22(1) and (2)

⁵²³ *Ibid.*

⁵²⁴ These Protocols include, among others, treaties which entered into force on Immunities and Privileges (signed in 1992), on Shared Watercourse Systems (1995), on energy (1996), on Transport, Communication and Meteorology, on Trade (1996), on the Regional Tourism Organization of Southern Africa (1997), on Mining (1997), on Health (1999), on Wildlife Conservation & Law Enforcement (1999), on Politics, Defense and Security Cooperation (2001), on Fisheries (2001), Against Corruption (2001), on the Facilitation of Movement of Persons in SADC (2005), on Cooperation in Taxation and Related Matters (2002), and on Fundamental Social Rights (2003). SADC, *Major Achievements and Challenges*, *supra* note 511 at 35.

⁵²⁵ *Protocol on Transport, Communications and Meteorology in the Southern African Development Regions*, (24 August 1996), entered into force on 6 July 1998, online: SADC website, <<http://www.sadc.int/>> [SADC Protocol on Transport]. See also: SADC, *Major Achievements and Challenges*, *supra* note 511 at 34.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

transport, railways, maritime and inland waterway transport, and civil aviation. In addition, it defines similar objectives and implementation programs for the telecommunications sector, for postal services, and for meteorology.⁵²⁶ Civil Aviation is covered in Chapter 9 of the Protocol which starts by setting the objectives for the sector. They include the provision of safe, reliable and efficient air transportation within Member States.⁵²⁷ The Protocol further provides that Member States must enhance co-operation within the regional air transport market “in order to overcome the constraints of small national markets, market restrictions and the small size of some SADC airlines”. Liberalization of air services is mentioned only once in Article 9(2), titled Civil Aviation Policy, which provides that Member States will develop a harmonized regional aviation policy, which includes the “gradual liberalization of intra-regional air transport markets for the SADC airlines”.

However, the remainder of the Protocol's policy priorities for civil aviation focuses primarily on developing regionally owned airlines by restructuring existing SADC airlines, airports and air navigation service providers; and on the promotion of fair competition between these service providers. In addition, it aims at expanding and strengthening the member governments' capacity to provide adequate policy frameworks and to establish an appropriate regional institutional mechanism.⁵²⁸

⁵²⁶ *SADC Protocol on Transport, supra* note 525 at 3.

⁵²⁷ *Ibid.*, art. 9.1

⁵²⁸ *Ibid.*, art. 9.2(b), (c), and (d).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The SADC Protocol on Transport, agreed upon three years before the signing of the Yamoussoukro Decision, clearly reflects the objectives of the previous Yamoussoukro Declaration, which primarily aimed at integrating African air carriers.⁵²⁹ While most of the other RECs have agreed upon or issued legislation and/or regulations aimed at implementing the Yamoussoukro Decision, SADC did not take this further step in defining liberalization of the air transport sector as part of its implementation of the Yamoussoukro Decision. Nevertheless, despite the fact that SADC never formally agreed on intra-regional liberalization of its air services, it has continuously worked at implementing the Yamoussoukro Decision, to which most of the SADC Member States are bound.⁵³⁰ The only regional element of the implementation of the Yamoussoukro Decision is the joint COMESA, SADC, and EAC effort aimed at preparing common regulations for competition in air transport services within the three RECs. However, despite the fact that a concrete roadmap for implementation was laid out on several occasions, the adoption of the joint competition regulations and the establishment of a Joint Competition Authority remains incomplete.⁵³¹

In conclusion, SADC has not taken any steps towards implementation of the Yamoussoukro Decision which, for the most part, is binding upon its Member States. However, it has at least acknowledged the Yamoussoukro Decision and its objective of liberalizing air transportation

⁵²⁹ *Yamoussoukro Declaration*, *supra* note 44 at 2.

⁵³⁰ Madagascar, South Africa, and Swaziland are not Yamoussoukro Decision Member States. See Annex III of this dissertation

⁵³¹ SADC, *Annotated Record, Ninth Meeting of the SADC Civil Aviation Committee*. (Manzini, Swaziland; 2006) at 9.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

continent wide. The Summit of SADC has the necessary power to adopt the Yamoussoukro Decision in its region; a decision which would be binding on all Member States if made, but the matter has never been presented for decision by the Council. Member States of SADC, therefore, cannot be considered to have liberalized air transportation in line with the dictates of the Yamoussoukro Decision.

4.3.3 East African Community (EAC)

The history of the East African Community (EAC) began in 1917 when Kenya and Uganda formed one of the first cooperative entities in Africa: a Customs Union. The Union was enhanced when Tanganyika (today Tanzania) joined in 1927, after being freed from German rule.⁵³² Basically, the prime role of the Customs Union was to provide a common customs administration for the countries involved. It was later replaced by the more formal East African High Commission, which was established under British colonial oversight (1948-1961). However, the East African High Commission was seen as a regime imposed on the three British territories of East Africa, Kenya, Tanzania, and Uganda.⁵³³ Nevertheless, when Tanganyika entered into formal negotiations with the British Government for independence in 1961, it was decided that the “common services

⁵³² Steve Kayizzi-Mugerwa, ed., *The African Economy: Policy, Institutions and the Future* (London: Routledge, 1999) at 178.

⁵³³ The Act establishing the commission was the *East Africa (High Commission) Order in Council of 1947*. The Act was promulgated in Britain by virtue of powers vested in the British Crown by the *British Settlement Acts of 1887 and 1945*, and by the *British Foreign Jurisdiction Act of 1890*. In essence, these Acts allowed the British Crown to make laws for British possessions without recourse to the British Parliament. See: S. A. Akintan, *The Law of International Economic Institutions in Africa* (Leyden, 1977) at 124.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

at present provided by the East African High Commission should continue to be provided on an East African basis".⁵³⁴ Subsequently, the East African Common Services Organisation was created.

In 1967, the East African Community (EAC) was formed as an economic cooperative between Kenya, Tanzania, and Uganda.⁵³⁵ One of the objectives of the treaty establishing the EAC was to maintain the cooperative regional trade framework which was initially mandated by the British Crown. An earlier attempt to create a cooperative to be known as the East African Federation had failed in 1964 because of strong nationalist positions and the fact that the economic and political priorities of the three countries started to diverge significantly. The declared long-term objective of the EAC was to set-up an East African common market which would promote, strengthen, and regulate common industrial and commercial developments.⁵³⁶ However, soon after its creation, it became apparent that the treaty of the EAC left several important issues open, and this resulted in many instances of stalled application of the principles of the common market.⁵³⁷ The main challenge of the new organization was the fact that the governments of the three member countries had become increasingly

⁵³⁴ Representatives from Tanganyika, Uganda, Kenya, the East African High Commission and the British Government met to establish the new institution called East African Common Services Organisation on 12 December 1961, eleven days after Tanganyika became independent. See *ibid.*, at 125.

⁵³⁵ *Treaty for East African Cooperation* (1967), reprinted in (1968) 7:2 *Journal of Common Market Studies* 129 [*Treaty for East African Co-operation*].

⁵³⁶ Donald C. Mead, "Economic Co-Operation in East Africa" (1969) 7:2 *Journal of Modern African Studies* 277 at 277 [Mead].

⁵³⁷ For instance, the external tariffs of the three countries, a crucial element of a common market, could not be harmonized as a result of flaws in the institutional set-up of the community. See *ibid.*

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

divergent in their ideological and political views.⁵³⁸ As a result of these divergences, the EAC collapsed in 1977 only ten years after its creation.⁵³⁹ The immediate cause of the collapse of the EAC was the bankruptcy and liquidation of the joint airline East African Airways and the immediate establishment of a national carrier by Kenya in response thereto.⁵⁴⁰ The collapse of the first EAC happened quite swiftly despite the fact that the organization was initially seen as a very promising example of regional cooperation in Africa.

Soon after the dissolution of the former East African Community in 1977, the Member States negotiated a Mediation Agreement for the Division of Assets and Liabilities, which they signed in 1984. One of the provisions of the Mediation Agreement provided that the three States would explore areas of future co-operation and prepare concrete arrangements for such co-operation. This eventually led to the signing of the Agreement for the Establishment of the Permanent Tripartite Commission for East African Co-operation on November 30, 1993 by the Heads of State of Kenya, Uganda, and Tanzania. Three years later, in March 1996, formal East African co-operation commenced yet again when the Secretariat of the Permanent Tripartite Commission was launched with

⁵³⁸ One author summarizes the situation as follows: "[A] three-dimensional verbal 'guerrilla' war has been waged by Kenya, Tanzania, and Uganda against one another; indeed, sometimes it has come very close to physical combat". See: Agrippah T. Mugomba, "Regional Organisations and African Underdevelopment: The Collapse of the East African Community" (1978) 16:2 *Journal of Modern African Studies* 261 at 262 [Mugomba].

⁵³⁹ The ideological split was caused by dictatorship under Idi Amin in Uganda, socialism in Tanzania, and capitalism in Kenya. In addition, Kenya demanded more seats than Uganda and Tanzania in decision-making organs. See generally: Tina Loevom Petersen, "The EAC: The Fast Guide" *MShikamano Magazine* (April 2005)

⁵⁴⁰ Mugomba, *supra* note 538 at 264.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the establishment of a headquarters in Arusha, Tanzania. It was quickly recognized that regional co-operation between the three States needed to be consolidated.

At their second Summit held in Arusha on 29 April 1997, the East African Heads of State directed the Permanent Tripartite Commission to initiate the process of transforming the Agreement establishing the Permanent Tripartite Commission for East African Co-operation into a Treaty for the Establishment of the East African Community.⁵⁴¹ Three years afterwards, the treaty was signed in Arusha by the three so called Partner States on 30 November 1999. Following ratification and deposit of the instruments of ratification with the Secretary General by all three Member States, the Treaty entered into force on 7 July 2000. Initially comprised by the three Partner States, membership of the EAC was enhanced in 2007 when Burundi and Rwanda joined.⁵⁴²

The objectives of the EAC are outlined in Article 5 of the 1999 Treaty.⁵⁴³ The prime objective of the EAC is to “develop policies and programs aimed at widening and deepening cooperation among the Partner States in political, economic, security and legal and judicial affairs, for their mutual

⁵⁴¹ Kayizzi-Mugerwa, ed., *The African Economy: Policy, Institutions and the Future* (London; New York: Routledge, 1999) at 179 [Kayizzi-Mugerwa].

⁵⁴² The five Member States of the EAC today include Kenya (2001), Uganda (2001), Tanzania (2001), Burundi (2007), and Rwanda (2007). See generally Neil Ford, "Rwanda, Burundi to join East African Community" (2007): April 2007 African Business

⁵⁴³ *Treaty establishing the East African Community* (1999), online, Institute for Security Studies website, <www.issafrica.org/AF/RegOrg/unity_to_union/pdfs/eac/EACTreaty.pdf>, [EAC Treaty]

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

benefit”.⁵⁴⁴ To achieve these objectives, the EAC shall establish a Customs Union, a Common Market, and subsequently a Monetary Union which would ultimately lead to a Political Federation.⁵⁴⁵

The EAC treaty states a set of fundamental and operational principles that must govern the achievement of the set objectives.⁵⁴⁶ The most significant fundamental principles include “mutual trust, political will and sovereign equality”, as well as peaceful co-existence and peaceful settlement of disputes.⁵⁴⁷ The key operational principles for the community are “the establishment of an export oriented economy for the Partner States in which there shall be free movement of goods, persons, labor, services, capital, information and technology”, and the subsidiary principle of the EAC that secures multi-level participation and the involvement of a wide range of stakeholders during the process of integration.⁵⁴⁸

The main organs and institutions of the EAC include:

- a) The Summit, which consists of Heads of State or Government, and which shall meet at least once a year. The principal function of the Summit is to “give general directions and impetus as to the development and

⁵⁴⁴ *Ibid.*, art. 5(1)

⁵⁴⁵ *Ibid.*, art. 5(2)

⁵⁴⁶ *Ibid.*, arts. 6 and 7

⁵⁴⁷ *Ibid.*, art. 6

⁵⁴⁸ *Ibid.*, art. 7

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

achievements of the objectives of the Community”.⁵⁴⁹ For this, the Summit is entrusted with other specific functions throughout the treaty, which, in turn, may be delegated to the Council or to the Secretary General.⁵⁵⁰ Rules and orders made by the Summit come into force once they have been published in the Gazette of the EAC. However, as the decisions of the Summit are to be made by consensus, Partner States become bound only if their representative Head of State gives his or her consent.⁵⁵¹

- b) The Council, defined as the policy organ of the Community.⁵⁵² Its role is to “promote, monitor and keep under constant review the implementation of the programs of the Community”, as well as to ensure its proper functioning and development.⁵⁵³ For the performance of this role, the Council may make policy decisions, give directions to Partner States and other Organs and institutions of the Community (except the Summit, the Court and the Assembly); and make regulations, issue

⁵⁴⁹ *Ibid.*, art. 11(1)

⁵⁵⁰ Exceptions from delegation include: (a) general directions, (b) the appointment of Judges to the East African Court of Justice, (c) admission of new members, and (d) the assent to Bills. *Ibid.*, art. 11(4), (6), and (9).

⁵⁵¹ *Ibid.*, art. 12(3)

⁵⁵² *Ibid.*, art. 14(1)

⁵⁵³ *Ibid.*, art. 14(2)

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

directives, or make recommendations.⁵⁵⁴ The regulations and directives made by the Council must be published in the Gazette upon which date they become binding on Partner States and all organs and institutions of the Community.⁵⁵⁵ Decisions of the Council shall also be made by consensus, a mechanism which effectively eliminates the problem of imposing a directive on a Member States against its will.⁵⁵⁶

c) The Coordinating Committee, which consists of the Permanent Secretaries responsible for regional co-operation in each Partner State.⁵⁵⁷ It primarily co-ordinates the implementation of the EAC Treaty, and reports to the Council.⁵⁵⁸

d) The Sectoral Committees, which are created by the Council on the recommendation of the Co-ordination Committee.⁵⁵⁹ Their main function is the preparation and monitoring of

⁵⁵⁴ *Ibid.*, art. 14(3)

⁵⁵⁵ *Ibid.*, arts. 14(5) and 16, with the same exception as applies to the Summit.

⁵⁵⁶ *Ibid.*, art. 15(4)

⁵⁵⁷ *Ibid.*, art. 17

⁵⁵⁸ *Ibid.*, art. 18

⁵⁵⁹ *Ibid.*, art. 20

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

specific implementation programs in their respective sectors.⁵⁶⁰

- e) The East African Court of Justice, which is in charge of “ensur[ing] the adherence to law in the interpretation and application of and compliance with this Treaty”.⁵⁶¹ The Court consists of six judges who are appointed by the Summit.⁵⁶² The Court is involved in a variety of matters such as disputes between the Community and its employees, disputes from arbitration clauses in contracts conferring jurisdiction upon the Community, and disputes between Partner States.⁵⁶³ The judgments of the Court are final, binding, and not open to appeal. However, a review can be requested upon discovery of new substantial facts.⁵⁶⁴ Finally, the execution of judgments of the Court which impose pecuniary obligations on persons is to be governed by the rules of civil procedure of the respective Partner State.⁵⁶⁵

⁵⁶⁰ *Ibid.*, art. 21

⁵⁶¹ *Ibid.*, art. 23

⁵⁶² *Ibid.*, art. 24

⁵⁶³ *Ibid.*, art. 32

⁵⁶⁴ *Ibid.*, art. 35

⁵⁶⁵ *Ibid.*, art. 44

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- f) The East African Legislative Assembly, which is the legislative organ of the Community.⁵⁶⁶ It consists of 27 elected members and five ex-officio representatives (Ministers responsible for co-operation from each Partner State, and the Secretary General and Counsel of the Community).⁵⁶⁷ The Legislative Assembly liaises with the National Assemblies of Partner States on matters concerning the Community; debates and approves the budget; considers annual report and audits of the Community; and is required to discuss various matters pertaining to the Community and make recommendations when necessary for the implementation of the Treaty.⁵⁶⁸ Finally, the Assembly enacts legislation for the Community by means of bills which are passed by the Assembly and assented to by the Heads of State.⁵⁶⁹
- g) The Secretariat, which is the executive organ of the Community, and which includes the Secretary General, the Deputy Secretaries General, the Counsel to the Community, and other offices deemed necessary by the Council.⁵⁷⁰ The

⁵⁶⁶ *Ibid.*, art. 49(1)

⁵⁶⁷ *Ibid.*, art. 48

⁵⁶⁸ *Ibid.*, art. 49

⁵⁶⁹ *Ibid.*, art. 62

⁵⁷⁰ *Ibid.*, art. 66

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Secretary General, who is elected for a fixed term of five years, is the principal executive officer of the Community, as well as its Accounting Officer, and the Secretary of the Summit.⁵⁷¹ The Deputy Secretaries General assist the Secretary General in selected matters and serve three years each.⁵⁷² The Counsel to the Community is the legal advisor of the Community and is appointed on contract.⁵⁷³ The numerous functions of the Secretariat include: (i) receiving and submitting recommendations to the Council; (ii) initiating research for the implementation of programs for the Community; (iii) co-ordinating the harmonization of policies; (iv) general administration and financial management (v) mobilization of funds from development partners; (vi) preparation of the budget of the Community; (vii) preparing the draft agenda for meetings of the Summit; and, (viii) implementation of decisions of the Summit and Council.⁵⁷⁴

Overall, the institutional framework of the newly established EAC is well defined and consists of all the necessary elements for the effective

⁵⁷¹ *Ibid.*, art. 67

⁵⁷² *Ibid.*, art. 68

⁵⁷³ *Ibid.*, art. 69

⁵⁷⁴ *Ibid.*, art. 71

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

implementation of its goal of economic cooperation and integration among its Partner States. In general, decision making within the EAC is consensus based, and this does not seem to pose a major problem given the small number of Partner States and their long history of economic cooperation.

The EAC Air Transport Program

Chapter 15 of the EAC Treaty outlines the modalities of co-operation in infrastructure and services between Partner States. There are several sectors for which policies and concrete programs are outlined.⁵⁷⁵ The civil aviation and civil air transport sectoral program is outlined in Article 92. The objectives of the civil aviation and civil air transport program are to (i) harmonize the civil aviation policies among Partner States, and (ii) to facilitate the establishment of joint air services.⁵⁷⁶ In particular, the Treaty provides a list of concrete elements for reaching these goals.⁵⁷⁷ The main elements engaging the Partner States on civil aviation are:

- a) The adoption of common policies for the development of civil air transport in collaboration with other relevant organizations, such as airline associations or ICAO;

⁵⁷⁵ Apart from air transport, the following sectors are also defined: Common Transport and Communications Policy (Article 89); Roads and Road Transport (Article 90); Railways and Rail Transport (Article 91); Maritime Transport and Ports (Article 93); Inland Waterways Transport (Article 94); Multimodal Transport (Article 95); Freight Booking Centres (Article 96); Freight Forwarders, Customs Clearing and Shipping Agents (Article 97); Postal Services (Article 98); Telecommunications (Article 99); Meteorological Services (Article 100); and, Energy (Article 101).

⁵⁷⁶ *Ibid.*, art. 92(1) and (2)

⁵⁷⁷ *Ibid.*, art. 92(3)

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

- b) The liberalization of the granting of air traffic rights for passengers and cargo operations;
- c) The harmonization of civil aviation rules and regulations;
- d) The establishment of the Upper Area Control system;
- e) Coordination of flight schedules of designated carriers;
- f) The application of the ICAO guidelines for the determination of user charges for scheduled air services; and,
- g) The adoption of common aircraft standards and technical standards within the Community.

Although the stated elements of the EAC Treaty include some elements of the Yamoussoukro Decision, which was signed the same year as the EAC Treaty, it is significant to note that the former restricts itself by merely mentioning the liberalization of the granting of air traffic rights for passengers and cargo operations, and not further specifying the degree or freedom of liberalization to be achieved. The other elements reflected in the EAC Treaty are, at best, only secondary measures of the Yamoussoukro Decision. They include the harmonization of civil aviation rules and application of the ICAO guidelines for the determination of user charges for scheduled air services. Furthermore, the

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

concrete objectives of establishing joint air services and facilitating the efficient use of aircraft are elements of the previous Yamoussoukro Declaration of 1988.⁵⁷⁸

Despite the fact that the EAC Treaty did not incorporate the principles of the Yamoussoukro Decision, the Sectoral Council on Transport, Communications and Meteorology of the EAC has worked continuously on several key measures of the Yamoussoukro Decision. The most important of these measures is the application of a liberalized air transport policy for scheduled air services. While other RECs (for example the WAEMU) have developed specific regulations that have liberalized air services within their respective RECs, the EAC chose to focus merely on amending existing bilaterals between the Partner States. During the 11th Meeting of the Council of Ministers of the EAC, several air transport related projects were formally approved by the Council, which also issued the necessary directives.⁵⁷⁹ In particular, these were the decisions taken and directives issued:

- a) The amendments of the bilaterals between EAC States towards full implementation of the Yamoussoukro Decision on air transport liberalization are approved and must be incorporated into the respective bilaterals.⁵⁸⁰ The amendments include full liberalization of air services

⁵⁷⁸ See *Yamoussoukro Declaration*, *supra* note 44, at 2. However, in its article 11.3, the Yamoussoukro Decision creates the possibility for designated carriers to enter into a mild form of cooperative arrangements amongst themselves.

⁵⁷⁹ East African Community, *Report of the 11th Meeting of the Council of Ministers*, (Arusha, Tanzania: EAC, 2006) EAC/CM11/Decision 44 at 61 [EAC/CM11].

⁵⁸⁰ *Ibid.*

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

between any points within the territory of the EAC.

Following the principles of the Yamoussoukro Decision, no restriction shall be imposed on frequency, capacity, or type of aircraft operated by the designated EAC carrier.

- b) The secretariat is directed by the Council to inform the Economic Commission for Africa, with copy to COMSEA and SADC, that the EAC is fully compliant with the Yamoussoukro Decision. The latter two organizations are urged to “expedite the move towards continental implementation of the Yamoussoukro Decision”.⁵⁸¹
- c) The EAC Air Transport Sub Committee for the implementation of the Yamoussoukro Decision will be staffed with an official responsible for the bilaterals administration, as well as with officials from the civil aviation authorities, airport authorities, and from the Attorney Generals' Chambers of each Partner State.⁵⁸²
- d) The Heads of Civil Aviation and Airport Authorities of each Partner State are authorized and instructed to re-negotiate the funding for civil aviation safety and airport

⁵⁸¹ *Ibid.*, EAC/CM 11/Directive 13 at 62.

⁵⁸² *Ibid.*, EAC/CM 11/Decision 45 at 62

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

projects with their respective Ministers of Finance, as well as to seek other resources for these projects.⁵⁸³

- e) The revised civil aviation regulations for the EAC are to be promulgated in order to facilitate the establishment of the East African Civil Aviation Safety and Security Agency.⁵⁸⁴
- f) The implementation of the priority airport projects is approved.⁵⁸⁵
- g) The Secretariat must develop a comprehensive funding arrangement for the priority airport projects for consideration by the Sectoral Council on Transport, Communications and Meteorology.

The first step towards the implementation of these decisions and directives was taken on 18 April 2007, when an Extra Ordinary Meeting of the Council of Ministers in Arusha approved the establishment of the EAC Civil Aviation Safety and Security Oversight Agency (CASSOA).⁵⁸⁶ The prime objective of the CASSOA is the promotion of safe, secure and efficient use and development of civil aviation by having the Partner States meet their obligations

⁵⁸³ *Ibid.*, EAC/CM 11/Decision 46 at 62

⁵⁸⁴ *Ibid.*, EAC/CM 11/Decision 47 at 62

⁵⁸⁵ *Ibid.*, EAC/CM 11/Decision 48 at 62

⁵⁸⁶ *Protocol on the Establishment of the East African Community Civil Aviation Safety and Security Oversight Agency*, (adopted at the Extra Ordinary Council of Ministers Meeting, Arusha, Tanzania: 2007) [*EAC Protocol on Aviation Safety and Security Oversight Agency*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and responsibilities under the Chicago Convention.⁵⁸⁷ The main functions of the agency are to strengthen the institutional framework for aviation security within the Partner States, to co-ordinate civil aviation security oversight activities among Partner States, and to evaluate and monitor compliance of Partner States with ICAO SARPs.⁵⁸⁸

Even before the establishment of CASSOA in 2007, the Civil Aviation Authorities of the Partner States of the EAC had been working individually on the development and adoption of harmonized Civil Aviation Safety and Security regulations for the region. These regulations contain specific rules for most operational aspects of air transportation. Uganda for instance has developed regulations which were formally adopted in 2006 addressing:

1. Personnel Licensing;⁵⁸⁹
2. Approved Training Organizations;⁵⁹⁰
3. Aircraft Registration and Marking;⁵⁹¹
4. Airworthiness;⁵⁹²

⁵⁸⁷ *Ibid.*, art. 4

⁵⁸⁸ *Ibid.*, art. 5. The revisions and harmonization of the civil aviation regulations in EAC cover the domains of (i) Personnel Licensing in accordance with Annex I of the Chicago Convention, (ii) revisions and harmonization of the Flight Operations regulations in accordance with Annex 6, and Airworthiness (aircraft maintenance, inspections, licensing of aviation maintenance organizations) of Annex 6 of the Chicago Convention.

⁵⁸⁹ Government of Uganda, *The Uganda Gazette*, (Kampala: Uganda Printing and Publishing Corporation, 2006) at 571.

⁵⁹⁰ *Ibid.*, at 853.

⁵⁹¹ *Ibid.*, at 929.

⁵⁹² *Ibid.*, at 955.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

5. Approved Maintenance Organizations;⁵⁹³
6. Instruments and Equipment;⁵⁹⁴
7. Operation of Aircraft;⁵⁹⁵
8. Air Operator Certification and Administration;⁵⁹⁶
9. Commercial Air Transport Operations by Foreign Air
Operators in and out of Uganda;⁵⁹⁷
10. Aerial Work;⁵⁹⁸
11. Rules of the Air and Air Traffic Control;⁵⁹⁹ and,
12. Parachute Operations.⁶⁰⁰

However, as of April 2008, only Uganda and Tanzania had formally adopted the harmonized Civil Aviation Regulations (CARs) into national law. Kenya reported that their CARs had been submitted to the Attorney General's Chambers for promulgation, while the two new members of the EAC,

⁵⁹³ *Ibid.*, at 1019.

⁵⁹⁴ *Ibid.*, at 1099.

⁵⁹⁵ *Ibid.*, at 1207.

⁵⁹⁶ *Ibid.*, at 1471.

⁵⁹⁷ *Ibid.*, at 1615.

⁵⁹⁸ *Ibid.*, at 1639.

⁵⁹⁹ *Ibid.*, at 1707.

⁶⁰⁰ *Ibid.*, at 1815.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Burundi and Rwanda, requested assistance to harmonize their CARs with those of the EAC.⁶⁰¹

From the foregoing discussion, it can be concluded that the EAC has displayed great interest and motivation towards the liberalization and development of air services within the territory of its Partner States. Being a relatively small REC, the EAC depends mainly upon mutual consent when it comes to major decisions and the implementation of programs. The notion of cooperation between Partner States has a long history in East Africa, and must be regarded as the best way forward. Liberalization in the sense of agreeing to bilaterals which conform to the principles of the Yamoussoukro Decision is, therefore, the most appropriate manner of implementation. However, this key element of the EAC's approach to implementing the Yamoussoukro Decision (i.e., the amendment of the existing bilaterals between EAC States), is still pending. Currently, the existing regime of bilaterals between the EAC Partner States is more restrictive than what the Yamoussoukro Decision framework envisages.⁶⁰² Finally, the creation of a regional Civil Aviation Safety and Security Oversight Agency is an important step not only for the implementation of the Yamoussoukro Decision, but for the overall development of international air services in the countries of the region. It is, however, only an important

⁶⁰¹ EAC, *Report of the Meeting of the Heads of Civil Aviation and Airport Authorities*, (Arusha, Tanzania: EAC, 2008) at 3.

⁶⁰² For example, the current bilaterals of Tanzania with Kenya and Uganda generally have no limitations on capacity or type of aircraft. However, they limit frequencies and, in the case of Kenya, the destinations to be served in both countries. There are also no provisions for fifth freedom traffic. See generally *Existing bi-lateral Air Service Agreements of Tanzania as of 30 November 2006* by Margaret T. Munyagi (Dar-es-Salaam, Tanzania: Tanzania Civil Aviation Authority, 2006).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

supporting tool, whereas the revision of the existing bilaterals remains the more important step.

4.4 Law making by Regional Economic Communities (RECs) in Africa

As outlined above, several RECs in Africa have commenced the implementation of the Yamoussoukro Decision by carrying out a sometimes complex law making process. In some regions, this law making process has resulted in the enactment of numerous new operational and commercial laws and regulations in the field of air transportation. However, some RECs on the continent have not adequately addressed the implementation of Decision as yet. Mostly, they do not apply the Decision's regulatory mandate, and their Member States are maintaining or even further developing the framework of restrictive bilaterals with other African counterparts.⁶⁰³ Three major issues need to be addressed when considering this great disparity among African States in an industry which is striving to achieve increased harmonization and liberalization at a global level.

Governance and the power of law making

First is the issue of governance in law making, which poses both great opportunities and great risks for African RECs. The historic background of several regional organizations in Africa shows that numerous attempts at establishing well functioning regional or pan-African initiatives have failed.⁶⁰⁴

⁶⁰³ The decision's regulatory mandate is anchored in Article 12.2 of the Yamoussoukro Decision, where sub-regional and regional organizations are encouraged to pursue and to intensify their efforts in the implementation of the Decision.

⁶⁰⁴ One prominent example is the Lagos Plan of Action, which aimed at promoting the integration of transport and communication infrastructure with a view of increasing intra-

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The law making function of each regional organization is based on the respective treaty establishing the REC. As outlined in this Chapter, all RECs in Africa were established by treaty. Some RECs enjoy very generous law making powers, which limit the autonomy of Member States by obliging them to apply community law without carrying out any further national rulemaking procedures.⁶⁰⁵ On the other hand are the organizations which clearly acknowledge the fact that the exclusive power of law making is an attribute of State sovereignty and therefore resides at the State level. These organizations (or the treaties establishing them) require proper ratification of all agreements, new regulation and laws by their member States in order for them to be binding.⁶⁰⁶

International treaties typically evolve from multilateral processes which result in the adoption of certain instruments. Some of these instruments, such as resolutions, conference declarations, formal multilateral treaties and agreements, later become formally binding on States. To a certain extent, the literature distinguishes between so called *hard law* and *soft law*.⁶⁰⁷ Hard law is

African trade and opening up land-locked countries and isolated regions. See Lagos Plan of Action, *supra* note 45.

⁶⁰⁵ One REC which is enjoying this power over its Member States is CEMAC. See *Kamtoah*, *supra* note 421.

⁶⁰⁶ An example of a REC that requires ratification is the AMU, which has signed over 30 multilateral agreements among the five Member countries. However, as they require ratification by all Union members, only five have been adopted. See *ISS, Profile of AMU*, *supra* note 264.

⁶⁰⁷ According to a paper prepared by its German Commission, the United Nations Educational, Scientific and Cultural Organization (UNESCO) distinguishes between declarations to be understood as “soft law”, and treaties as “hard law”. See: Roberto Andorno, “The Invaluable Role of Soft Law in the Development of Universal Norms in Bioethics”, (presented at a Workshop jointly organized by the German Ministry of Foreign Affairs and the German UNESCO Commission, Berlin, 2007) [Andorno].

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

generally understood as traditional law with a strong binding character. It includes treaty provisions and customary law. Treaties are legally binding agreements between States, and customary law is derived from the continuous practice of States when such practice is driven by a sense of legal obligation. Soft law refers to quasi-legal instruments which do not have full legally binding force and which are traditionally associated with international law.⁶⁰⁸ Nevertheless, it is widely acknowledged that soft law provisions are only of a potentially binding nature. They are generally seen as the beginning of a gradual process in which further steps are needed to transform such agreements into rules which have a binding effect upon states.⁶⁰⁹ The Yamoussoukro Declaration of 1988 was widely considered as an expression of intent, and not obligation to commit to increased cooperation and to eventually grant fifth freedom traffic rights. However, applying the above mentioned concepts, it can be seen as bearing a certain dose of soft law which ultimately resulted in the adoption of the Yamoussoukro Decision, a fully binding treaty to liberalize air services.

The Yamoussoukro Decision primarily establishes the obligation and the right of Member States to exchange up to fifth freedom air traffic rights among each other. However, it does not create the right of a given air carrier to participate in liberalized international air traffic with other African States unless

⁶⁰⁸ The concept of *soft law* is frequently used when discussing governance issues in the European Union, as it is often understood to constitute governance that operates in place of, or along with, the *hard law* that are based on treaties, regulations, and the community's law making process. David M. Trubek, Patrick Cottrell & Mark Nance "'Soft Law', 'Hard Law', and the European Integration: Toward a Theory of Hybridity" (Madison, WI: University of Wisconsin, 2005) at 1.

⁶⁰⁹ *Ibid.*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

that carrier has been formally selected and designated by a Member State to so participate.⁶¹⁰ The Decision's only reference to air carriers in terms of their right to participate in air services concerns fair competition and the obligation of State Parties to guarantee it as couched in the following words:

[States Parties shall ...] ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territories⁶¹¹

The obligation of ensuring fair competition within Member States cannot be considered as hard law, as it does not, in and of itself, create any law making obligations or instruments. However, it can be recognized as an example of soft law which should lead to the creation of competition laws and regulation. The quoted text also suggests that the obligation primarily concerns domestic competition among air carriers and therefore has a limited effect on Yamoussoukro Decision based air services.⁶¹²

Notwithstanding the foregoing, the Decision does have some law making effect where it addresses commercial opportunities. Article 11 for instance stipulates that the designated airline shall have the right to establish offices in the territory of the other State Party. It further grants to designated

⁶¹⁰ The Decision stipulates in Article 6 that each State Party shall have the right to designate in writing at least one airline to operate the intra-Africa air transport service.

⁶¹¹ *Yamoussoukro Decision*, supra note 29, art. 7.1

⁶¹² For the examination of the question if the true intent of the Decision would target competition among carriers in international air service, one could turn to the original version which was prepared in French. However, the French article 7 states “dans leurs territoires respectifs”, which is identical with the meaning of the English text mentioned above.

REGIONAL IMPLEMENTATION OF THE YAMOOUSSOUKRO DECISION

carriers the right to convert and remit all local revenues from the sale of air transport services, and entitles their employees to reside and work in the territory of the other party(ies). Even though the commercial rights granted in Article 11 are limited to selected entities (i.e., designated carriers under the Yamoussoukro Decision), those carriers may be foreign operators. As such, the rights may now be exercised in a manner that previously was not have possible either because they were prohibited (e.g., remittance of revenues by foreign carriers) or were they reserved to nationals only (e.g., the right to take up employment).

The process of law making by international organizations

As outlined above in this Chapter, law making processes at the level of African RECs are quite diverse. However, those regional organizations which benefit from the formal power of law making (by limiting the autonomy of Member States and by obliging them to apply community law) clearly create hard law. For example, both WAEMU and CEMAC have the formal power of law making in their respective treaties.⁶¹³ Hindering or refusing the application of community law in States of those RECs that are recognized as having law making powers is a challenge to governance within the given regional organization.

In general, the law making process of international organizations can occur in a variety of forms or roles. These forms may include law-making in:

⁶¹³ For the direct applicability of the Union decision on Member States in the case of WAEMU see note 355 *supra*.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- a. Forums for state practice, where governments acting by their representatives issue statements on legal questions which provide evidence of customary law;⁶¹⁴
- b. Prescriptive resolutions, which by themselves are not binding, but their mere formulation may develop customary law;⁶¹⁵
- c. Provision of opinion in specialized bodies of legal experts which work on the codification or progressive development of the law;⁶¹⁶
- d. Decision of organs with judicial functions, such as the Court of Justice of the European Communities, which influence the development of the law of treaties as well as the principles of interpretation, and, to a lesser extent, general international law;⁶¹⁷

⁶¹⁴ One example of providing statements on legal practice was the voting of the General Assembly of the United Nations in 1948 affirming “the principles of international law recognized by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal”. Ian Brownlie, *Principles of Public International Law*, Seventh Edition ed. (New York: Oxford University Press, 2008) at 588 [Brownlie].

⁶¹⁵ An example of a prescriptive resolution is a resolution of the General Assembly on a subject dealt with by the United Nations Charter, which is interpreted as an authoritative interpretation of the Charter. *Ibid.*, at 559.

⁶¹⁶ The most prominent body of law-making by expert opinion is the International Law Commission of the United Nations General Assembly, which provides highly influential legal opinions. *Ibid.*, at 31.

⁶¹⁷ See John F. McMahon, "The Court of the European Communities Judicial Interpretation and International Organization" (1961) 320 BYIL 50 [McMahon].

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

- e. The practice of political organs, which often issue a large array of recommendations and decisions relating to matters involving general international law, or which provide constituent instruments, such as the Charter, and evidence of the state of the law;⁶¹⁸
- f. External practice of organizations, which can consist in agreements with Member States or other organizations, as well as making claims or official pronouncements on matters affecting the organization; this practice of international organizations does provide evidence of the law; and
- g. Internal matters of organizations, for which an organization enjoys a large autonomy; the internal law-making often primarily concerns operational procedures, and organizational and employment rules concerning staff.⁶¹⁹

The above mentioned processes of law making by international organizations result in different forms of soft or hard law, with various degrees of effectiveness. Organizations which have the formal rule making power have the prime advantage in that their legislative action becomes binding on Member

⁶¹⁸ The General Assembly and Security Council of the United Nations stand as a prime examples of such a political organ. See generally: Rosalyn Higgins, "The Development of International Law through the Political Organs of the United Nations" (1963) 64 AJIL 18.

⁶¹⁹ See generally Chittharanjan Felix Amerasinghe, *The Law of the International Civil Service* (Cambridge: Cambridge University Press, 2005) [Amerasinghe].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

States. Good examples are specialized organizations that are recognized international organizations with defined norm-setting powers such as the Security Council of the United Nations or the International Civil Aviation Organization (ICAO).⁶²⁰ As generally outlined above, regional economic organizations have various degrees of law-making powers. However, the key element for States accepting to be bound by written rules issued by an international organization, other than those based on consent or explicitly defined in a treaty, is their previous acceptance of the norm-creating process of the international organization.

Finally, even explicitly non-binding agreements in international law can have some effectiveness when their contents become understood as having attained a certain binding status.⁶²¹ In application of the principles of *Soft Law*, non-binding agreements can, in fact, lead to legislative action, such as, for example, a State being prompted to introduce national legislation based on the contents of a non-binding international agreement. Alternatively, non-binding agreements may also develop into customary law through practice.⁶²²

Despite the fact that some RECs have promulgated specific laws and regulations for the purpose of implementing the Yamoussoukro Decision,

⁶²⁰ ICAO, through its Council, is empowered to set international standards which become binding on Member States three months after adoption unless the majority of Member States notify their disapproval. See: *Chicago Convention*, *supra* note 63 art. 90(a). See also Thomas Buergenthal, *Law-Making in the International Civil Aviation Organization* (New York: Syracuse University Press, 1969) at 66.

⁶²¹ In Roman law, there is a clear distinction between the *instrumentum* and the *negotium*, which allows for the *instrumentum* to be legally non-binding while the *negotium* can have binding effect. Laurence Boisson de Chazournes & Vera Gowlland-Debbas, eds., *The International Legal System in Quest of Equity and Universality* (The Hague: Martinus Nijhoff Publishers, 2001) at 245.

⁶²² *Ibid.*, at 247.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

little evidence exists regarding the fact that these rules have been applied, even though air services have developed in certain regions without the application of the formal rules or procedures.⁶²³ On a worldwide basis, general levels of compliance with international law vary greatly. Growing evidence suggests that the global picture of compliance is quite mixed, and in many cases there is only minimal compliance by States.⁶²⁴

One author categorizes the reasons for this non-compliance into three paradigms, the classical, the non-hierarchic network, and the individualist.⁶²⁵

- The classical paradigm distinguishes between an international sphere and a domestic sphere, which are in a dualistic relationship to each other. The international system assumes that independent States which are sovereign and equal to each other recognize international law as an expression of sovereign will. They regard joining a treaty to be in the interest of their country, and compliance to be a matter of national interest.

Opposing this is the domestic sphere, which pushes domestic

⁶²³ As outlined in Chapter 5 below, there is clear evidence that air traffic was developing over the past eight years, even beyond fifth freedom in many regions in Africa. However, there is no known case where the formal mechanism for designating an air carrier, as outlined in Article 6 of the YD, was ever applied.

⁶²⁴ There are about 40,000 bilateral and multilateral agreements registered at the United Nations, many of which are not complied with by States at all or only partially. Eyal Benvenisti & Moshe Hirsch, eds., *The Impact of International Law on International Cooperation* (Cambridge: Cambridge University Press, 2004) at 134 [Benvenisti & Hirsch].

⁶²⁵ See generally Edith Brown Weiss, *Rethinking Compliance with International Law* in Benvenisti & Hirsch, *ibid.*, at 136.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

priorities that may be opposite to the content of an international agreement. This can result in a country joining an international treaty, but having no intention to comply with it.⁶²⁶ The general response to non compliance is sanctions to punish the offender and to deter future violations.

- The network paradigm is characterized by a non-hierarchical power network in which there are, in addition to States, many other key participants performing increasingly complex tasks.⁶²⁷ All participants including States, international organizations, non-governmental organizations, industry associations, ad hoc associations or organizations, and individuals create an international network which flows across national boundaries and which is often quite fragmented. International law, and the compliance with its rules, is influenced by sovereign States, transnational non-State actors and individuals. Under this paradigm, compliance with international treaties depends not only upon binding agreements, but also on soft law; various aspects of public and private international law; and, on customary rules. Compliance

⁶²⁶ Some countries may join a treaty because of the so called “bandwagon” effect, but their governments know that they cannot comply because of conflicts with domestic issues, or because of a lack of capacity to comply. See *ibid.*, at 137.

⁶²⁷ See generally: James N. Rosenau & Ernst Otto Czempiel, *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

is therefore seen as a dynamic process in which all actors interact continuously with each other, which also entails that a country's compliance changes over time.⁶²⁸

- The individualist paradigm recognizes the individual as the key participant and sovereign unit in the international system. As such, individuals give consent to governments and international bodies, and international law, in turn, is focused on the individual and the rights of the individuals.⁶²⁹ The basic idea of this new paradigm is an outflow from international human rights law, where the demise of the sovereignty of States leads to the rise of the sovereignty of individuals and the protection of their rights. Applying the individualist paradigm to compliance with international law would shift the priority onto educating and mobilizing civil society to pressure governments, international organizations and other key actors to comply with their international obligations. To help empowered individuals, non-governmental organizations and other non-State actors to exert that role, a strong focus on transparency and capacity building is necessary. Traditional sanctions against a State, however, become secondary as the

⁶²⁸ SADC, *Major Achievements and Challenges*, *supra* note 511 at 138.

⁶²⁹ Paul W. Kahn, "Speaking law to power: Popular sovereignty, human rights, and the new international order" (2000) 1 *Chicago Journal of International Law* 1.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

State has a diminished role when it comes to compliance with international law.⁶³⁰

The law making process of international organizations and compliance with international law depend, to a great extent, on transparency and good governance especially in Africa where the general level of education is low as compared with other continents. In many African countries, the challenge of establishing good governance in the public sector remains, in the opinion of many experts, the most important obstacle to development in Africa.⁶³¹ One of the chief reasons of poor governance in the public sector emerges from the fact that most economic and political institutions are weak. The weakness of these institutions is often based on the reality that although these institutions were created at, or immediately after, independence, they continue to pursue a colonial strategy of, for example, supporting the drainage and export of the countries' natural resources and agricultural products, along with the financial surpluses they generate. When these institutions are inherited by new administrators, they rarely get transformed but continue to perpetuate their people's poverty and vulnerability.⁶³² One of the inherited problems of weak institutions lies in the behavior of the government officials occupying them who frequently decide, in an

⁶³⁰ SADC, *Major Achievements and Challenges*, *supra* note 511 at 139.

⁶³¹ Good governance has been defined in the Cairo Agenda for Action, adopted at the OAU summit of 1995, as follows: "good governance [is] characterized by accountability, probity, transparency, equal application of the rule of law, and a clear separation of powers". See J. O. Adésinà, Yao Graham & A. Olukoshi, eds., *Africa & Development - Challenges in the New Millennium* (London: Zed Books Ltd., 2006) at 97.

⁶³² Ann Seidman *et al.*, eds., *Africa's Challenge* (Trenton, New Jersey: Africa World Press Inc., 2007) at 5.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

arbitrary and non-transparent fashion, whether and how to implement proclaimed government policies.⁶³³

The only instrument to effectively transform a weak institution that perpetuates a social problem is the effective application of the law.⁶³⁴ Laws are required to influence and change the behavior of elected and appointed officials for two reasons. First, every rule promulgated and implemented by government comprises a law. To ensure the implementation of a desired behavior of an institution, a government must use the law and the legal system. Second, governments generally recognize the *ultra vires* rule, which implies that government officials have no power beyond what the law permits.⁶³⁵

Given the above mentioned challenges, the law making process of international organizations must be inclusive and flexible in nature. Regional Economic Organizations with legislative roles must make wise use of their formal and informal powers when creating law within their Member States. To secure compliance with this law, a process similar to the above described network paradigm should be carried out, and it must allow all stakeholders and participants to voice their concerns and influence the process. However, this process also has

⁶³³ *Ibid.*, at 21.

⁶³⁴ Many experts of development call for a social change, which in turn implies institutional change because of the fact that many institutions perpetuate the social problems which development processes must solve. *Ibid.*, at 20.

⁶³⁵ Under constitutional law, particularly in Canada and the United States, constitutions give federal and provincial or state governments various powers. Any action beyond those powers would be considered *ultra vires*. This was confirmed by the Supreme Court in *United States v. Lopez* in a case of a state government that was striking down a federal law on the grounds that it exceeded the Constitutional authority of Congress. *United States v. Lopez*, 93 U.S. S. Ct. 549 (U.S. 1995).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

its limitations, and these can be felt when individuals as key participants are more focused on maintaining the process of law making, rather than reaching the objective.⁶³⁶ An effective method to stimulate the process of law making in a given region is to compare and evaluate its progress with other RECs on the continent. Given that the implementation of the Yamoussoukro Decision is a continent wide mandate, discussions and coordination by pan-African organizations, especially the African Union, are key instruments to exert pressure on those RECs that have achieved only little progress in the making the required laws and regulations to implement the Decision in their respective regions.

A positive aspect of the matter is the fact that many regional organizations have the opportunity to promulgate and implement binding rules upon their Member States, which can lead to the transformation of the weak institutions in these countries. Respect of a community law may lead to renewed and improved behavior by the public officials of these institutions, and this, in turn, will result in gradual social change in which the law, and its correct application, will indeed begin to matter. The implementation of the Yamoussoukro Decision carries with it a particular advantage for supporting this mechanism. Given the fact that the concept of liberalizing air services is, by

⁶³⁶

One common challenge in many African countries is the fact that a traveling public servant receives a daily “per diem”, which is a sum that should cover decent accommodation and adequate subsistence. In many cases, this sum exceeds the monthly salary of a public servant (for example a per diem of US\$250 for a stay in a major city, exceeds a monthly salary of CFA 100,000 by about US\$40), and many officials in fact are able to save substantial sums helping them to support their families given the generally low levels of remuneration in the public sector. However, this system creates the incentive to prolong or multiply official missions, while reaching a final conclusion or agreement is often postponed. This is especially the case on projects that are supported and funded by international organizations. *Source:* Various missions to Africa and project preparation for the World Bank from 1998 to 2008.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

nature, limited to a very narrow field (international air transport), this would make the implementation of new rules by a regional organization relatively easy since, those rules will not be of direct concern to as many citizens or corporations of a given country. In that sense, the Yamoussoukro Decision is to be understood as an opportunity for RECs to prove that their law making processes are indeed functional. In summary, successful regional implementation of the Decision, which can be considered a relatively low hanging fruit, will result in an improvement of governance in public institutions, and will as well strengthen RECs for the implementation future legislative tasks.

The challenge of legal pluralism

The third issue concerns the challenge of Africa's particular form of legal pluralism, in which the effectiveness of national governments is often reduced because another legal order is of paramount importance. The Yamoussoukro Decision aims at continent-wide liberalization of bilateral air transportation relationships between Member States. However, given the nature and the recency of the technology of air transportation, it is a relatively new mode of transportation which lacks a defined history of accepted customary rules. As outlined in Chapter 2, little progress had been made in the policy implementation of the Decision on a pan-African level. Concerns about this delay have been expressed at several recent meetings, and policy implementation of the

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Yamoussoukro Decision remains one of the critical pending issues of the African Union.⁶³⁷

In assessing the possible reasons why the implementation of a pan-African accord remains incomplete, one could explore the particular challenge that legal pluralism creates on the continent. Legal pluralism in Africa allows unwritten moral laws to have effect next to formally enacted laws. Any country that has more than one legal system could be considered to be following legal pluralism. Many countries that emerged from colonialism are experiencing a certain plurality of law. Sometimes, modern western laws still collide with the practices and rules of a society which maintained its own customary laws and regulations for centuries despite the introduction of modern law by colonial rulers.

Legal pluralism poses a particular challenge in Africa in domains of strong customary principles. One of such domains is the water sector where the formalization of water rights through either nationalization or privatization may be faced with stiff opposition or refusal to apply new rules. The lesson learned in this field of legal pluralism is that new forms of property rights must build upon strong customary principles that consider and incorporate rules which may have existed for centuries, even before the advent of colonialism.⁶³⁸ According to Etienne Le Roy, another outcome of legal pluralism is the fact that, African

⁶³⁷ AU, *Libreville Resolution on Aviation Safety in Africa*, (adopted at the Conference organized by the African Union on Civil Aviation Safety in Africa, Libreville, Gabon, 2006), AU Doc No. AU/EXP/AT/Res.1 (II) at 1 [*Libreville Resolution on Aviation Safety in Africa*].

⁶³⁸ See generally Ruth Meinzen-Dick & Leticia Nkonya. "Understanding Legal Pluralism in Water Rights: Lessons from Africa and Asia", (paper presented at the International Workshop on African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa, Johannesburg, South Africa, 2005).

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

societal disputes are preferably dealt with without official interference.⁶³⁹ Both arguments steer toward the notion that legal pluralism creates a certain level of resistance against the implementation of new regulations especially by regional organizations which might not consider the particular legal and judicial circumstances of a Member State's regulatory environment.

However, there are also theories that support a deeper legal pluralism, as a constructive methodology from which to reconsider the role of the State. In a recent paper, Coel Kirby argues that deeper legal pluralism can in fact lead to the collapse of the reproduced colonial legacy of the bifurcated State (i.e., civil and customary; urban and rural).⁶⁴⁰ Also on the positive side is the observation, that in the global international legal system, a new pluralist form is emerging. This new legal system includes a wide range of different, but equally legitimate, normative choices by national governments, and by international institutions and tribunals. However, these choices are made within the context of universal standards and norms.⁶⁴¹ Applying this principle, one could argue that the Yamoussoukro Decision provides the universal standards and norms for the liberalization of air traffic, whereas the RECs and even national governments may

⁶³⁹ Etienne Le Roy, Emil Le Bris & Paul Mathieu, eds., *Le foncier de l'arbre et le foncier de la forêt* (Paris, Karthala, 1991) at 359.

⁶⁴⁰ Coel Kirby, "Deeper Legal Pluralism: Overcoming the Legacy of Legal Positivism in the Postcolonial African State", (paper presented at the 2007 Annual Conference of the Graduate Law Students Association, University of Toronto, Toronto, Ontario, Canada, 2007).

⁶⁴¹ William W. Burke-White, "International Legal Pluralism" (2004) 25:4 Michigan Journal of International Law 963 at 977.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

maintain normative choices on how to apply these norms in their respective countries.

Nevertheless, in comparison to the above summarized considerations on the challenges of good governance, legal pluralism represents a far smaller obstacle to the implementation of a liberalized air transport system than it does to other sectors. On the one hand, there is little customary law involved, given the nature of air transportation. On the other hand stands the obligation to harmonize laws in international aviation as mandated by several international agreements, including the Chicago Convention.⁶⁴² In addition, the principle of dispute settlement, which in Africa is traditionally carried-out without any official interference, fits well into the current realities of the Yamoussoukro Decision, as all examples of new traffic rights which were agreed upon based on the principles of the Decision were the result of bilateral agreements. Disputes arising out of such agreements would certainly be dealt with on a bilateral basis. However, this bilateral reality must also be continuously respected by regional organizations which have formal powers to impose rules that require a certain bilateral harmony between the States concerned.

⁶⁴² Article 37 of the Chicago Convention mandates States to collaborate “in securing the highest practical degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.” In addition to this article, the Council of ICAO adopted a resolution in 1948 urging the Contracting States “in complying with ICAO standards which are of a regulatory character, to introduce the text of such standards into their national regulations, as nearly as possible, in the wording and arrangements employed by ICAO.” See: ICAO, *Proceedings of the third Session of the Council*, (1948) ICAO Doc. 7310 (C/846) at 26.

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

4.5 Conclusion

The Yamoussoukro Decision explicitly encourages sub-regional and regional organizations to pursue and to intensify their efforts in its implementation.⁶⁴³ This recommendation stems from the fact that Africa is a very fragmented continent with heterogeneous economic and political organizations. Expecting a full and harmonious application in all Yamoussoukro Decision Member States only two years after the decision came into force is probably excessively optimistic. The better strategy is to encourage the various sub-regional and regional organizations which deal with air transportation to begin implementing the steps of the Yamoussoukro Decision, while at the same time, pan-African implementation efforts are driven by the African Union. The underlying idea clearly seems to be one of reaching a situation in which the Yamoussoukro Decision is applied in many RECs, which then start to agree on liberalizing air traffic as between themselves. This last step would eventually complete full continent-wide implementation.

In reviewing the different regions, a quite heterogeneous picture appears. The Arab States of North Africa have not begun liberalizing air services among themselves, even though instruments such as the Arab League Open-Skies Agreement exist. Morocco, the only North-African country that is not a Member State of the Yamoussoukro Decision, is the most active nation liberalizing and expanding its air services; it has signed an open-skies agreement with the European Union, and has also acquired controlling stakes in two African air carriers.

⁶⁴³ *Yamoussoukro Decision*, *supra* note 29 art. 12.2

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

In West Africa, the overarching organization ECOWAS has not been able to take any significant steps towards liberalization of air services. However, the smaller REC WAEMU has gone beyond the principles of the Yamoussoukro Decision in agreeing to an EU model of liberalization which includes cabotage rights. Finally, the Banjul Accord Group has agreed to a multilateral air service agreement which establishes a liberalized regime fully compatible with the Yamoussoukro Decision.

In Central Africa, CEMAC has implemented all the necessary legislative and regulatory elements to comply with the provisions of the Yamoussoukro Decision. In East and South Africa, the most progress has been achieved by COMESA which, in 2001, promulgated a legal instrument that would have effectively liberalized air services. However, after numerous delays, the application of the instrument was suspended until other elements, such as competition regulations are prepared. The EAC, a region which has the longest history of co-operation especially in the field of aviation, has chosen an effective strategy of revising existing bilaterals to conform to the Yamoussoukro Decision. However, while implementation of the Yamoussoukro Decision remains incomplete, progress in other relevant matters such as the establishment of a joint air safety and security agency are significant steps forward. Finally SADC is the Southern African REC which has achieved the least progress. It seems that the dominant position of South Africa, and the fear that its national carrier South African Airways would quickly wipe out competition in a liberalized Southern

REGIONAL IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

African market, remains the main obstacle towards more progress in implementing the Yamoussoukro Decision in that region.

Finally, of the ten African States which cannot be considered Member States of the Yamoussoukro Decision, two (Gabon and Equatorial Guinea) have implemented the Yamoussoukro Decision through their REC. This results in eight African states which remain outside of any obligations of liberalizing air transportation according to the Yamoussoukro Decision either on a continental or regional level.⁶⁴⁴

⁶⁴⁴ These are Djibouti, Eritrea, Madagascar, Mauritania, Morocco, Somalia, South Africa, and Swaziland (see Annex III of this dissertation).

CHAPTER 5

**AIR SERVICE MARKETS IN AFRICA AND INDICATIONS
OF THE IMPACT OF LIBERALIZATION**

5.1 Data source and methodology of analyzing air service markets

Analyzing air service markets in any given region of the world can be done in a number of different ways. For air carriers, one of the most important indicators is the revenue passenger-kilometer (RPK), which represents the revenue derived from transporting one fare-paying passenger one kilometer. The RPK of a given flight can be divided by the so called available seat-kilometers (ASK), which are the total number of seats available for the transportation of fare paying passengers multiplied by the number of kilometers flown. This results in the so called load factor, which, for most airlines, is one of the leading performance indicators as to how well a given route performs within their network. While these data generally would give a comprehensive picture of an air service market, the RPK and ASK of an air carrier are mostly disclosed on a fleet-wide basis only in order not to indicate specific route profitability to competitors.⁶⁴⁵ This is especially true in fragmented international markets where often, only a few carriers dominate certain routes.

The standard source for air traffic data collected by airlines and airports is ICAO. Over the years, ICAO has developed statistics and forecasting

⁶⁴⁵ International publicly listed airlines have become increasingly transparent by generally disclosing a set of data, which includes passengers transported, ASK, RPK, passenger load factor, freight transported, cargo load factors, available cargo-ton-kilometers, revenue cargo-ton-kilometers, total revenue ton-kilometers, overall load factor, and number of flights flown in a given year. A good example is *Lufthansa Annual Report 2007* by Deutsche Lufthansa AG (Cologne) at 46.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

programs that are based on data it collects from its Contracting States, which are then compiled into multiple data series.⁶⁴⁶ These data include information on commercial air carriers (traffic, on-flight origin and destination, traffic by flight stage, fleet-personnel and financial data), on airports (airport traffic by passengers and aircraft movements of international airports, and financial data), on air navigation service providers (financial and traffic data), as well as data from civil aircraft registries.⁶⁴⁷ However, the availability, accuracy and currency of the data are based on the reporting of States. Very often these data are not sufficiently complete, accurate, or reliable, especially in developing countries where statistical capacity is often limited due to lack of training and funding for adequate staff.⁶⁴⁸ In addition, given the fact that the mandate of ICAO is mainly focused on international air services, many Contracting States consider their reporting duty to ICAO to be limited only to international traffic.

⁶⁴⁶ The ICAO database is known as the Integrated Statistical Database (ISDB). See ICAO, *Developments in the Statistics and Forecasting Programmes*, (Working paper presented by the Council of ICAO to the 36th Assembly of ICAO, Montreal, 2007) ICAO Doc. A36-WP/20.

⁶⁴⁷ On-flight origin and destination data show on an aggregate basis the number of passengers, freight and mail tones carried between all international city-pairs on scheduled services. Traffic data by flight stage contains traffic on-board aircraft on flight stages of international scheduled services. The data are classified by international flight stage for each air carrier and aircraft type used, the number of flights operated, the aircraft capacity offered and the traffic (passengers, freight and mail) carried. These data are provided to Contracting States, as well as commercially available. See ICAO Data, online: ICAO website, <<http://icaodata.com/Trial/WhatIsICAO.aspx> accessed 21 May 2008>.

⁶⁴⁸ It was observed by the present author during several missions to Africa from 2002 to 2008 that e.g. actual passenger counts were often kept on paper ledgers with no computerization. In many cases these data were never submitted to ICAO, leaving exceptionally large data holes in any time series. In fact, for many African countries the data holes can be as large as five years or more, with only sporadic monthly reporting.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Alternatively, in the case of developing countries, official airline schedules which are in the public domain are the best source of data for air traffic analysis. The limitation of data published by airlines is the fact that only capacity offered, in terms of seats between two points and not actual passengers carried, is captured. Nevertheless, given the assumption that no airline would, over a period of time, operate an aircraft with enough empty seats to render the flight economically feasible, one could hypothesize that, at any given point in time, 50 to 70% of the seat capacity offered on a route would approximate the actual traffic in terms of passengers carried. In addition, one could also hypothesize that, even with certain changes in load factors taken into account, the overall trend of seat capacity would approximate actual traffic trends over time. Finally, given the fact that data on airline schedules is readily available, and provides additional information such as type of aircraft, the frequency of the routes, and the actual scheduled times of the flight, the analysis of the air service market will primarily be based on such data.

The traditional source for airline data is the Official Airline Guide (OAG), a company with a more than 150 year history of publishing travel schedules.⁶⁴⁹ For many years, OAG was the only provider of such data until the

⁶⁴⁹ Official Airline Guide (OAG) is a global flight information and data provider company for the passenger aviation, air cargo logistics and business travel markets. The firm, a merger of two companies, was founded in the United Kingdom in 1853 as ABC International, when it issued its first publication, the "ABC Alphabetical Railway Guide". Later, Official Airline Guides Inc. was created in 1929 in the US, and published the "Official Aviation Guide of the Airways", listing 35 airlines offering a total of 300 flights. In 1993 the two firms merged, and today OAG operates in three business units: Aviation Solutions, Cargo Solutions and Travel Solutions. Its aviation solutions unit, OAGback Aviation Solutions, provides data on airlines, analytical services and asset valuation support.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Airline Data Group (ADG) of Seabury was created in or about the year 2000.⁶⁵⁰

Both sources depend on route information reported by airlines, and both have captured 99% of the scheduled airline data, with about 900 to 1,000 airlines participating. Though OAG is the more established data collector, both companies enjoy an excellent industry reputation, and are endorsed by IATA.

For purposes of carrying out the analyses of air service markets in Africa in this thesis, which was done in cooperation with the World Bank, a defined set of data was procured from ADG and compiled in electronic form.⁶⁵¹ In order to cover the period of the implementation of the Yamoussoukro Decision, a total of twelve extractions in time were assembled, four each for the years 2001, 2004, and 2007. These extractions cover all scheduled flights within, and to and from the African continent. To ensure that seasonal trends are taken into account, the four samples for each year consist of data for one week in the months of February, May, August, and November. For the annualization of these figures the total sum of the four observations for a given year were multiplied by 13.⁶⁵²

OAG - Corporate Profile, online: OAG website,
<www.oag.com/oagcorporate/aboutOAG_corporateprofile.html> (date accessed: 23 May 2008).

⁶⁵⁰ Founded in 1995, the US based Seabury Group provides investment banking, financial advisory, restructuring and consulting services primarily for transportation companies and those in related industries around the world. Online: Seabury Group - Investment Banking & Advisory Services website, <<http://www.seaburygroup.com/company/index.html>>, (date accessed 23 May 2008).

⁶⁵¹ See generally *Detailed Analysis of African Air Services Schedules* by Douglas Abbey (Washington DC: The Velocity Group)

⁶⁵² Since this is weekly data, the multiplier 13 ($4 \times 13 = 52$ weeks) is more precise than 12 ($4 \times 12 = 48$).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The data consists of one record of each flight occurring during the sampled week, with relevant entries as to: origin and destination airports; the changeover airport in the case of one-intermittent-stop flights; the number of miles of the flight; the duration of the flight; the number of seats available on the flight; the number of times the flight occurred during the week; the day(s) of the week on which the flight was scheduled; the aircraft type used; and, an entry each both for the carrier as well as for the actual operator. Using the relational database management system “Microsoft Access”, the data was normalized and linked to other relevant tables in order to develop a relational database for extensive summarization and querying. In addition, one important adjustment had to be made: flights from one airport to another final destination with an intermediate scheduled stop had their capacity allocated with even proportions to each leg. This implies that a flight from airport A to airport C via Airport B would only have half the capacity go from airport A to C, while the other half would deplane at airport B. This allocation was made for each leg, i.e. if a flight had four legs, each of the destination airports would only have one quarter of the overall capacity allocated. Despite the fact that the even distribution of the legs is just an assumption, this methodology prevents double-counting of capacity for multi-legged flights. The overall impact of these calculation resulted in about a 10% adjustment of capacities.

In order to provide safeguards and so called “sanity checks”, some of the airport aggregates were compared to actual data from ICAO and other

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

sources, where available.⁶⁵³ The ratio of scheduled seats to reported passenger traffic established by the analysis hinted at a load factor of about 65 to 69% for most of the routes tested. This result is a solid and reliable figure, which supports the credibility of the data used. Other more general and rougher summaries resulted in a load factor between 50 to 60%. However, these were large aggregates measured against each other, most likely also having significant assumptions in the index measured against, and therefore less accurate. Overall, in estimating traffic in terms of passengers, a load factor of 70% will be assumed in this research when deriving seat capacity from flight schedules.

The data used is particularly helpful in capturing trends in city and country pairs, fleet renewal (in most cases the type of aircraft is provided down to the detail of series number, i.e. Boeing 737-100 versus 737-800), and airline market share. However, the data analyzed reflects only scheduled and advertised services. Any data on “informal” carriers or charter operators with no public reservation systems, which are issuing paper tickets at the airport and are providing only a chalkboard or a printed flyer as to their schedule, was not captured. For example, the ADG data includes virtually no older, Eastern-built aircraft operating in Africa, yet there is much anecdotal evidence of such operations, as well as accident statistics. Nevertheless, the overall proportion of these flights is generally considered to be relatively small, and they are primarily

⁶⁵³

A sanity check or sanity test is a basic test to quickly evaluate the validity of a statement or calculation. One example of a sanity check in mathematics is multiplying a figure by three or nine, and verifying that the sum of the digits of the result is a multiple of three or nine.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

operated in larger domestic markets, thus being of no significance to the Yamoussoukro Decision.

Finally, in order to confirm and underline the fleet analysis derived from the ADG data, the registration information of each aircraft of each African-registered carrier for the years 1997, 2001, 2004, and 2007 were compiled in an electronic “Microsoft Excel” spreadsheet. The data were summarized and entered manually from the publications of *JP-Fleet* for the respective years.⁶⁵⁴

5.2 Africa’s air traffic development between 2001 and 2007

5.2.1 Intercontinental air traffic

The overall intercontinental air traffic in Africa is dominated by a few entry points. In the North, Morocco, Algeria, and Tunisia operate as entry destinations mainly with flights to and from France. Still in the North, Egypt plays an important role as a gateway to the Middle East, and the Egypt-Germany route is one of the dominant European connections. South of the Sahara, intercontinental traffic relies heavily on the three major hubs of Johannesburg in South Africa, Nairobi in Kenya, and Addis Ababa in Ethiopia. Finally, Dakar in Senegal plays a role in West Africa for intercontinental traffic with Europe, and with the US due to the fact that certain flights between South Africa and the US are required to include a technical stop in Dakar.

In terms of growth rates, the overall African intercontinental capacity increased by 5.8% between 2001 and 2007. However, in recent years, between 2004 and 2007, traffic growth was substantially higher at 10.7%

⁶⁵⁴ Ulrich Klee, ed., *JP Airline-Fleets International* (Zurich, Switzerland: Bucher & Co., 1997, 2001, 2004, and 2007), editions 1997/98, 2001/02, 2004/05, and 2007/08.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

annually. In spite of the demand effects of the fateful events of September 11, 2001, the overall growth between 2001 and 2007 has resulted in a 40% increase to an estimated seat capacity of 244.8 million. In North Africa, the traditionally most dominant intercontinental route between Algeria and France has now been topped by the traffic between France and Morocco. Growth of sub-Saharan Africa's intercontinental capacity yielded an overall increase of 43.6 % between 2001 and 2007, stemming from an annualized growth rate of 6.2%. During this period the continent saw a significant rise in service provided by the Middle East.⁶⁵⁵

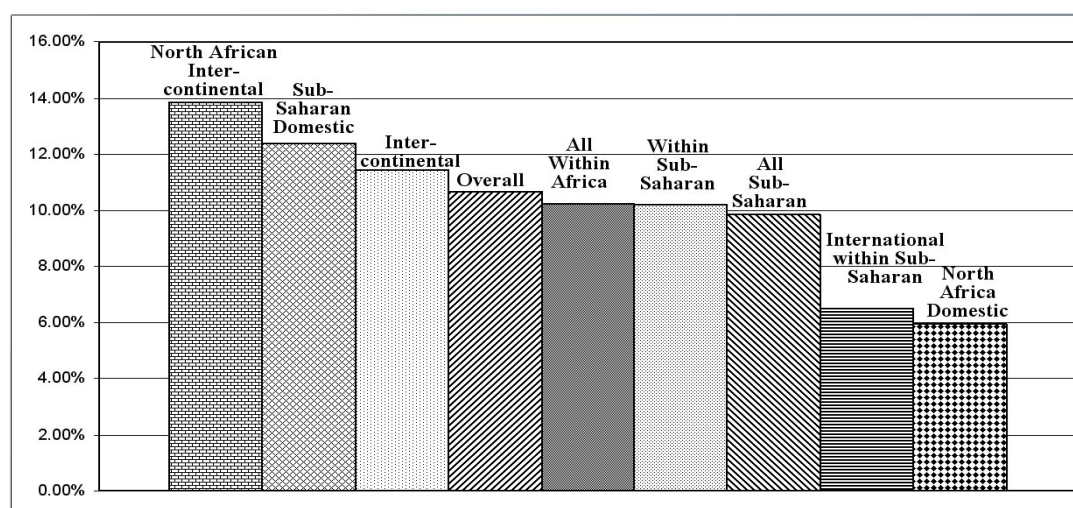


Figure 1: Annualized growth rates of all carriers (African and non-African) in seat capacity by travel type, from 2004 to 2007. Growth in Sub-Saharan domestic travel nearly rivals that of Intercontinental travel in North Africa.⁶⁵⁶

⁶⁵⁵

For example, the United Arab Emirates (UAE) accounted for only two of the top 30 country pairs in 2001, yet by 2007 five of the top routes were with the UAE.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Africa's intercontinental air traffic can be grouped into in seven global regions; (i) Europe; (ii) Middle-East; (iii) South Asia; (iv) Central Asia; (v) East Asia and the Pacific; (vi) South America; and, (vii) North America. The following matrix is obtained from consolidating the data pertaining to each individual route (city-pair):

Table 6: Estimated intercontinental scheduled passengers per global region
(Per annum, in thousands)

Intercontinental	2001	2004	2007
Central Africa			
Europe	736	874	832
Middle-East	24	13	0
East Africa			
Europe	1 244	1 634	2 320
Middle-East	1 439	1 789	2 612
South Asia	170	230	287
East Asia & Pacific	43	120	238
North America	33	41	73
Indian Ocean			
Europe	1 666	1 780	1 730
Middle-East	32	116	311
South Asia	110	155	135
East Asia & Pacific	166	165	184
North Africa			
Europe	11 768	12 813	18 761
Middle-East	4 500	4 940	7 452
South Asia	45	32	37
East Asia & Pacific	201	298	478
Central Asia	0	0	7
North America	326	277	409
Southern Africa			
Europe	3 143	3 452	3 842
Middle-East	246	364	778
South Asia	53	78	116
East Asia & Pacific	732	787	949
South America	126	212	267
North America	220	146	217
West Africa			
Europe	2 843	3 021	3 486
Middle-East	115	163	551
South Asia	9	2	0
East Asia & Pacific	0	0	32
South America	0	8	30
North America	449	338	393
All Africa	30 440	33 848	46 526

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Over the period examined (i.e., from 2001 to 2007), intercontinental traffic increased by 53% (from 30 million in 2001 to 46 million in 2007). The growth rates especially increased from 2004 onwards, a trend also observed on intra-African traffic (see below). In analyzing traffic flows from an African regional perspective, the following figures are observed:

Table 7 Estimated intercontinental passengers per African region
(Per annum, in thousands)

Intercontinental	2001	2004	2007
Central Africa	760	887	832
East Africa	2 930	3 813	5 529
Indian Ocean	1 974	2 216	2 361
North Africa	16 841	18 361	27 144
Southern Africa	4 520	5 039	6 169
West Africa	3 415	3 532	4 491
Total Africa	30 440	33 848	46 526
As percent of total Africa			
Central Africa	2%	3%	2%
East Africa	10%	11%	12%
Indian Ocean	6%	7%	5%
North Africa	55%	54%	58%
Southern Africa	15%	15%	13%
West Africa	11%	10%	10%

The most significant findings are first, the large share of North Africa, which is due to the geographical proximity of the region to Europe and the Middle East. Although considered intercontinental, the traffic between North Africa and these regions is mostly medium-haul traffic, with driving factors such as business activity and tourism, (including vacation travel by nationals of Europe

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and countries in the Middle East, and visits by passengers of North African origin to friends and relatives living in Europe and the Gulf countries). The second finding is the increase of the relative share of North and East Africa, whereas the relative shares of all the other regions tended to decline. However, this is mostly a result of increased capture of intercontinental traffic by the 6th freedom hubs of North Africa to and from Europe, and in East Africa, to and from Asia.

Reviewing traffic flows to and from each region of the World from a global African perspective, we obtain the following passenger figures:

Table 8: Estimated intercontinental passengers per global origin
(Per annum, in thousands)

All Africa to/from	2 001	2 004	2 007
Europe	21 401	23 574	30 970
Middle-East	6 356	7 386	11 703
South Asia	387	497	575
East Asia & Pacific	1 143	1 370	1 881
Central Asia	0	0	7
South America	126	220	297
North America	1 027	802	1 092

The resulting data suggest that certain structural changes are taking place. Europe's dominance on Africa's intercontinental routes still prevails, but is increasingly being challenged by the Middle-East, whereas Asia's share remains steady.⁶⁵⁷ The highest growth rates on major routes were found on routes to the Middle East, specifically between South Africa and Egypt on the one hand and the UAE on the other, and in the traffic between France and Morocco. The only

⁶⁵⁷ See Figures 4 and 5 in Annex VIII – top 30 intercontinental routes for Africa and for sub-Saharan Africa.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

routes showing a decline between 2001 and 2004 are those between the United States and South Africa, and between Morocco and France.

Competitiveness of intercontinental access is greater if the traveler has the flexibility in choosing the entry point into Africa, which, in turn, depends on an efficient intra-continental route network for the further distribution of traffic. However, competitiveness is already considerably high for any given intercontinental route: in the top 20 intercontinental markets, there was an average of 3.45 competing airlines in 2007, with a total of 158 carriers providing intercontinental services. Growth is steady, and a relatively high turnover in airlines occurred between 2001 and 2007 (50 left market, while over 80 new entrants nearly doubled the capacity provided by those who had left). The most dramatic loss in capacity during the time period is attributable to the exit of Air Afrique, Swissair, and Ghana Airways from the intercontinental market.

Table 9 below summarizes the main intercontinental country pair routes, presenting figures on both growth in the routes and competitiveness in terms of number of airlines. Table 10 provides a view as to which airlines are serving Africa on intercontinental routes, ranked by overall market share in 2007. Over 30% of the intercontinental market share is held by the top five airlines – South African, Air France, British Airways, EgyptAir, and Emirates.

It may be concluded from the foregoing discussion that there is a competitive and dynamic market in the intercontinental traffic from and to Africa. However, given the size of the African continent, the traffic is still concentrated on relatively few entry points. Nevertheless, new entrants from the Middle-East

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

seem to have developed a certain catalytic effect, especially in the Eastern and Southern African markets.

Table 9: Number of competitors in the top 20 intercontinental routes in Africa⁶⁵⁸

Country 1	Country 2	Estimated Seat Miles (millions)	A. growth 2001-2007	No. of Airlines
South Africa	United Kingdom	11,693	1.02%	5
Germany	South Africa	5,444	9.08%	3
France	Morocco	5,378	17.40%	8
South Africa	United Arab Emirates	3,195	28.62%	2
South Africa	United States of America	3,102	-3.34%	2
Egypt	Germany	3,099	9.24%	8
Hong Kong, PRC	South Africa	3,041	10.85%	2
France	South Africa	3,025	9.29%	2
Algeria	France	2,954	8.74%	3
Kenya	United Kingdom	2,872	8.27%	4
France	Mauritius	2,780	-0.12%	3
Nigeria	United Kingdom	2,715	9.45%	5
Egypt	United Arab Emirates	2,592	16.94%	6
Egypt	Saudi Arabia	2,415	6.04%	2
Netherlands	South Africa	2,378	5.84%	1
Australia	South Africa	2,139	0.37%	2
Kenya	Netherlands	2,077	6.30%	3
France	Tunisia	1,982	5.21%	5
Mauritius	United Kingdom	1,803	3.85%	3

⁶⁵⁸

Bofinger, supra note 656 at 23.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 10: Top 20 airlines with intercontinental travel with Africa⁶⁵⁹

Airline	Seat Miles 2001 (millions)	Seat Miles 2004 (millions)	Seat Miles 2007 (millions)	Annual Growth 2001 - 2007	Annual Growth 2004 - 2007	Market Share 2007
South African Airways	14,879	14,088	14,795	-0.09%	0.82%	9.32%
Air France	7,986	11,195	12,654	8.0%	2.1%	8.0%
British Airways P.L.C.	11,387	10,907	10,656	-1.1%	-0.4%	6.7%
EgyptAir	7,800	7,164	10,577	5.2%	6.7%	6.7%
Emirates	1,528	4,398	8,924	34.2%	12.5%	5.6%
KLM Royal Dutch Airlines	4,576	5,854	6,641	6.4%	2.1%	4.2%
Royal Air Maroc	3,872	4,594	6,153	8.0%	5.0%	3.9%
Ethiopian Airlines	1,840	2,398	4,962	18.0%	12.9%	3.1%
Air Mauritius	4,226	4,589	4,838	2.3%	0.9%	3.1%
Deutsche Lufthansa AG	3,228	4,391	4,770	6.7%	1.4%	3.0%
Kenya Airways	1,892	2,686	4,237	14.4%	7.9%	2.7%
Virgin Atlantic Airways	1,889	2,267	3,213	9.3%	6.0%	2.0%
Qatar Airways (W.L.L.)	211	633	2,865	54.5%	28.6%	1.8%
Air Algérie	2,071	2,263	2,636	4.1%	2.6%	1.7%
Tunisair	2,307	2,401	2,569	1.8%	1.1%	1.6%
Saudi Arabian Airlines	1,765	2,047	2,483	5.9%	3.3%	1.6%
Swiss International Airlines.	59	1,919	2,148	82.1%	1.9%	1.4%
Singapore Airlines Limited	1,876	2,121	2,145	2.3%	0.2%	1.4%
Alitalia	1,535	1,674	1,986	4.4%	2.9%	1.3%
TAP	921	1,190	1,948	13.3%	8.6%	1.2%

⁶⁵⁹

Ibid., at 24.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

5.2.2 International air traffic within the African continent (“intra-African” air traffic)

The international air traffic within the African continent must be subdivided into three markets: (i) the North African market; (ii) the sub-Sahara market; and, (iii) the market between North and sub-Sahara Africa. Overall, intra-African air traffic (domestic and international) increased between 2001 and 2007 at an annualized rate of 4.2%. However, an overall annual growth of 10.2% occurred between 2004 and 2007. The strongest overall market increase of 64% occurred between sub-Saharan Africa and North Africa. Still an increase of 45% was experienced in the North African market, while international traffic within sub-Saharan Africa only grew by 17% between 2001 and 2007 (see Table 11 below).

Table 11: Estimated international seat capacity within Africa from 2001 to 2007⁶⁶⁰

Market	Est. Seats 2001 (millions)	Est. Seats 2004 (millions)	Est. Seats 2007 (millions)	Growth 2001- 2004	Growth 2004- 2007	Growth 2001- 2007
All markets	87.5	90.3	122.4	1.1%	10.7%	5.8%
All within Africa (domestic and international)	42.8	40.9	54.7	-1.5%	10.2%	4.2%
All just Sub-Saharan	50.4	54.5	72.3	2.7%	9.9%	6.2%
Intercontinental only	43.7	48.4	66.9	3.5%	11.4%	7.4%
Sub-Saharan Intercontinental (No North Africa)	19.5	22.1	28.1	4.1%	8.4%	6.2%
North Africa Intercontinental (No Sub-Saharan)	24.1	26.3	38.8	2.9%	13.9%	8.3%
All international within Africa	13.8	14.4	18.8	1.4%	9.3%	5.2%
North African	1.1	1.3	2.0	3.2%	16.6%	9.7%

⁶⁶⁰ *Ibid.*, at 17. Estimated seats and growth rates in African air transport markets. Since these markets overlap, totals of the different sub-markets add up to more than the overall total shown in the first row.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

International within North Africa						
Sub-Saharan International within Sub-Saharan	11.8	11.9	14.3	0.3%	6.5%	3.4%
Between North Africa and Sub-Saharan Africa	0.9	1.3	2.5	11.1%	24.8%	17.8%
Sub-Saharan domestic	18.2	19.4	27.5	2.1%	12.4%	7.1%
North Africa domestic	10.7	7.1	8.4	-12.9%	6.0%	-3.9%
Other	1.0	1.1	0.8	1.2%	-9.6%	-4.3%

The North African market

The North African international market has experienced strong growth. On an annual basis, international air traffic increased 9.7% between 2001 and 2007. However, the highest annual growth of 16.6% occurred between 2004 and 2007. The strongest growth was on routes involving Egypt, Libya and Morocco. The network within North Africa consists of ten main country pairs, and it remained stable during the past decade in terms of city pairs served. However, competitiveness in these top routes declined slightly, with the exception of the routes between Egypt and Libya, and Egypt and Morocco.⁶⁶¹ The five leading carriers of the region are EgyptAir (leading with 627,000 seats in 2007), Royal Air Maroc (578,000 seats), Jamahiriya Libyan Arab Airlines (440,000 seats), Tunisair (310,000 seats), and Air Algérie (35,000 seats). Despite a decline

⁶⁶¹ Competitiveness is measured in table 11 by the Herfindahl index. The Herfindahl index, which is also known as Herfindahl-Hirschman Index or HHI, is an indicator that measures the amount of competition in a given industry. It does this by measuring the size of firms in relationship to the industry with an indicator of the amount of competition among them. The index was named after two economists, Orris C. Herfindahl and Albert O. Hirschman, and it became an economic method that is widely applied in competition law and antitrust. The formula for calculating the index includes the sum of the squares of the market shares of each individual firm, e.g. the average market share, weighted by market share. The resulting indicator can range from 0 to 10,000 spanning from a very large amount of very small firms to a single monopolistic market participant. A decreasing Herfindahl index indicates a loss of market power and an increase in competition, and increases imply a reduction of competition.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

in competitiveness, no carrier dominates any route by enjoying a monopolistic advantage or by displaying anti-competitive behavior. The overall quality of the North African airline industry is generally considered the best in Africa. Many have well developed international and intercontinental networks, and have demonstrated a generally good safety record over the past few years.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 12: Overview of the capacities offered for international travel within North Africa⁶⁶²

Country 1	Country 2	City Pairs 2001	City Pairs 2007	Airlines Feb 2001	Airlines Nov 2007	Adj Seats 2001 ('000)	Adj Seats 2004 ('000)	Adj Seats 2007 ('000)	Annual Growth 2001 - 2007	Annual Growth 2004 - 2007	Herfindahl Index Feb 2001	Herfindahl Index Nov 2007	Leading Airline 2007	Airline Market Share 2007	Leading Airline 2001	Airline Market Share 2001
Egypt	Libya	6	5	2	3	178.3	203.8	527.7	19.8%	37.3%	6,814	3,965	EgyptAir	45%	Jamahiriya Libyan Arab Airlines	79%
Libya	Tunisia	3	3	3	2	141.2	169.4	298.0	13.3%	20.7%	4,670	5,037	Jamahiriya Libyan Arab Airlines	51%	Jamahiriya Libyan Arab Airlines	58%
Morocco	Tunisia	2	2	4	2	228.4	232.6	270.8	2.9%	5.2%	3,787	5,006	Royal Air Maroc	52%	Tunisair	46%
Algeria	Tunisia	1	2	3	2	169.5	184.3	212.0	3.8%	4.8%	3,576	5,005	Tunisair	54%	Tunisair	43%
Algeria	Morocco	2	2	5	2	80.9	99.4	165.4	12.7%	18.5%	2,482	5,017	Royal Air Maroc	58%	Air Algérie	32%
Egypt	Morocco	1	1	2	2	92.4	66.2	142.0	7.4%	29.0%	5,005	5,169	Royal Air Maroc	59%	Royal Air Maroc	50%
Libya	Morocco	1	3	2	4	94.8	109.6	141.9	7.0%	9.0%	5,214	2,688	Jamahiriya Libyan Arab Airlines	37%	Jamahiriya Libyan Arab Airlines	67%
Algeria	Egypt	1	1	2	2	55.2	66.3	99.3	10.3%	14.4%	5,351	5,152	EgyptAir	58%	EgyptAir	65%
Egypt	Tunisia	1	1	2	2	69.4	86.7	98.3	6.0%	4.3%	5,134	5,005	Tunisair	52%	Tunisair	59%
Algeria	Libya	1	1	2	2	33.9	38.8	35.6	0.8%	-2.9%	5,001	5,341	Air Algérie	56%	Jamahiriya Libyan Arab Airlines	52%
						1,144.0	1,257.1	1,990.8	9.7%	16.6%						

⁶⁶²

Source: Bofinger, *supra* note 656 at 26.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The sub-Saharan market

International traffic within sub-Saharan Africa increased at an average annual rate of 6.2% between 2001 and 2007. Air travel within sub-Saharan Africa is concentrated on a few airports which serve as hubs. In fact, the three major airports, Johannesburg, Nairobi, and Addis Ababa, represent 36% of the seat capacity offered in the sub-Saharan market (see table 12 below).

Each of these hubs is served by dominating national carriers: South African Airways at Johannesburg with 33% market share; Kenya Airlines at Nairobi with 70% market share; and, Ethiopian Airlines at Addis Ababa with 83% market share. Kenya Airlines and Ethiopian Airlines experience almost no competition on most of the international routes they dominate, whereas South African Airways typically competes with one other international carrier on such routes.

While East Africa has a well developed international route network, the situation in West and Central Africa remains quite different. The only significant hub in this region is Lagos in Nigeria, which had more than 1 million seats offered within the sub-Saharan region in 2007 (see table 12). One reason for the slow growth in that region is the collapse of a few national and regional carriers, a situation which caused an absolute decline in service in recent years. Nevertheless, while the surrounding countries had negative growth, Nigeria experienced very strong development in its domestic market.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 13: Top 15 airports serving international travel within Sub-Saharan Africa⁶⁶³

Country	City/Airport	Airport ID	Est. Seats 2007 ('000)	Percent of all Airports
South Africa	Johannesburg	JNB	5,742	20.0%
Kenya	Nairobi	NBO	2,901	10.1%
Ethiopia	Addis Ababa	ADD	1,706	6.0%
Nigeria	Lagos	LOS	1,157	4.0%
Senegal	Dakar	DKR	986	3.4%
Zambia	Lusaka	LUN	959	3.4%
Uganda	Entebbe	EBB	954	3.3%
Zimbabwe	Harare	HRE	828	2.9%
Ghana	Accra	ACC	813	2.8%
Namibia	Windhoek	WDH	791	2.8%
Tanzania	Dar Es Salaam	DAR	749	2.6%
Cote D'Ivoire	Abidjan	ABJ	717	2.5%
Mauritius	Mauritius	MRU	544	1.9%
Angola	Luanda	LAD	484	1.7%

The number of carriers serving the international markets within sub-Saharan Africa between 2001 and 2007 ranged from 67 to 78. Of this number, 76 were serving 206 country pairs in 2007, which represents a significant reduction of 14% from the 238 country pairs served in 2001. The decline in country pairs is the result of ongoing market concentration by a few dominant operators. A clear indicator of market concentration is the fact that in 2007, 16 of the top 60 routes were served by only one carrier, up from 10 in 2001. The concentration is even stronger on the remainder of the

⁶⁶³ *Ibid.*, at 27.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

market where 50 routes were dominated by one single carrier in 2007 as against 25 in 2001. However, 25 of the 50 routes did not exist in 2001. The prime operators on these new routes are Ethiopian Airlines and Kenyan Airways (see

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 14 on market concentration below).

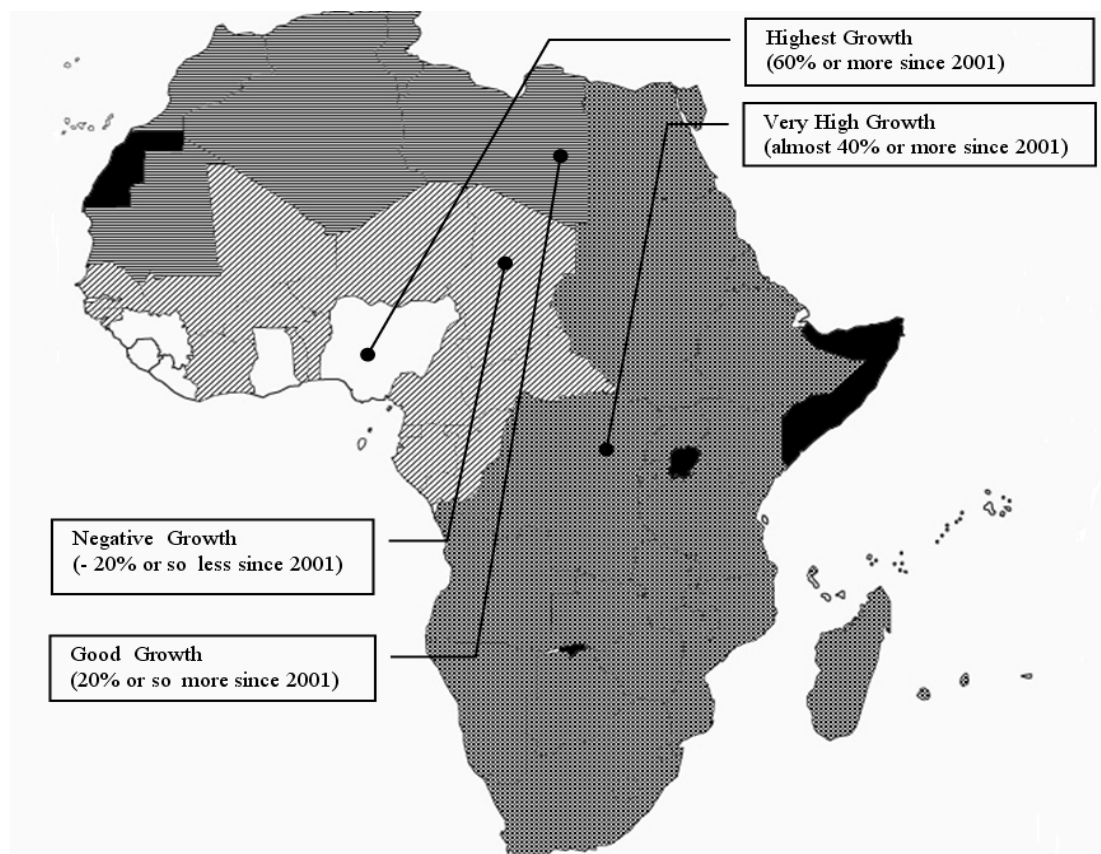


Figure 2: Regional growth zones in terms of seats offered.⁶⁶⁴ The Banjul Accord Group countries have seen the highest increase, surrounded by neighbors with very little, if not negative, growth. East Africa and North Africa both showed high, if not very high, growth.

⁶⁶⁴ *Ibid.*, at 31.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Table 14: Airlines operating in monopoly markets in Sub-Saharan international traffic⁶⁶⁵

Leading Airline 2007	Seats 2007 (‘000)	Seats 2001 (‘000)	Percent 2007	Percent 2001
Ethiopian Airlines Enterprise	1,173	273	45%	43%
Kenya Airways	583	35	22%	5%
Belview Airlines Ltd.	101	8	4%	1%
SA Airlink d/b/a South African Airlink	86	45	3%	7%
Zambian Airways	77	0	3%	0%
Air Namibia	76	17	3%	3%
TAAG Angola Airlines	67	12	3%	2%
Air Seychelles Limited	64	0	2%	0%
Hewa Bora Airways	49	2	2%	0%
Air Tanzania Company Ltd.	36	20	1%	3%
Slok Air International	32	41	1%	7%
Air Mauritanie	28	11	1%	2%
Air Mauritius	26	0	1%	0%
Air Senegal International	25	5	1%	1%
Rwandair Express	23	8	1%	1%
Eritrean Airlines	22	0	1%	0%
South African Airways	18	85	1%	13%
Air Botswana Corporation	15	0	1%	0%
Afriqiyah Airways	15	0	1%	0%
Air Madagascar	14	31	1%	5%
Air Burkina	14	38	1%	6%
Sudan Airways Co. Ltd.	13	0	0%	0%
Inter-Aviation Services (South Africa)	12	0	0%	0%
Star Equatorial Airlines	12	0	0%	0%
Nas Air (Eritrea)	10	0	0%	0%
Steffen Air Charter Services (Swaziland)	9	1	0%	0%
SN Brussels Airlines	9	0	0%	0%
Air Zimbabwe (PVT) Ltd.	9	0	0%	0%
Air Service	9	0	0%	0%
Transportes Aereos de Cabo Verde	2	0	0%	0%
Benin Golf Air SA	1	2	0%	0%
Total Seats in Monopoly Markets	2,628	632	100%	100%

Annual Growth Rate Monopolized routes 27%
Annual Growth Rate Monopolized routes
Ethiopian Only 28%
Annual Growth Rate Monopolized routes
Kenyan Only 60%

⁶⁶⁵ *Ibid.*, at 33

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

The Market between Sub-Saharan Africa and North Africa

The market between Sub-Saharan Africa and North Africa is dominated by two main carriers, Royal Air Maroc and EgyptAir, which, together, offer 81% of the seat capacity. Three other airlines, Afriqiyah Airways, Air Algérie, and Tunisair share the remaining 19%. Each of the carriers concentrates on a distinct geographical market segment with destinations South and West of their home base. EgyptAir serves several destinations in the South Eastern part of the continent, with Sudan being its most frequent one. Morocco serves primarily West Africa, and Libya's Afriqiyah Airways has established a network with many destinations in West and Central Africa (see figure 6 below for an illustration of this market).

The most important routes between North Africa and sub-Saharan Africa include Sudan, Senegal, South Africa, Kenya, Mauritania, Ivory Coast, Mali, Nigeria, Ethiopia, and Gabon. Growth on these routes has been very strong, with some increasing over 26% annually between 2001 and 2007, and even above 44% annually between 2004 and 2007. The overall annual growth rate of traffic between North Africa and sub-Saharan Africa was over 18% between 2001 and 2007, and about 26% between 2004 and 2007. 17 country pairs have been added to the market since 2001, bringing the total number of country pairs to 45. The new routes primarily serve Morocco and Libya, and 41 of the 45 routes including all of the newly established ones are dominated by a single operator.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

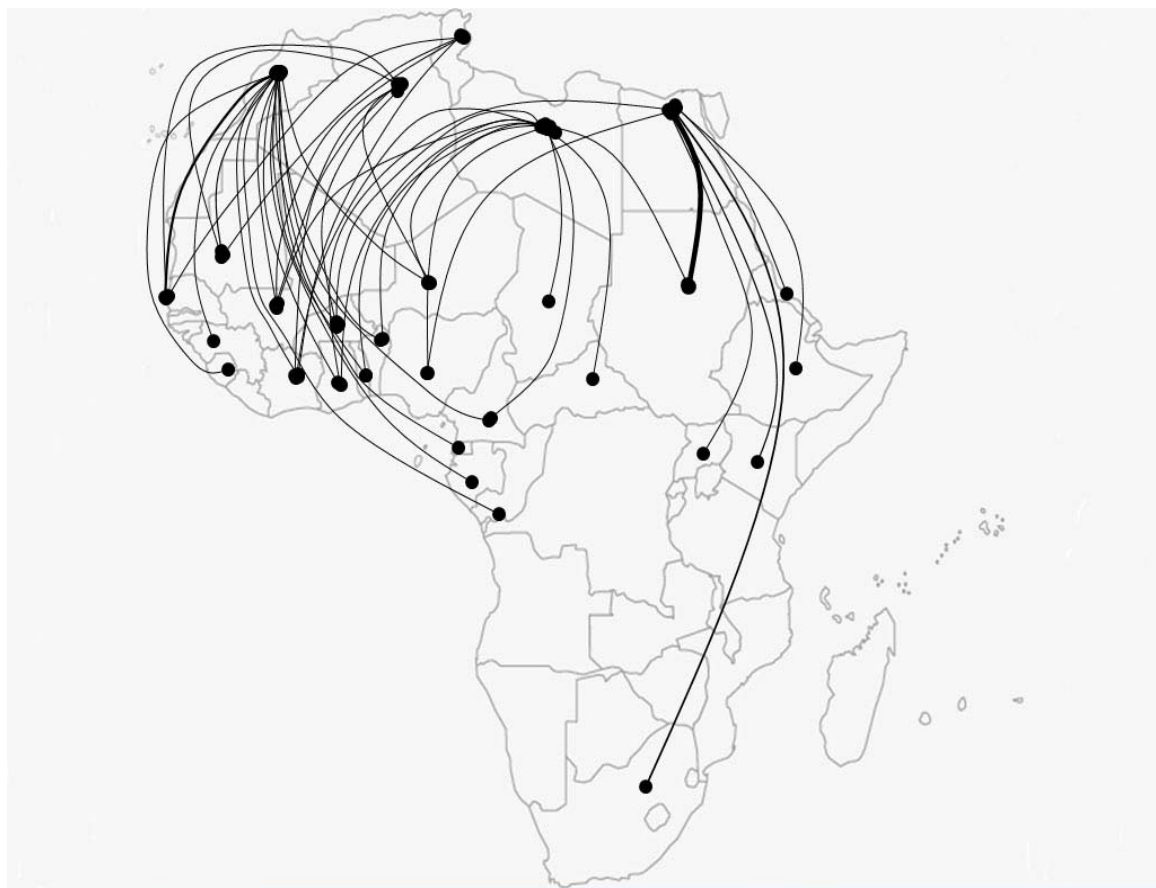


Figure 3: Top international routes between Sub-Saharan Africa and North Africa⁶⁶⁶

5.2.3 Domestic air traffic markets

In terms of seat capacity, domestic markets in sub-Saharan grew overall by 34% between 2001 and 2007, with a significant annual growth rate of 12% from 2004 to 2007. The domestic North African markets on the other hand, shrunk by 27% during the same period. However, it is interesting to note that the number of city pairs of both markets has been declining, with various destinations being dropped from the domestic networks (see Table 15 below).

⁶⁶⁶ *Ibid.*, at 30.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 15: Domestic markets in sub-Sahara Africa⁶⁶⁷

Country	Est. Seats 2007 (millions)	Est. Seat Miles 2007 (millions)	Annual Growth Seat Miles 2004 - 2007	Airlines 2007	City Pairs November 2007	Net City Pair Change 2004-2007
South Africa	15.9	8,891.8	11.8%	12	36	-8
Nigeria	4.7	1,389.1	66.8%	7	19	13
Mozambique	0.6	306.1	19.7%	3	28	9
Kenya	1.0	253.6	-3.7%	4	15	-3
Tanzania	0.9	240.0	-1.8%	5	16	-3
Madagascar	0.6	208.6	3.7%	2	24	-61
Angola	0.6	192.4	10.0%	2	21	4
Sudan	0.3	159.5	12.9%	3	13	-5
Congo DRC	0.2	106.2	-5.7%	2	9	-7
Mauritius	0.3	93.5	16.0%	2	1	0
Ethiopia	0.4	80.7	-6.5%	1	8	-42
Congo	0.2	52.1	-18.1%	4	1	-7
Zambia	0.2	40.9	57.7%	2	6	0
Botswana	0.1	40.1	6.3%	1	3	-3
Cape Verde	0.3	34.8	-7.9%	1	10	-1
Zimbabwe	0.1	29.9	-16.4%	1	5	3
Gabon	0.2	28.9	-9.4%	1	9	-2
Somalia	0.1	28.1	54.5%	4	5	2
Namibia	0.0	13.8	-12.1%	1	7	-6
Malawi	0.1	12.6	-1.1%	1	3	-3
Ghana	0.1	11.6		1	4	
Senegal	0.1	10.8	4.0%	1	3	0
Cameroon	0.1	10.5	-49.0%	3	3	-7
Seychelles	0.4	9.6	1.5%	1	1	0
Uganda	0.0	7.9	33.6%	1	4	3
Comoros	0.1	6.8	11.9%	3	7	6
Eritrea	0.0	5.8		1		
Mauritania	0.0	2.1	-62.0%	1		
Burkina Faso	0.0	2.1	-12.9%	1	1	0
Equatorial Guinea	0.0	1.3		1	1	

Note: During the year, airlines may have stopped servicing a city pair, e.g. though the Republic of Congo may show four airlines for 2007, in November 2007 there were in fact only two. Significant are the very high growth rates in Nigeria, Mozambique, and Zambia. Though Somalia is also growing at a very high rate, the domestic market is roughly only one tenth of, for example, Kenya's. Countries with missing growth rates represent new data where previous services in 2001 either did not exist or where not published.

⁶⁶⁷

Ibid., at 39.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The size of domestic markets in North Africa is relatively small. They compare to about one fifth the size of the sub-Saharan African markets when measured in seat-miles. In both regions, the number of city pairs has been declining; an indication of increasing consolidation in domestic networks across the African continent. The drop in the number of city pairs was even accelerated between 2004 and 2007, with an overall loss of 229 routes in sub-Saharan Africa and 32 routes in North Africa. The disappearance of several major regional or national carriers in several regions contributed to this reduction.

The domestic markets in North Africa are generally more mature and less dynamic. National flag carriers continue to play dominant roles in several States. This is the case in Algeria for instance, where Air Algérie maintains a monopoly on almost all domestic routes with the exception of a few on which some smaller non-significant operators compete.⁶⁶⁸ Of the other countries, Egypt, Libya, and Morocco experienced an increase in competitive pressure from new operators, although they still have only a small share of the respective domestic markets. The only exception to the foregoing trend is Morocco, where new private regional airlines have been established successfully and are presently providing service to thirteen city pairs, thereby replacing the former dominant national carrier Royal Air Maroc or serving entirely new routes (see table 15).

⁶⁶⁸

Algeria experienced the successful rise of Khalifa Airways, which was a passenger and cargo carrier based in Algiers operating initially on domestic routes, but later expanding internationally. The airline was founded in June 1999 by Rafik Khalifa, but ceased operating in 2003.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 16: Domestic Markets in North Africa⁶⁶⁹

Country	Est. Seats 2007 (millions)	Est. Seats Miles 2007 (millions)	Annual Growth of Seat Miles 2004 - 2007	Airlines 2007	City Pairs Nov 2007	Net City Pair Change 2004-2007
Libya	1.23	844.86	4.49%	4	11	3
Egypt	2.98	828.42	12.88%	10	18	-2
Algeria	2.17	676.49	-2.17%	1	44	-5
Morocco	1.74	374.66	5.09%	8	18	5
Tunisia	0.33	65.37	-10.62%	4	10	2
Totals	8.45	2,789.79		27	101	3

Mostly, domestic air service markets in Sub-Saharan Africa are highly concentrated, experiencing very little or no competition at all. Of the 286 domestic routes in this category, only 54 had more than one operator serving them in 2007. Most operators on the domestic routes are national carriers which enjoy *de facto* monopoly on those routes. However, South Africa and Tanzania have allowed competition in their domestic markets and developed significant traffic as a result. In South Africa competition is primarily active on the most traveled routes. In 2007, Tanzania had more than one air service provider on every one of its 17 domestic routes.

The overall growth of domestic markets between 2001 and 2007 was 7.1%, and a stronger growth of 12.4% was recorded between 2004 and 2007. However, this was primarily based on the growth of the domestic markets in South Africa, Nigeria, and Mozambique. Without these markets, overall growth in sub-Saharan Africa was nearly neutral at a rate of negative 0.84%, and there was a net loss of 137 routes between 2004 and 2007. The domestic markets of South Africa and Nigeria combined represent

⁶⁶⁹ Source: Bofinger, *supra* note 656 at 38.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

over 83% of all known scheduled domestic air services, with South Africa alone accounting for 72.5%. Further, it is significant to note that certain larger States with successful carriers, such as Ethiopia, have not developed their domestic markets, whereas several island nations such as Madagascar, Cape Verde, Comoros, and the Seychelles will, as a matter of necessity, continue to depend on scheduled domestic air services.

5.3 Evidence of the impact of the Yamoussoukro Decision on traffic and airline fleets

5.3.1 General traffic analysis

For purposes of measuring the impact of liberalization, the traffic analysis focuses on two main types of markets for each economic community, namely: international traffic in terms of seat capacity within a REC; and, international traffic of a REC with other Africa countries outside the given REC. As mentioned above, the dataset applied consists of twelve extractions, four each for the years 2001, 2004, and 2007. These data were annualized and used to provide an estimated seat capacity for 2001, 2004, and 2007. The change in seat capacity can thus be measured for the two periods between 2001 and 2004, and 2004 and 2007. However, given the fact that most of the implementing measures the Yamoussoukro Decision were only launched or achieved in recent years, and given also the worldwide drop in air traffic growth after the events of 11 September 2001, the latter dataset does provide more reliable evidence of the liberalization related impact.

The RECs were rated in terms of their progress made towards the implementation of the Yamoussoukro Decision and the actual level of liberalization

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

achieved. The rating scale ranges from score 1 (no progress towards liberalization) to score 5 (full liberalization achieved) (see Table 17 below).

Table 17: Grading of RECs in terms of liberalizing air services

Community	General Status of YD Implementation	Status of Air Services Liberalization	Overall Implementation Score
AMU	No implementation.	No liberalization within AMU initiated, but need is recognized.	1
BAG	Principles of YD agreed upon in a multilateral air service agreement.	Up to fifth freedom granted, tariffs are free, and capacity/frequency is open.	4
CEMAC	Principles of YD agreed upon in an air transport program. Some minor restrictions remain.	Up to fifth freedom granted, tariffs are free, and capacity/frequency is open. Maximum of two carriers per State may participate.	5
COMESA	Full liberalization decided ("Legal Notice No. 2"), but application and implementation remain pending until a Joint Competition Authority is established.	Incomplete. Once applied, operators may be able to serve any destination (all freedoms), tariffs and capacity /frequency will be free.	3
EAC	EAC Council has issued a directive to amend bilaterals among EAC States to conform with YD.	Air services are not liberalized, as the amendments of bilaterals remain pending.	3
SADC	No steps taken towards implementation despite the fact that Civil Aviation Policy includes gradual liberalization of air services within SADC.	No liberalization within SADC initiated.	2
WAEMU	Within WAEMU the YD is fully implemented.	All freedoms, including cabotage, granted. Tariffs are liberalized.	5

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

A cursory glance at the changes in the number of seats offered that has resulted may lead to the erroneous conclusion that liberalization has had a rather negative effect on traffic. The highest scored regions in terms of liberalization had the steepest drop or slowest growth in traffic. Air traffic within the two most liberalized regions (CEMAC and WAEMU) dropped significantly between 2004 and 2007, while the traffic between the RECs only dropped slightly between 2001 and 2004, and generally experienced good growth in the period between 2004 and 2007.

However, the BAG, the second most liberalized region, saw a healthy development of traffic especially during the years when liberalization took effect (2004-2007). It is further remarkable to note that traffic experienced a steep drop within the two fully liberalized regions, but the traffic between these regions with other regions remained stable or stagnant. Nevertheless, as the detailed analyses of the RECs show below, the drop in traffic in Western and Central Africa was not a direct effect of the Yamoussoukro Decision, but can be attributed to other factors.

Table 18: Estimated seats for international flights within RECs

Regional Community	Seats 2001	Seats 2004	Seats 2007	Growth 2001-2007	Growth 2004-2007
AMU	799,719	943,345	1,294,189	8.35%	11.12%
BAG	549,105	425,427	568,306	0.57%	10.13%
CEMAC	498,708	495,158	152,984	-17.88%	-32.40%
COMESA	2,952,372	2,745,938	4,484,675	7.22%	17.76%
EAC	1,384,894	1,458,539	1,751,811	3.99%	6.30%
SADC	4,033,387	4,465,842	5,663,632	5.82%	8.24%
WAEMU	983,167	849,818	763,472	-4.13%	-3.51%

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 19: Estimated seats for international flights between RECs

Regional Community	Seats 2001	Seats 2004	Seats 2007	Growth 2001-2007	Growth 2004-2007
AMU	617,747	879,595	1,641,705	17.69%	23.12%
BAG	1,911,861	1,573,379	2,130,360	1.82%	10.63%
CEMAC	1,206,595	1,044,355	1,266,196	0.81%	6.63%
COMESA	1,675,538	2,075,502	2,961,023	9.95%	12.57%
EAC	623,131	815,557	1,069,575	9.42%	9.46%
SADC	1,660,856	1,980,463	2,296,398	5.55%	5.06%
WAEMU	1,877,875	1,907,297	2,352,456	3.83%	7.24%

A similarly revealing result is obtained when the city pairs served are analyzed. The analysis shows a substantial decline in the number of city pairs served in the most liberalized regions of West and Central Africa, but growth in the BAG as well as within the less liberalized RECs in South and East Africa. A much lesser but still negative trend can be observed on city pairs between RECs; the most liberalized regions experienced a slow or negative growth (see table 7 & 8 below). This trend appears to be linked to an ongoing consolidation of networks which is focusing on the most profitable routes. This trend is the consequence of the collapse of the former business model that was based on the cross-subsidization of local and regional routes with the income generated on strongly regulated and highly profitable intercontinental routes.

5.3.2 General fleet analysis

The fleet analysis described in this section was conducted by attributing a specific aircraft group code to each type of aircraft. The codes ranged from very old vintage Western aircraft, commuter jets and propeller types, city jets, wide-body jets, to several Eastern built aircraft types. The changes in fleet

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

composition by region were calculated as a percentage of seat miles flown. A grading was applied to the overall fleet age, with the highest score (5) being applied to the most recent or youngest fleet.

The result of the analysis conducted with the traffic data extraction of 2001, 2004, and 2007 show an overall improvement in fleet age and type of aircraft across all regions, with the exception of the BAG countries (see Table 22 below). CEMAC and WAEMU, the two most liberalized regions demonstrated a clear shift towards smaller and newer aircraft. In essence, the general observations in these regions are that CEMAC has been abandoning all city jets and replacing them with newer turboprop aircraft, whereas WAEMU has been replacing wide-body aircraft with city jets and commuter aircraft.

A similar trend was observed in the BAG, where the rapid growth of air services in Nigeria resulted in a shift to primarily smaller, but older city jet aircraft. However, non liberalized regions showed both a renewal in terms of age as well as a shift to smaller aircraft. Nevertheless, more wide-body aircraft seem to have remained in less liberalized regions, such as COMESA and SADC.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 20: City pairs of international flights within RECs

Summary Int. Within Region:	Score	Cities end of 2007	Net Change in cities from 2001	City Pairs end of 2007	Net change city pairs	Annual g 2001 - 2007	Annual g 2004 - 2007	Overall g 2001 - 2007	Average Capacity 2001	Average Capacity 2007
AMU	1	9	1	14	2	6.71%	11.12%	47.68%	147	159
BAG	4	8	0	15	1	-0.16%	10.13%	-0.95%	144	117
CEMAC	5	7	-2	9	-9	-18.48%	-32.40%	-70.66%	128	78
COMESA	3	34	-2	71	-3	7.25%	17.76%	52.20%	129	147
EAC	3	10	0	18	-2	3.34%	6.30%	21.78%	113	95
SADC	2	37	4	72	5	4.75%	8.24%	32.12%	98	88
WAEMU	5	9	0	21	-3	-5.32%	-3.51%	-27.99%	150	102

Note: Basic indicators for traffic changes by region with respect to international travel within a region. Interestingly those regions with the highest scores of implementation have had the highest negative growth by several measures. This, however, is not due to the YD, but rather the collapse of capacity offered by regional airlines that have gone under.

Table 21: City pairs of international flights between RECs

Summary Int. With other Reg.	Score	Cities end of 2007	Net Change in cities from 2001	City Pairs end of 2007	Net change city pairs	Annual g 2001 - 2007	Annual g 2004 - 2007	Overall g 2001 - 2007	Average Capacity 2001	Average Capacity 2007
AMU	1	30	11	7	-3	8.13%	15.37%	59.85%	146	142
BAG	4	28	-5	9	0	-0.84%	5.23%	-4.96%	177	118
CEMAC	5	17	-4	20	3	-2.67%	0.24%	-14.97%	192	170
COMESA	3	74	5	43	6	4.67%	6.89%	31.47%	128	122
EAC	3	42	8	19	3	11.42%	17.03%	91.29%	156	149
SADC	2	50	-2	44	6	3.74%	5.74%	24.62%	135	122
WAEMU	5	30	-8	14	-4	0.96%	12.94%	5.88%	187	198

Note: Indicators of changes in traffic by region for international travel with other regions. Intersections of the country sets having been accounted for (e.g. Swaziland is both a member of COMESA and SADC; therefore its traffic cannot be accounted for as extra-regional for either of those communities.)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Table 22: Changes in fleet composition by REC

REC	Fleet Age Grade 2001	Fleet Age Grade 2007	Diff.	Note on change	Typical Size 2001 ⁶⁷⁰	Typical Size 2007
AMU	4	5	1	Almost all old aircraft replaced	Nearly all Boeing 737 - type city-jets	Almost 100% city jet type
BAG	2	1	-1	Very large proportional shift from old to even older aircraft	Roughly 60% city-jet, about 30% wide body	Almost 100% city jets
CEMAC	3	4	1	From mixed (50% old) to about 75% recent but also an increase in very old aircraft	About 80% city jet	Large shift towards commuter turboprop
COMESA	3	4	1	Shift from 50% relatively recent to almost 75% recent	About 65% city jet, 35% wide-body	Shift to about 80 % city jet, 20% wide body
EAC	3	3	0	Roughly the same proportion 33% of old aircraft, with the remainder renewing.	About 75% city jet, 20% wide-body, 10% commuter prop.	About 80% city jet, wide-bodies down to 5%, remainder increase in commuter prop.
SADC	3	4	1	Increase of recent jetliners from roughly 20% to nearly 66%.	About 75% city jet, 20% wide-body	About 85% city jet, only 5% wide-body
WAEMU	3	4	1	Percentage of recent airliners about as high as BAG, but the remainder still old	About 60% wide-body, about 10% commuter jet, 30% city jet	Large shift towards 80% city jet, 20% commuter prop, no wide-bodies

5.3.3 The impact of liberalization on traffic and air carriers by region

The result of the analysis of traffic and fleet changes must be further analyzed on a region by region basis, taking into account the progress made by the respective RECs in liberalizing their air services, as well as some peculiar external factors which may have occurred independently of the implementation of a liberalized air services framework.

⁶⁷⁰

For the analysis of the African fleet all aircraft were grouped into the following categories: (i) wide-body (e.g. A340, B747), (ii) large jet (e.g. B757, DC8), city jet (e.g. A320, B737, DC9), commuter jet (e.g. CRJ, F100), commuter prop (e.g. F28, SB200), and general aviation (e.g. PC12, BE200, C421).

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

In order to analyze the effects of liberalization in selected countries of each REC, the aircraft fleet data were compiled and summarized by country in the tables below.⁶⁷¹ It must be noted that due to the multitude of small planes in service, only aircraft with 30 seats or more were included. It was assumed in this study that smaller aircraft do not significantly change the conclusions drawn from the fleet analysis of aircraft above 30 seats, as they participate only marginally in international (i.e., country-to-country) air services. In addition, all aircraft which are not involved in public air transportation, such as aircraft belonging to Government air services, corporate fleets, air ambulance operators, or air surveyors have also been excluded from the data sample.

In addition to the fleet analysis, changes in traffic flows with a specific focus on service providers were also analyzed. It was found for example that West Africa and Central Africa were dominated by a few large carriers in 2001 which subsequently disappeared during the early years of liberalization. After 2004, new carriers that were neither registered in the country of departure nor destination began operating flights serving fifth or even seventh freedom traffic; the same traffic that was originally served by the carriers which had disappeared. Such changes are clear signs of the impact of liberalization because new carriers are conducting fifth freedom flights in accordance with one of the basic elements of the Yamoussoukro Decision.

⁶⁷¹ Source of fleet and aircraft type data for this analysis is Klee, ed., *JP Airline-Fleets International*, *supra* note 654.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Continent-wide development

A steady increase of the number of carriers occurred between 1997 and 2004 (see Table 23). The collapse of some of the African legacy carriers such as Air Afrique and Ghana Airways, during that period has been more than compensated by the entry of several new carriers into the market. Between 2004 and 2007, the number of carriers has stabilized continent-wide. However, several carriers which existed in 2004 had been replaced by new operators as of 2007. The general increase in the number of operators is primarily due to the reform of domestic policies allowing new operators to compete with or replace the former national carrier. There is little evidence that the observed fleet development is solely and directly attributable to the intra-African liberalization driven by the Yamoussoukro Decision. However, the country-by-country analysis within the different regions provides further insights into the background of the various African carriers (see Table 23 below).

Table 23: Fleet analysis on a continent-wide basis in Africa

All Africa - Aircraft over 30 seats

	1997	2001	2004	2007
Number of carriers	104	125	166	168
Number of aircraft	585	706	895	978
Seat capacity	76 615	95 828	118 803	123 896

The number of aircraft on the continent has generally followed the number of carriers. Nevertheless, an accelerated growth was observed between 2004 and 2007 (an increase of 9%). During the past ten years, the fleet of aircraft with over 30 seats has increased by 67%, representing an annual growth rate of

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

5.3%. Initially, the total seat capacity increased more rapidly than the number of aircraft, but has slowed in recent years. The average fleet size (aggregated number of aircraft in fleets divided by number of carriers) remained steady at 5.6 during the 1997-2001 period, and decreased slightly thereafter due to the entry of smaller operators and the growth of existing small carriers which have added some aircraft with over 30 seats to their fleet. However, the average fleet size has been growing again since 2004, and this reflects a trend of consolidation in the industry, with the major carriers achieving stronger growth rates.

The average aircraft capacity increased between 1997 and 2001 from 131 to 136 seats per aircraft. However, a clear movement away from wide bodied aircraft to smaller aircraft since 2001 resulted in an average seat capacity of 127 seats in 2007. This trend reflects the introduction of smaller aircraft by some major operators for the development of new routes. Additionally, this trend is also the result of the phasing out of older, sometimes underutilized, aircraft such as the B-727 series, as well as the removal of several wide-body “flag of convenience” aircraft from the registries of some States.⁶⁷²

The Yamoussoukro Decision has facilitated the entry of new airlines into markets that were abandoned by failing carriers. However, there is little evidence that the failure of major carriers such as Air Afrique or Nigerian Airways was caused by the operation of the Yamoussoukro Decision. In many regions, new carriers made up for some of the capacity lost as a result of failing

⁶⁷² For the purpose of the analysis in this research, *flag of convenience* registrations are considered all cases of carriers whose head office is located outside the country of registration and which do not operate listed air services to and from their country of registration.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

carriers (see Table 24 for a summary of capacity that left and entered the markets REC by REC). In many cases, carriers from outside a given REC were allowed to take over non-served capacity, often by adding fifth freedom operations. Through such means, both Ethiopian Airlines and Kenyan Airways, coming from East Africa, gained predominant market shares in Western and Central Africa. In other words, as the markets shrunk in capacity, and older carriers either abandoned those markets or went bankrupt, every single one of the remaining six country pair markets out of the original of twelve is being served by a new entrant in the market. At times, this was done by operators such as Ethiopian Airways and Afriqiyah Airways from Libya. The latter now provides the only intra-regional service connecting the Central African Republic. What seems to be a clear application of the Yamoussoukro Decision can be seen in most of the services found in Table 24 below. However, one must also take caution against over-interpreting these findings because of the simple fact that, as from 2001, many of the airlines which replaced Air Afrique in serving those routes, and which are no longer active today were mostly foreign to the country pairs they served.

Table 24: Traffic changes from exit and entrance of carriers by REC

REC	Seats for International Travel within REC in 2007	Seats from airlines that have left the market	Seats from Airlines that are new to the market	Seats for International travel between RECs In 2007	Seats from airlines that have left the market	Seats from Airlines that are new to the market
AMU	1,294,189	90,998	45,396	1,641,705	186,977	554,030
BAG	586,306	457,422	432,907	2,130,360	1,265,446	980,850
CEMAC	152,984	663,116	152,984	1,266,196	1,103,435	777,976
COMESA	4,484,675	1,170,550	990,390	2,961,023	674,559	707,209
EAC	1,751,811	806,977	472,030	1,069,575	223,160	217,291
SADC	5,663,632	1,396,004	1,891,595	2,296,398	972,450	722,042
WAEMU	763,472	932,675	408,288	2,352,456	1,550,345	1,395,286

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Between 2001 and 2004, most of the RECs saw a reduction in fifth freedom traffic carried by their own carriers (see Table 25 below). This was primarily due to the fact that large carriers such as Air Afrique or Air Gabon left the market during that period. By 2007, fifth freedom flights had recovered in most regions, especially in West and Central Africa, where fifth freedom flights accounted for about a third of all traffic.

Table 25: Percentage of fifth freedom flights of carriers of each REC

	AMU	BAG	CEMAC	COMESA	EAC	SADC	WAEMU
Seats 2001	7.63%	45.26%	38.00%	25.35%	33.01%	18.68%	47.66%
Seats 2004	8.27%	36.27%	11.76%	9.86%	12.21%	2.25%	43.70%
Seats 2007	4.13%	43.25%	28.48%	14.10%	16.38%	5.68%	43.75%

Most interesting, however, is the development observed with regard to those African carriers which do not belong to any REC, and which are providing fifth freedom flights (see Table 26 below). A strong increase of non-REC carrier fifth freedom flights was especially demonstrated in West and Central Africa after 2004. There are strong indications that carriers from East Africa (Ethiopian and Kenya Airways) and North Africa (Afriqiyah Airways and Royal Air Maroc) have taken over traffic within BAG, CEMAC, and WAEMU.

Table 26: Percentage of fifth freedom flights performed by carriers from other RECs

	AMU	BAG	CEMAC	COMESA	EAC	SADC	WAEMU
Seats 2001	5.62%	39.11%	35.23%	20.79%	32.63%	17.95%	25.73%
Seats 2004	8.27%	24.43%	3.19%	3.63%	11.50%	1.48%	29.34%
Seats 2007	4.13%	27.99%	28.48%	7.22%	14.56%	3.97%	28.74%

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Non-African carriers had a remarkable share of fifth freedom flights in sub-Saharan Africa; a share which reached between 10 and 30% in 2001. However, this traffic steeply declined when African carriers began to take over such fifth freedom operations (see Table 27 below). This development can be identified as a successful response to the concerns expressed at the Summit of the OAU in 1979 that, increasingly, European carriers would replace African airlines. There is clear evidence that the Yamoussoukro Decision has facilitated the expansion of African carriers into domestic markets.

Table 27: Percentage of fifth freedom flights performed by non-African carriers

	AMU	BAG	CEMAC	COMESA	EAC	SADC	WAEMU
Seats 2001	5.62%	28.64%	11.02%	19.39%	26.48%	13.35%	16.52%
Seats 2004	8.27%	19.71%	2.02%	2.59%	6.77%	0.63%	0.00%
Seats 2007	4.13%	15.19%	0.00%	3.86%	0.77%	2.55%	0.37%

Regional development in North Africa

North Africa has made little progress towards liberalizing its air services. The main countries within the AMU are Algeria, Tunisia, Libya, and Morocco. Although, no liberalization of international air services took place within the AMU, some of the member countries adopted some kind of domestic liberalization by allowing more than one carrier to operate. Some of these carriers have since begun serving international destinations.

In Algeria, the national carrier Air Algérie benefited from a monopoly both in the domestic and international market for several decades. However, liberalization of the domestic market in 2000 resulted in the entry of a

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

few new carriers. This resulted in an increase in aircraft and seat capacity by more than 70%. Khalifa Airways, the most significant new operator soon embarked on a rather ambitious and aggressive growth policy. However, the operator subsequently collapsed, as the liberalization of domestic market entry had not been accompanied by adequate new regulatory instruments.⁶⁷³ By 2004, only two carriers remained in the domestic market, and as of 2007, the air transport industry in Algeria had reverted back to a *de facto* monopoly (see table Table 28 below).

Libya experienced steady progress towards liberalization which resulted in the number of carriers increasing from only one in 1997 to nine in 2007, while seat capacity also doubled. This development is the result of the opening up of the country following the end of the international embargo. In addition, it appears that Libya focused on a policy of developing an air transport sector which would compete with sixth freedom flights between West Africa and Europe. Further, it is notable that Libya firmly supports its new carrier Afriqiyah Airways by designating it on all the new routes which were opened, to the detriment of its legacy state-owned carrier Libyan Airlines.

Morocco appears to have a more restrictive liberalization policy in allowing the introduction of only a few new operators. The number of carriers increased from one to four in the last ten years. However, the only major operator among the new entrants, Atlas Blue, is a subsidiary of the legacy carrier, Royal

⁶⁷³ *République Démocratique et Populaire Algérienne: La Reforme du Sector des Transports* by World Bank (Washington DC, 2005) at 34.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Air Maroc.⁶⁷⁴ It is strictly focused on low-cost operations and on providing supplementing traffic for Royal Air Maroc under franchise or code-share agreements on low density routes. This strategy seems to have been successful, as fleet size has increased by a factor of 2.6 over the period, whereas unit capacity also slightly increased from 149 in 1997 to 155 in 2007 (see Table 28 below).

Tunisia's air carrier development in terms of fleet size and seat capacity has been fluctuating. This seems to be due primarily to the changing relative competitiveness between Tunisian charter operators and their European counterparts on the international market with Europe. In addition, it seems that the national carrier Tunisair has been less successful than Royal Air Maroc in capturing sixth freedom traffic between West Africa and Europe. This is probably due to its smaller size and its stronger exposure as a result of geographic proximity to the competition from Libya's Afriqiyah Airways on this particular market segment.

Egypt is not a member of AMU, but a member of COMESA. COMESA has made some progress towards liberalization, but still falls short of fully implementing the Yamoussoukro Decision. The number of carriers in Egypt has continuously fluctuated over the past ten years, whereas total seat capacity has remained more or less steady. The fluctuation is mainly due to changes in the industry structure, which is comprised of one dominant flag carrier, EgyptAir, and several smaller charter operators, some of which had ceased operations soon after

⁶⁷⁴ Actually, one of these new entrants, privately-owned Regional Air Lines, already existed in 1997 and 2001, but was not yet operating aircraft over 30 seats; this is why it is not listed in the table for these years.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

they entered the market. This is attributable to different factors, such as the volatility of the international tourist market in view of recurrent security problems, and the fact that this segment of the industry is dominated by financial investors, some with short-term investment strategies.

Overall, there is little evidence of the impact of the Yamoussoukro Decision within the North African market. However, some North African carriers have commenced expansion of their operations into sub-Saharan Africa, where most can derive benefits from their States' membership of the Decision.

Table 28: Fleet analysis of North Africa

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats
Algeria	1	40	5 035	5	68	8 885	2	55	6 692	1	58	7 854
Egypt	9	56	10 289	15	71	12 445	8	63	11 418	12	72	12 229
Libya	1	27	2 346	2	21	2 673	7	58	4 969	9	51	5 369
Morocco	1	28	4 176	1	41	5 617	3	49	7 364	4	73	11 303
Tunisia	3	31	4 533	3	49	7 317	5	59	9 552	4	49	7 692
	15	182	26 379	26	250	36 937	25	284	39 995	30	303	44 447

Regional development in West Africa

West Africa has done quite well in implementing the principles of the Yamoussoukro Decision. WAEMU has fully liberalized its internal market, and the BAG has applied most of the principles through a multilateral agreement. Regional development in West African countries can be examined by grouping the smaller players together, while reviewing the larger, dominant countries separately.

The first group of small countries comprises Benin, Burkina Faso, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, and Togo, most of which are member States of WAEMU. The development of the air transport industry in

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

these countries was unstable, consisting only of the entrance of a few new carriers with low capacity. In some of these countries (e.g. Mali and Togo) the air transport industry completely disappeared after some unsuccessful attempts at establishing new operators. Niger is currently listed as having one operator, which apparently has no aircraft. Nevertheless, Burkina Faso has been able to maintain its flag carrier which continues to operate on a reduced scale, whereas a new carrier was created in Mauritania after the national carrier, Air Mauritanie, went out of business.

The second group of small countries is comprised of Cape Verde and Senegal. Their respective flag carriers have been able to develop their markets and have performed reasonably well. Cape Verde's national carrier, TACV, has reduced its focus on the regional market in West Africa in order to concentrate on the long-haul routes to Europe and the United States.⁶⁷⁵ Air Sénégal International, a re-emergence of the former national carrier with equity participation of Royal Air Maroc, has successfully carried out a strategy of developing its business on the routes to and from Dakar which had been abandoned by the defunct Air Afrique.⁶⁷⁶ Further, it seems that Air Sénégal's success on regional fifth freedom sectors such as Bamako-Abidjan, or Bamako-Niamey, may have contributed to driving the carriers of Mali, Niger and Togo out of business. This is a direct consequence of the impact of liberalization induced by the Yamoussoukro Decision.

⁶⁷⁵ *Privatization of TACV: Market Research and Strategic Options* by Sterling Merchant Finance Ltd (Washington DC, June 2007) at 82.

⁶⁷⁶ *Ibid.*, at 86.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Three countries, Nigeria, Ivory Coast and Ghana, are cases of specific circumstances which have influenced market and fleet development.

Nigeria accounts for nearly half of the total number of the region's air carriers, and well over one half of the total air fleet and seat capacity. Starting in the late 1990s, the country has gone through an in-depth reform of its air transport sector, resulting in the full liberalization of domestic air services. Its flag carrier, Nigeria Airways, was faced with harsh competition on the domestic market as a consequence, and it subsequently collapsed in 2003. The new private carriers which entered the market initially operated a massive fleet of old aircraft (e.g., 30 year-old Romanian-built BAC-111s). However, most of them were phased out between 2004 and 2007 and replaced with newer aircraft, predominantly of the Boeing 737 series. The average seat capacity slowly increased from about 116 in 2001 to about 120, but remains relatively low as carriers compete for high frequency services on major domestic routes.

In 2005 a new flag carrier, Virgin Nigeria, was established as a public-private partnership to operate Nigeria's international traffic rights. In 2007, the Government of Nigeria indicated its intention to designate Arik, a carrier created in 2006 by Nigerian private investors, to operate most of the long-haul routes previously assigned to Virgin Nigeria. Arik has subsequently placed a large order for Boeing 777 and 787 aircraft to be delivered in the next few years.⁶⁷⁷

The fleet size of Ivory Coast and its capacity dropped dramatically between 2001 and 2004 (from 2,495 to 385 seats). This is due to the collapse of

⁶⁷⁷ Aduke Atiba, "Taking the Bold Step" *Aviation and Allied Business* (June 2007) at 26.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Air Afrique, whose fleet was registered in Ivory Coast. A new national carrier, Air Ivoire, was subsequently established on a modest scale and has been building up its capacity while serving regional destinations, as well as a few routes to Europe.

In Ghana, fleet size and seat capacity steadily increased from 5 aircraft and 748 seats in 1997 to 12 aircraft and 1,600 seats in 2004. Since then, and in spite of a large increase in the number of carriers to 4 in 2007, fleet size and seat capacity had significantly dropped to only 670 seats by 2007. This was followed by the collapse of the legacy carrier Ghana Airways, which suffered a freeze in traffic rights with the USA due to safety concerns and subsequent downgrading to FAA IASA category 2. It is also particularly notable that aircraft Ghana's registry lists a significant number of freighter aircraft, including seven B-747-200s; which are operated by carriers based in the UK and the United Arab Emirates, supposedly using Ghana as a flag of convenience.

The third group of countries comprises the Gambia, Liberia and Sierra Leone. In these countries, the flag-of-convenience phenomenon has taken on particular importance. In the Gambia, fleet size and seat capacity remained at a high level between 1997 and 2004; well in excess of the country's market potential. However, it has dropped significantly since then, apparently due to the efforts of the Gambian authorities to remove flag-of-convenience registrations from its registry. In Sierra Leone, the trend is opposite to what was observed in the Gambia. While in 1997 and 2001, no carrier operating aircraft with over 30 seats was listed, the figure increased to 8 carriers and 24 aircraft with 5,600 seats

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

in 2004, obviously reflecting flag-of-convenience registrations. These figures have dropped since then, in an effort by the authorities to remove flag-of-convenience registrations. Finally, Liberia's fleet figures are very similar to the first group of countries characterized by small air transport industries. However, large numbers of freighter aircraft which are not listed in the above table appear on its registry. Most of them are operated by carriers based outside the country.

Overall, the region has gone through a fundamental change: from a few major national air carriers to various smaller operators. There is no evidence that liberalization was a factor that contributed to the disappearance of unsustainable flag carriers. However, the Yamoussoukro Decision provided both the political and the regulatory basis for a few carriers, such as Air Sénégal International, to expand into abandoned markets. In addition, as mentioned above, several carriers both from within the West African RECs, as well as from other RECs have expanded their services with fifth freedom operations.

Table 29: Fleet analysis of West Africa

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats
Benin				1	1	118	1	1	108	1	3	324
Burkina Faso	1	1	85	1	1	85	1	4	369	1	1	189
Cape Verde	1	5	367	2	5	353	1	5	508	1	6	554
Gambia	2	12	1 370	3	7	1 040	5	9	1 433	2	7	789
Ghana	1	5	748	1	6	1 312	3	12	1 600	4	8	670
Guinea	3	5	318	2	4	274	3	3	220	2	2	172
Guinea Bissau	1	1	44							1	1	48
Ivory Coast	2	16	2 613	1	11	2 395	1	4	385	3	7	546
Liberia	1	1	40	3	4	409	2	2	100	1	2	96
Mali	1	2	168	1	1	65	1	2	180			
Mauritania	1	4	254	1	2	158	1	5	566	1	5	545
Niger				1						1		
Nigeria	12	83	10 431	15	64	7 316	20	78	10 285	20	98	11 789
Senegal	1	1	37	1	1	50	2	5	452	2	5	452
Sierra Leone							8	24	5 596	4	13	3 731
Togo	1	3	225	1	1	281	1	1	46			
	28	139	16 700	34	108	13 856	50	155	21 848	44	158	19 905

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Regional development in Central Africa

The Central African region is composed of two main groups with very different characteristics. On the one hand are the CEMAC countries, and on the other are the Democratic Republic of Congo, often referred to as “Congo-Kinshasa”, and the small island State of São Tomé and Príncipe.

Democratic Republic of Congo (DRC) is the largest and most populated country in the region. It accounts for about half the region’s fleet and seat capacity, although the data for this country fluctuated in a rather erratic manner. This may be attributed to the successive intermittent periods of relative peace and internal conflict, but may also reflect a lack of appropriate reporting. The country experienced a sharp drop in the number of operators, aircraft, and seats, between 1997 and 2001, and this probably reflects the crisis experienced following the death of its long-time leader President Mobutu Sese Seko. However, a strong upturn followed increasing the number of carriers to 12 in 2004 (with 25 aircraft and 2,871 seats), from only two in 2001. The situation has stabilized since then, with some consolidation happening within the industry and thereby reducing the number of carriers to nine. Most of the country’s fleet, however, consists of old aircraft models. In addition to its passenger fleet, DRC also lists a large number of freight carriers. One of its major carriers, Hewa Bora Airways, was on the path to becoming an international carrier of some standing, serving routes to

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Johannesburg and Brussels. However, blacklisting by the EU and a recent accident have suspended these plans.⁶⁷⁸

Of the CEMAC countries, both Cameroon and Gabon are to be considered special cases. The two countries withdrew from Air Afrique in the early 1970s to set up their own flag carriers, considering that their traffic potential would be able to sustain their operations.⁶⁷⁹ Both Cameroon Airlines and Air Gabon were initially successful operators. However, during the late 1990s, they experienced serious financial and operational problems leading to the collapse of both carriers.⁶⁸⁰ The disappearance of these carriers resulted in the progressive phasing out of wide-bodied aircraft in the region. What remained is the activity of a few niche carriers operating local routes with smaller aircraft.

Congo-Brazzaville showed a steady growth of the number of aircraft and seats, whereas the number of operators stabilized, indicating that some consolidation is taking place. However, the aircraft fleet is primarily composed of older aircraft ranging from earlier Boeing 727 to Antonov aircraft. Chad and the Central African Republic are completely marginalized in terms of their air transport industry. Central Africa does not have any air carrier, and the establishment of Chad's new carrier Air Toumaï did not materialize.

⁶⁷⁸ See EC, *List of Airlines banned within the EU*, *supra* note 206.

⁶⁷⁹ Ndiva Kofele-Kale, "Cameroon and its Foreign Relations" (1981) 80:319 *African Affairs* 197 at 202.

⁶⁸⁰ Note that the 2007 figures for Cameroon were collected before Cameroon Airlines finally went out of business.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

With its territory split between the main continent (i.e., the former Rio Muni) and its islands, Equatorial Guinea offers an opportunity for the development of a niche domestic air transport. On the other hand, the effect of the oil boom has become a major driver for international travel to the country, which is an important petroleum producer. Nevertheless, the carriers of Equatorial Guinea are weak, as shown by major fluctuations reported in the number of aircraft and seats. In addition, a large part of the capacity listed comprises flag-of-convenience registrations. São Tomé and Príncipe has two airlines operating aircraft with less than 30 seats. In addition there are several flag-of-convenience listings on its registry, including a large fleet of B-727 and L-100 freighters (not listed in the above table) that are owned by a carrier based in Angola.

Overall, and despite the fact that the region falling within CEMAC is to be considered as fully liberalized, there is little evidence that the Yamoussoukro Decision has had an effect so far, in terms of facilitating the establishment of new carriers within the region. However, this might be due to the fact that the two main national carriers in Cameroon and Gabon have only recently disappeared, and their replacement by new operators has not taken place yet. On the positive side, the Decision has clearly facilitated the entry into and operation within Central Africa of carriers from other RECs. In the CEMAC region for example, most fifth freedom flights performed by carriers from other RECs in 2001 were presumably flights previously conducted by Air Afrique, which was registered in Ivory Coast. These flights were discontinued in 2004 and were replaced by nearly the same percentage of fifth freedom flights conducted by

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

non-CEMAC carriers. According to table 18 above, carriers from Ethiopia, Nigeria, Benin, and Libya presently have an important market share in fifth freedom traffic in the region.

Table 30: Fleet analysis of Central Africa

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats
Cameroon	2	5	551	2	7	751	2	6	1 162	2	5	730
Central African Rep.				1	3	90						
Congo Brazzaville	3	9	455	2	7	590	4	10	669	4	13	803
Congo Kinshasa	9	22	1 777	2	9	965	12	25	2 871	9	27	2 984
Equatorial Guinea	2	2	64	3	4	212	4	9	447	3	7	301
Gabon	2	8	944	4	11	1 113	7	20	1 692	5	17	1 022
Sao Tome e Principe	1	1	118				2	3	315			
Tchad	1	1	44	1	1	44	1	1	87	1	1	72
	20	48	3 953	15	42	3 765	32	74	7 243	24	70	5 912

It can be concluded that in terms of traffic flows, there is a clear indication that the principles of the Yamoussoukro Decision are having an effect both on a regional as well as on a continent-wide basis. The prime indicator is found in the fact that traffic which is now served by out-of-region carriers were previously served by the former major regional carriers. On the other hand, it is interesting to note that full liberalization of air services within the region has apparently had little effect on the replacement of the traffic lost by capacity from within the REC. However, this, is a positive fact signalling that the implementation of the Yamoussoukro Decision on a regional basis has not shut the door to carriers from other RECs, which are operating under the continent-wide application of the principles of the Decision.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Table 31: Out-of-region carriers serving CEMAC intra-region traffic

Country Pair	Airline	Nationality	Market Share
Cameroon – Gabon	Ethiopian Airlines	Ethiopia	22%
	Bellview Airlines	Nigeria	11%
Congo - Gabon	Benin Golf Air	Benin	11%
Equatorial Guinea - Gabon	Benin Golf Air	Benin	11%
Equatorial Guinea - Cameroon	Benin Golf Air	Benin	31%
Cameroon - Central African Republic	Afriqiyah Airways	Libya	100%

Regional development in Eastern Africa

The air transport sector in Eastern Africa has experienced remarkable growth both in terms of number of carriers and markets. However, this growth is unevenly distributed, as only two countries, Kenya and Ethiopia, together represent about two thirds of the region's seat capacity. Both countries operate strong flag carriers, but the situation of each nation is entirely different. In terms of RECs, Kenya is within the EAC, where Tanzania, Uganda, Rwanda, and Burundi are relatively small players in the regional air transport market. COMESA, which includes most Eastern African States, is dominated by Ethiopian, but also includes Egypt with a strong national carrier.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Kenya has implemented reformed air transport policies aimed at liberalizing the domestic air transport sector. The number of carriers has doubled since 1997, whereas the average fleet size and seat capacity increased by a factor of three to reach 6,000 seats in 2007. However, implementing domestic liberalization has been less successful endeavour. One example can be found in a privately owned carrier which operated during 2002 and 2003 under a franchise agreement with British Airways on the domestic market. It quickly became a strong competitor to Kenya Airways. However, this undertaking was short-lived, and British Airways suddenly terminated the franchise agreement. Kenya Airways subsequently remained as the only major operator, and, to date, all other carriers are either small charter companies or local operators on low density routes. It is also notable that the Kenyan Government has carried out a partial privatization of Kenya Airways, with KLM (today Air France-KLM) owning a 27% share, and providing support services in the role of a technical partner.

In Ethiopia, there is no sign of an effective internal liberalization of the air transport market. Ethiopian Airlines still holds a *de facto* monopoly, and it enjoys great support by the Government when it comes to negotiating new air service agreements for the carrier.⁶⁸¹ The fleet experienced steady growth with a 50% increase of the number of aircraft from 1997 to 2007, whereas average seat capacity also doubled over the same period. This development illustrates Ethiopian's strategic priorities in favour of fostering the development of long-haul routes. At the same time the carrier continues to establish its intra-African

⁶⁸¹ See Annex IV of this dissertation for a complete list of bilaterals negotiated by the Ethiopian Government.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

network, which, in the past, essentially aimed at playing a feeder role for its intercontinental services. Nevertheless, increased fifth and some seventh freedom routes indicate a clear intra-African market development where Ethiopian is becoming a major operator serving several RECs.

Although a relatively large market for air transport as compared with other countries of similar size, Tanzania is dominated by several small carriers flying aircraft below 30 seats, which primarily serve the domestic tourism market. In terms of international carriers, two major operators stand out. The national carrier, Air Tanzania, was partially privatized in 2002 when South African Airways (SAA) acquired a 49% stake and thereby became a major shareholder and technical partner. However, the partnership ended in 2006 when SAA sold back its stake.⁶⁸² The other carrier is Precision Air, which is a privately owned carrier with a substantial shareholding by Kenya Airways. Precision Air has been steadily gaining ground against Air Tanzania, effectively becoming the country's most important operator in the domestic and regional market within the EAC. Other Tanzanian carriers are small operators serving selective local routes (e.g., to and from Zanzibar and Arusha). Nevertheless, at least two carriers

⁶⁸²

On 31st March 2006, the Government of Tanzania declared that it would dispose off Air Tanzania Company Limited following four years of loss-making operations which amounted to TZS 24.7 billion. The Director General of the Tanzania Civil Aviation Authority supported this by stating "Air Tanzania was in a worse state than before it was taken over by SAA". On the other side SAA blamed Tanzania's government for not releasing about USD 30 million which were needed to implement Air Tanzania's restructuring and to stop continued losses. On 7 September 2006, the Government of Tanzania bought back the 49% stake for USD 1 million, which terminated the partnership with SAA. See: Wikipedia. Multilingual, web-based, free content Encyclopedia, online: <http://en.wikipedia.org/wiki/Air_Tanzania>, (date accessed on 23 June 2008).

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

compete on any major domestic route in Tanzania and this has made it one of the most competitive domestic markets when compared to other African countries.

Sudan, the largest country in Africa in terms of land mass, has the region's third largest fleet. Its air transport market seems to be volatile, with fleet size and capacity fluctuating between the years analyzed. Most of Sudan's fleet is composed of older Western and Eastern built aircraft split among a few operators. None of these operators so far has been able to dominate the country's air transport sector by becoming a serious contender on international routes. In addition, Sudan's safety record is particularly worrying, and this has recently caused the suspension of the air operator's certificate of its national carrier.⁶⁸³

The other countries of the region include Uganda, Rwanda, and Burundi (members of the EAC), Eritrea and Djibouti (members of COMESA), and Somalia, which is not part of any REC. Each of these States has a marginal and relatively unstable air transport industry. Burundi, for instance, does not even have a carrier operating aircraft with over 30 seats. However, a good example in terms of policy is Uganda, which completely opened up its air transport market after its national carrier was liquidated. While its own fleet remained stagnant, traffic rose steadily from other carriers which have been allowed to operate quite freely.⁶⁸⁴

⁶⁸³ Amber Henshaw "Sudan crash airline is grounded" *BBC News* online: BBC website, <<http://news.bbc.co.uk/2/hi/africa/7467423.stm>>, (date accessed 23 June 2008).

⁶⁸⁴ See Chapter 3.5.1. above

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Another special case in the region is Djibouti. The relatively large number of aircraft and seats listed in 2007 is rather deceptive, as the list mostly comprises carriers which are based out of the country. It is apparent that Djibouti recently became a provider of flag-of-convenience registrations, a situation which was identified as a critical issue during the 2008 ICAO Universal Safety Oversight Audit of that country.⁶⁸⁵

Eastern Africa has experienced strong development of its air transport sector since 2001. Liberalization has helped to two main carriers, Ethiopian and Kenya Airways, to expand their regional operations. As a consequence, however, fifth freedom operations carried out by carriers that are neither based in EAC nor COMESA have lost their significance in the region, and this suggests that the region has been least influenced by the continent-wide application of the Yamoussoukro Decision. Nevertheless, strong growth of intra-regional traffic, including fifth freedom operations, confirms that regional liberalization of air services is taking place in Eastern Africa.

⁶⁸⁵ See ICAO, *Significant Safety Concerns on Djibouti* (Montreal, 10 March 2008).

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 32: Fleet analysis of Eastern Africa

Country	1997			2001			2004			2007		
	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats
Djibouti	1	2	222	3	8	735	1	1	48	3	12	1 443
Eritrea							1	2	412	1	2	403
Ethiopia	1	17	1 668	1	17	1 920	1	25	3 558	2	25	3 547
Kenya	5	17	1 914	7	28	3 894	10	40	4 219	10	56	6 045
Rwanda				1	1	79	1	1	142	1	1	37
Somalia				1	1	164				1	1	48
Sudan	3	12	1 478	3	11	2 213	3	15	1 359	5	21	2 169
Tanzania	2	6	390	2	7	516	4	14	916	4	10	674
Uganda	1	3	249				1	1	103	1	1	103
	13	57	5 921	18	73	9 521	22	99	10 757	28	129	14 469

Regional development in Southern Africa

Southern Africa's air transport industry is predominantly located in SADC countries, which have generally achieved relatively little progress in implementing the Yamoussoukro Decision at the regional level. However, several SADC States are also members of COMESA, which has fared far better in implementing the liberalization of air services.⁶⁸⁶

One of the prime reasons for SADC's slow progress is the domination of the air transport market by South African carriers. These represented 68% of the region's aircraft in 1997, and this percentage increased to over 80% in 2007. At the regional level, the capacity has grown steadily, resulting in a 60% increase in the number of carriers, a 112% growth in fleet size, and a 72% increase in seat capacity. These figures reflect the incidence of consolidation in the industry, and stronger growth on regional and domestic routes. However, due to the magnitude of South Africa's air transport industry, it is primarily its domestic market which is driving the regional indicators in terms of fleet size and seat capacity.

⁶⁸⁶ The States with dual memberships are Angola, Malawi, Swaziland, Zambia, and Zimbabwe.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

South Africa has embarked on a policy liberalizing its domestic market for the past few years. However, with its flag carrier SAA still not privatized, the implementation of the policy remains incomplete. The number of South African carriers increased from eight in 1997 to 16 in 2001, and 20 in 2004; and dropped slightly to 19 in 2007. The number of passenger aircraft with more than 30 seats doubled between 1997 and 2001; it reached 206 in 2004 and 220 in 2007. Seat capacity also doubled from 1997 to 2004, but has stabilized since then.

Other important South African carriers include:

- Comair, and Nationwide, both operating domestic trunk routes, as well as a few short to medium-haul international destinations. Comair operates under two different brands: regular services are flown under a franchise agreement with British Airways, whereas “low-cost” operations are flown as “Kulula.com”;
- South African Express and South African Airlink, both equipped with 50-seater aircraft operating feeder services to smaller South African towns and neighbouring countries (Swaziland and Lesotho) under franchise agreements with SAA.

The figures in Table 33 below alone are not sufficient to provide a clear picture of South Africa’s aircraft fleet. In the past few years, the industry has modernized its fleet by replacing aging Boeing 737-200s with newer versions.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

Table 33: Fleet evolution of major Southern Africa carriers

Carrier	Aircraft types	1997	2001	2004	2007
Comair	B-727 and 737-200	8	15	10	6
	MD-80 series			6	6
	B-737 newer versions			4	12
Nationwide	B-727 and 737-200	1	7	14	16
	B-737 newer versions			1	2
	BAC 111	12	11		
South African Airlink	F-28			1	
	EMB-135				5
	Bae-146				3
South African Airways	B-727 and 737-200	1	1	11	
	B-737 newer versions		11	21	21
	A-320 and 319	7	5	4	11
	A-300	7	3	3	3
South African Express	DHC-8		7	7	9
	CRJ		6	6	9

The fleet in Botswana has seen steady growth, with just one carrier operating aircraft with over 30 seats. Namibia has experienced strong fluctuations. The number of operators and aircraft has remained stable, but capacity was reduced by half before resuming timid growth. This was due in part to the difficulties experienced by Air Namibia in sustaining its long-haul operations in the face of aggressive competition by SAA, which was using sixth freedom based, low fare connections via its Johannesburg hub.

The same phenomenon occurred in Zambia, Zimbabwe, Mozambique and Malawi. In Zambia, the flag carrier Zambia Airways was liquidated in 1994 (see section 3.5.1. above). In Zimbabwe, the national carrier Air Zimbabwe was stabilized somehow after it went through a serious drop in capacity between 1997 and 2001. LAM, the national carrier of Mozambique, experienced a continued drop in unit capacity, reflecting limited liberalization of

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the domestic market as well as difficulty in competing on long-haul routes as its intercontinental traffic is increasingly being captured by the hub in Johannesburg.⁶⁸⁷

Malawi's flag carrier seems to have maintained a niche market strategy, capturing a substantial part of the passengers to and from the small country. Lesotho, also a small and landlocked country with limited traffic potential is in a situation similar to that of Malawi. However, the only existing flag carrier has gone out of business, partly because of competition from South African carriers and partly because of the competition from cheaper transportation services offered by bus operators on the routes to Bloemfontein (200 km) and Johannesburg (500 km). The third country that shares some characteristics with Lesotho and Malawi is Swaziland. Its national airline has not been successful in competing with South African carriers. Nevertheless, the country's registry lists several aircraft some of which are clearly flag-of-convenience registrations.⁶⁸⁸ The reduction of aircraft in the registry between 2004 and 2007 is a consequence of international pressure to reduce flag-of-convenience registrations.

Overall, the Southern African region provides little evidence of the impact of liberalization of air services. The SADC countries remain dominated by

⁶⁸⁷ Mozambican authorities have tried to limit this competition by imposing a cap on frequencies and capacities on the Johannesburg-Maputo route. Such attempt is now challenged by the clauses of the Yamoussoukro Decision imposing (in principle) liberalization of 3rd and 4th freedoms.

⁶⁸⁸ One of these aircraft concerned was a Boeing 727 of UTA, which crashed in Cotonou, Benin, on 25 December 2003. *Accident survenu le 25 décembre 2003 sur l'aérodrome de Cotonou Cadjèhoun (Benin) au Boeing 727-223 immatriculé 3X-GDO exploité par l'Union des Transports Africains* by Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile) at 50.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

the South African flag carrier, and as a consequence fifth freedom operations from both SADC and other REC carriers have declined steeply. However, some of the SADC States are also Member States of COMESA. In isolated cases, there are some indications that these States have benefited from fifth freedom flights to other COMESA States, which were requested on the basis of the Yamoussoukro Decision.⁶⁸⁹

Table 34: Fleet analysis of Southern Africa

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats
Angola	4	21	2 136	4	20	2 238	4	15	1 976	8	33	2 818
Botswana	1	2	84	1	3	138	1	4	211	1	5	281
Lesotho	1	1	44									
Malawi	1	2	177	1	2	177	1	2	177	1	3	287
Mozambique	1	4	654	1	5	613	1	5	520	3	9	886
Namibia	2	6	1 435	2	6	680	2	5	679	2	7	1 044
South Africa	8	85	13 960	16	161	21 853	20	206	27 364	19	220	28 039
Swaziland	1	2	156	2	3	660	2	8	2 275	1	4	503
Zambia	2	4	360				1	1	48	1	2	236
Zimbabwe	2	11	1 374	1	6	836	1	6	836	1	9	968
	23	138	20 380	28	206	27 195	33	252	34 086	37	292	35 062

Regional development in Indian Ocean island countries

Countries in the Indian Ocean region depend heavily on air transportation in order to service domestic and international destinations. Of the four countries in this group, two belong to COMESA (Comoros and Seychelles), and two (Madagascar and Mauritius) belong to both COMESA and SADC. However, the two smaller countries belonging solely to COMESA are both

⁶⁸⁹ See the case of Malawi which requested several fifth freedom operations, most of which were refused. Heinrich C. Bofinger, *Note on the Air Transport Sector of the Republic of Malawi* (Washington DC: The World Bank) at 15.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

Member States of the Yamoussoukro Decision, while Madagascar is not, and the case of Mauritius remains unclear.⁶⁹⁰

Only one carrier was listed for the Comoros in 1997, and none for the subsequent years. Nevertheless, the country operates a national carrier with two aircraft (one Boeing 767-300ER and one Boeing 737-400), which are not registered in Comoros. In the Seychelles the overall figures of aircraft and seats remain stable. A slight increase the number of aircraft registered occurred while capacity dropped between 2004 and 2007, following a peak which was due to registration of a carrier based abroad.

Mauritius represented two thirds of the region's seat capacity in 1997, but its relative share has declined since then. Total seat capacity has been growing slowly throughout the period, but at a slower pace as compared to total traffic. This reflects a loss of market share by Mauritius. However, the increase in unit capacity reflects Air Mauritius' strategic priorities on developing its long-haul services, as well as its difficulty in diversifying its markets on a regional level. A recent air transport policy reform has put an end to Air Mauritius' monopoly by allowing the entry of the new carrier Catovair. However, its operations remain limited, concentrating on services between Mauritius mainland and the outer island of Rodrigues.⁶⁹¹

Madagascar's aviation capacity doubled between 1997 and 2001, but dropped in the subsequent years. The number of medium-haul aircraft

⁶⁹⁰ See Annex II of this dissertation.

⁶⁹¹ Bernard Krief Consultants, *Country Profile Mauritius* (Addis Ababa, Ethiopia: The ICT Africa Market Place) at 4.

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

remained steady, but ageing models were replaced by newer ones. The long-haul fleet was increased from one Boeing 747 to two Boeing 767-300ER aircraft, following an objective of opening new routes and increasing the frequency of services on existing ones. In similar fashion to other countries on the continent, reformed policies were implemented to liberalize domestic market entry, and a second carrier was established with a limited fleet operating domestic routes.⁶⁹²

The analysis of the region's air transport industry would not be complete without mentioning La Réunion Island, which is a French territory. The local carrier, Air Austral which operates with two Boeing 737-300/500 and one ATR72-500 aircraft on regional routes, has recently added three Boeing 777-200 to its fleet to operate its new routes to France and South-East Asia.

Table 35: Fleet analysis of Indian Ocean island countries

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats	Carriers	Aircraft	Avail. Seats
Comores	1	1	44									
Madagascar	2	7	788	1	12	1 642	2	11	1 341	2	10	1 074
Mauritius	1	11	1 996	1	12	2 216	1	12	2 222	2	12	2 463
Seychelles	1	2	454	1	3	696	2	8	1 311	1	4	564
	5	21	3 282	3	27	4 554	5	31	4 874	5	26	4 101

5.4 Conclusions on the impact of liberalization

The general movement towards liberalization of African air services resulted from three different set of causes:

- (1) Worldwide trend towards liberalization, which strongly impacted the African carriers' long-haul operations (especially through increased competition resulting in lower fares), as well as their past

⁶⁹² *Ibid.*, at 4.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

business model, (which consisted in cross-subsidizing domestic and regional services with profits made on intercontinental traffic);

- (2) Domestic liberalization policies which brought an end to domestic monopolies (and in some cases the disappearance of State ownership of flag carriers), and the arrival of mostly privately-owned new entrants on the domestic markets which began competing with legacy carriers to be designated on international routes; and,
- (3) Continent-wide liberalization of intra-African air services, which was promoted by the Yamoussoukro Decision, and which, in some instances, had already been implemented by some RECs.

The first two causes of liberalization produced strong and conspicuous impacts during the period from 2001 to 2004. In particular, these impacts resulted in the collapse of some major legacy carriers, which, in turn, caused in significant drops in seat capacity and air services supply. However, the impact of the Yamoussoukro Decision only became noticeable during the second period examined, from 2004 to 2007.

The most remarkable impacts of the Yamoussoukro Decision on the African air transport sector in the period from 2004 to 2007 are:

- The relative strengthening of a limited number of strong African carriers, which reaped the benefits of their comparative advantages in terms of (i) geographical location; (ii) financial, commercial and

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

managerial strength; and, (iii) access to intercontinental markets (examples are Ethiopian and Kenya Airways);

- The marginalization of many already weak carriers, some of which ultimately disappeared (examples include Air Tanzania, Nigerian Airways, and Cameroon Airlines);
- The consolidation of networks through the phasing out of a number of low density routes, and the high growth rates observed on routes to/from the main hubs (most significant in Eastern Africa);
- The development of fifth freedom traffic especially in regions and country-pairs which lacked strong local carriers; these fifth freedom services are often offered by dominating carriers at marginal cost, effectively putting pressure on regional fares and thereby forcing locally based third and fourth freedom carriers to lower fares;
- significant development of sixth freedom traffic, which was fostered by the liberalization of third and fourth freedom capacity within Africa, and in some cases with intercontinental counterpart countries; some of the sixth freedom services are increasingly competing with point to point intercontinental traffic, which is especially the case on West African routes to and from Europe, as well as on traffic over certain hubs in Eastern Africa; these carriers, who appear to be the main beneficiaries of the ongoing liberalization, are mostly based in Northern and Eastern Africa,

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and are likely to emerge as key actors in the future consolidation of Africa's air transport industry.

On a regional basis, liberalization of air services within the African continent in terms of policy implementation has only been fully achieved in Western and Central Africa. While these regions experienced high carrier turnover rates, these are also the regions where the largest impact in terms of fifth freedom flights can be found. Nevertheless, while a high percentage of these fifth freedom flights are operated by carriers registered within these RECs, a significant number of fifth freedom flights are also carried out by African carriers from other RECs. Given the fact that no strong regional carrier has emerged in West and Central Africa, the question as to which form of liberalization (i.e., regional or continent-wide) will ultimately shape this region's market, remains unanswered.

Those regions which have not implemented the Yamoussoukro Decision, such as North or Southern Africa, would generally benefit from implementing the Decision. However, some countries, such as South Africa, are facing continued strong resistance from neighboring States with weak carriers. Nevertheless, examples of several North African carriers that have begun expanding their route network into sub-Saharan Africa are inspiring indicators of a continent-wide liberalization.

The most inspiring development is the progress in Eastern Africa, where a few operators have aggressively expanded their air services into other regions of Africa. Both Ethiopian and Kenya Airways are good examples of the

AIR SERVICE MARKETS IN AFRICA AND INDICATIONS OF THE IMPACT OF LIBERALIZATION

way forward in replacing the capacity held by failed operators, often in smaller non-viable markets. However, the liberalization of their own regional market must still take the necessary final steps.

CHAPTER 6
REVIEW OF THE ECONOMIC ASPECTS OF
LIBERALIZATION
OF AIR SERVICES IN AFRICA

Africa is a large continent of about 30.37 million square kilometers and with a population of about 900 million.⁶⁹³ Although its land surface is three times larger than that of Europe, its population density is low. Africa has a population density of only 33 persons per square kilometer, which is about 30% less than the World average of 50 persons.⁶⁹⁴ This fact is even more striking when compared to Europe which has 128, or South Asia which counts 307 persons per square kilometer. In addition, Africa has a much lower percentage of urban population than many other parts of the World.⁶⁹⁵ Africa has also the largest overall share of population living in poverty. About 41% of Africa's population lives on less than US\$ 1 a day, and this is followed by South Asia (32%), and

⁶⁹³ The World Bank, *World Development Indicators* (Washington DC: The World Bank, 2007) at 42.

⁶⁹⁴ *Ibid.*

⁶⁹⁵ In 2005 only 35% of Africa's population was urban, compared to a World average of 49%. See *ibid.*, at 164.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

China (9.9%).⁶⁹⁶ Economic development for poverty reduction therefore must be considered as one of the key priorities for the African continent.

In reviewing the economic indicators of sub-Saharan Africa, one cannot help but come to the striking realization that Africa's overall gross domestic product (GDP) includes a high percentage of merchandise trade and trade in services.⁶⁹⁷ A large part of trade in Africa is carried out at the local level. However, expanding economies aim at developing new markets, first on a regional, and then on a continent-wide basis. In addition, an increase in local trade also depends on imports of goods, or at least raw materials for production. As with many other emerging regions, transportation of goods and persons is becoming an increasingly important element for economic development in Africa. This has been confirmed in a recent study which showed that trade was highly sensitive to transportation costs: a 10% reduction in transport cost would increase trade by 25%.⁶⁹⁸

However, in general Africa's road infrastructure is less developed than pertains in any other region of the World. A study conducted by the World Bank has shown that African countries have lower levels of paved roads per capita, per square kilometer, and per GDP per capita than any other low income

⁶⁹⁶ *Ibid.*, at 63.

⁶⁹⁷ In 2005 merchandise trade accounted for 57.8% of sub-Sahara's GDP, compared to a 47.3% World average. Trade in services was at 13.1% of GDP, compared to a 11% World average. *Ibid.*, at 318.

⁶⁹⁸ Ken Gwilliam, *Roads in Africa* (Washington DC: The World Bank) at 39.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

countries in the World.⁶⁹⁹ Another study has revealed that transport costs in Africa are far higher when compared to other regions.⁷⁰⁰ Given the poor state of the existing road network in Africa, and considering the fact that a reduction in transportation costs would stimulate trade, an issue which requires serious thought concerns the potential role of air transportation in the economic development in Africa. It is also necessary to review the theoretical benefits generated by liberalization of air transportation, and to ask the question if liberalization of air services is indeed one of the key issues for economic development in Africa.

6.1 Economic benefits of the air transport sector in general

6.1.1 The direct, indirect, and induced global effect of air transportation

Commercial air transportation started as early as during the First World War when bomber aircraft begun transporting passengers or goods against pay.⁷⁰¹ However, early air transportation was seen as a risky endeavor, and, because of its high cost, it was reserved to a very few affluent passengers.

⁶⁹⁹ *Ibid.*, at 5.

⁷⁰⁰ The study found that for distances up to 300 kilometers the unit cost of road transport is 40%-100% higher in Africa than in South-East Asia. In addition, the composition of trucking costs in Africa differs from the one in most regions of the World: fixed costs are low, while variable costs are very high (around 70% in Central and Western Africa). Fuel and lubricants account for between 40% and 70% of variable costs. Annual truck mileages are lower in many Central, East and West African countries than in developed countries and many other developing countries. Finally, transport charges are high, especially landlocked African countries, where they have been in a range from 15% to 20% of import costs, which is three or four times more than those of most developed countries. Henri Gwet & C. Rizet, *An International Comparison of Road Haulage Prices. Africa, South-East Asia, Central America*, at 80.

⁷⁰¹ In 1913 the Russian-built aircraft "Grand" and "Ilya Mourometz" transported 12 passengers on a six-hour flight. In the US, a regular passenger service across the Tampa Bay was started in 1914, and regular service across the English Channel commenced in 1919 by the "Lignes Aeriennes Farman". Geoffrey Thomas & Christine Forbes Smith, *Flightpaths* (Perth, Australia: Aerospace Technical Publications International Pty. Ltd., 2003) at 8 [*Thomas & Smith, Flightpaths*].

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

Nevertheless, several air carriers were created between the two World Wars of which a few still exist today.⁷⁰² After the Second World War, commercial air transportation of passengers and goods experienced immense growth. This was due to the fact that a huge inventory of transport aircraft which were built and operated during the war was available. In addition, the technological gains achieved with respect to large bomber aircraft during the war strongly facilitated the development of more efficient passenger and cargo airplanes.⁷⁰³

However, for many decades, air transportation remained an expensive form of transportation. The cost of commercial air transportation has declined steadily over the years. The decline was especially steep when jet aircraft became widely used during the late 1960s. For example, passenger fares in cents per mile (expressed in 1978 cents) were 25 cents in 1940 on the then widely used DC-3 aircraft.⁷⁰⁴ The fare declined by about half to 12.14 cents in mid 1965 when jet aircraft were introduced. A further decline by another half to 6.37 cents was achieved in the early 1990s with the introduction of more fuel efficient aircraft. Presently, the new Airbus A380 allows an estimated passenger fare of about 3 cents per mile. An illustrative example of the foregoing is the cost of flying from Sydney to London expressed in average weekly earnings. In 1945, the fare for this

⁷⁰² Examples include in the US: Northwest in 1925 and American Airlines in 1930; in Europe: KLM (Koninklijke Luchtvaart Maatschappij) in 1919, Lufthansa in 1926, and Air France 1933; in South America: Avianca in 1919 and LAB (Lloyd Aereo Boliviano SA) in 1925; and in Africa: South African Airways in 1934 and Linhas Aéreas de Moçambique in 1934.

⁷⁰³ For example, the first aircraft with cabin pressurization (though restricted to crew areas), was the B-29 Superfortress, a bomber developed by Boeing. This technology became standard for all jet aircraft.

⁷⁰⁴ *Thomas & Smith, Flightpaths, supra* note 701 at 177.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

trip would have cost 130 weekly earnings (i.e., US\$ 94,350 in terms of 2005 per capita income in the United Kingdom).⁷⁰⁵ In 1965, the cost declined to 22 weekly earnings (translating into a fare of US\$15,970), and, currently, the fare is at about two weekly earnings (translating into a fare of US\$1,450). This example illustrates that the cost of commercial air transportation has reached a level which is affordable for a wide range of passengers and goods.

With the decline in airfares came a rapid growth of the air transport sector. The introduction of jet aircraft resulted nearly in a tripling of worldwide passenger traffic in the 1960s and early 1970s; a doubling in the 1980s, and finally a growth rate of about 50% in recent decades.⁷⁰⁶ This rapid growth has facilitated the development of the global air transport sector into a major industry which has a significant economic impact. The air transport industry consists of an aviation sector and a civil aerospace sector. The aviation sector includes airlines (passengers, air cargo, general aviation), airports and related services (civil airports, handling and catering, freight services, aircraft maintenance, fueling, and retail), and air navigation service providers. The civil aerospace sector develops and manufactures airframes, engines, equipment, and performs off-site maintenance.

Globally, the air transport industry generates about 5 million direct jobs (airlines employ 4.3 million persons globally and the civil aerospace sector

⁷⁰⁵ *Ibid.*, at 181: Number of average weekly earnings (Graph 15.5) divided by 52 weeks, and multiplied by US\$37,740 gross national income per capita in the United Kingdom.

⁷⁰⁶ The worldwide rate of passenger growth reached 261% per decade during the 1960's; it was 96% during the 1970's; 56% during the 1990's; and, it settled at 42% in 2000. See *ibid.*, at 222.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

about 730,000).⁷⁰⁷ Its global contribution to GDP in 2004 was around US\$ 275 billion, and this was similar in magnitude to the contribution of the global pharmaceutical sector. Apart from its direct impact, the air transport sector also generates an even greater indirect and induced effect on the industry's supply chain.⁷⁰⁸ The indirect impact of the sector was estimated in 2004 as representing 5.8 million jobs, with a global contribution to GDP of US\$ 375 billion.⁷⁰⁹ The induced effect of the direct and indirect impact of the air transport sector generated another 2.7 million jobs, and resulted globally in a contribution of US\$175 billion to GDP.⁷¹⁰ Overall, in 2004 the air transport sector represented a global industry of about 13.5 million jobs with a GDP contribution of well over US\$ 800 billion. However, air transport by itself cannot be identified as the sole cause or even the most important catalyst for economic growth, especially in less developed countries where demand for air travel is generally thin. Nevertheless, there are case studies that clearly indicate the absolute necessity of air transport in economic activities, especially those related to exports.⁷¹¹

⁷⁰⁷ Oxford Economic Forecasting, *The Economic and Social Benefits of Air Transport* (Geneva: Air Transport Action Group, 2005) at 6 [Oxford Economic Forecasting, *The Economic and Social Benefits of Air Transport*].

⁷⁰⁸ The industry supply chain includes suppliers (e.g., off-site fuel supply, food and beverage, construction), manufacturing (e.g., computers, retail), and business services (e.g., call centers, accountants, lawyers, financial services). The induced effect is generated through direct and indirect spending by employees (e.g., on food and beverages, recreation, transport, clothing, household goods, etc.). See *ibid.*, at 5.

⁷⁰⁹ *Ibid.*, at 6.

⁷¹⁰ *Ibid.*

⁷¹¹ See case studies on cut flowers, seafood and fresh fish, clothing industry, and electronics in Heinrich C. Bofinger, *Description and Assessment of a Sample of Export Markets with Dependence on Air Cargo in Developing Countries* (Washington DC: The World Bank, 2007) [Bofinger, *Description and Assessment of Sample Export Markets*].

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

6.1.2 The effect of air transportation on other industries

In addition to its direct, indirect, and induced effect, air transportation also generates a significant catalytic effect. The catalytic effect, which is considered air transportation's most important economic contribution, is the impact on the performance and growth that it exerts on a range of other industries. One very important catalytic effect is on international trade. Air cargo has become a key element for efficient, on-time delivery of many manufactured goods, as well as for a large range of perishables. It is estimated that about 40% of the value of all inter-regional trade is transported by air.⁷¹² On a global scale, this translates to a 25% share of the total value of goods which, in 2004, corresponded to a value of about US\$ 1,750 billion. Some developing countries have specialized in manufacturing high value goods such as electronic components for the computer industry. These countries can only participate in global trade of these products if they are included in a reliable and cost-effective transportation network. As many high value computer components are time-sensitive due to the successive development of newer versions of such products, air transportation is often the most cost- and time-effective mode of transportation.⁷¹³

⁷¹² *Ibid.*, at 15.

⁷¹³ A good example is the Malaysian electronics export industry, which is dominated by semiconductor manufacturing, and computer component production for major computer manufacturer such as NEC or DELL. The factors influencing a manufacturer's decision to use air cargo are the degree to which production has been internationalized, the nature of the good produced, the importance of speed in a supply and distribution chain, and the degree of liberty of decision making of the manufacturer in the production network. Air transportation has become the prime mode of transportation in the case of the production of high value electronic components with the above mentioned factors playing a dominant role. See: Thomas R. Leinbach & John T. Bowen Jr., "Air Cargo services and the Electronics Industry in Southeast Asia" (2004) 4:3 *Journal of Economic Geography* 299 at 301.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

The role of trade in economic development is another very important element to be considered when reviewing the economic aspects of liberalizing air services in Africa. In an extensive cross-country analysis involving all African, Latin American, European and many Asian countries (a total of 150 countries), researchers concluded that a one percentage point increase in trade share of a given GDP increases per capita income by 2%.⁷¹⁴ Several subsequent studies have confirmed the effect of trade on per capita income. More recent research estimates that a one percentage point increase in trade share increases per capita income by 2.5%, which is still considered very significant.⁷¹⁵ One of the key elements of trade is transportation. Development of trade which, in turn, leads to economic development is only possible if the means used to transport the traded goods follow the path of growth. Several studies have concluded that high transport costs pose a barrier to trade which is at least of the same if not higher magnitude as tariffs.⁷¹⁶ Good governance, efficient infrastructure, overall low transport costs, and the absence of trade barriers, are commonly seen as some of the most important ingredients to developing trade.⁷¹⁷ As one author put it, low transport costs are seen as a “necessary but not a sufficient condition”, pointing to

⁷¹⁴ Jeffrey A. Frankel & David Romer, "Does Trade Cause Growth?" (1999) 89:3 American Economic Review 379 at 394.

⁷¹⁵ Satheesh Aradhyula, Tauhidur Rahman & Kumaran Seeivasan, "Impact of International Trade on Income and Income Inequality" (Paper presented at the 2007 Annual Meeting of the American Agricultural Economics Association, Portland, Oregon) at 35.

⁷¹⁶ Irene Feige, *Transport, Trade and Economic Growth - Coupled or Decoupled?* (Berlin: Springer-Verlage, 2007) at 31 [Feige].

⁷¹⁷ World Bank, *World Development Indicators* (Washington DC: The World Bank Group, 2008) at 317.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

the fact that efficient transportation is considered to be the basic element of trade, next to low tariffs.⁷¹⁸

Air transportation has become the mode of choice for the transportation of many time-sensitive and high value goods in international trade, as well as a powerful tool for the implementation of just-on-time procurement and production strategies. However, apart from manufactured goods, perishables are as well becoming increasingly dependent on a well functioning air transport sector. Many developing countries have built a solid export industry which trades agricultural products on a global scale. These products include cut flowers, exotic fruits, seafood and fresh fish, or meat from livestock. One of the prime examples of a strong perishables export industry is Kenya's cut flower exports to the European Union. Over the past forty years Kenya has grown to become the largest cut flower producer and exporter to the European market, maintaining a solid market share of 31%.⁷¹⁹ Air transportation has been the basis for the global distribution of Kenya's perishable goods since inception because of the high value per weight and the time sensitivity of the products. However, Kenya's national air carrier does not have any dedicated freighter aircraft. Nevertheless, the airline transports about 90% of the country's air cargo exports in the cargo hold of regular passenger aircraft with destinations in the United Kingdom, and the Netherlands. Only a small part of the overall exports are transported on dedicated

⁷¹⁸ *Feige, supra* note 716 at 29.

⁷¹⁹ *Bofinger, Description and Assessment of Sample Export Markets, supra* note 711 at 10.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

cargo aircraft.⁷²⁰ This fact underscores the importance of passenger air services for air cargo, especially in countries which do not have large air cargo fleets at their disposal or whose volume of cargo business is too small to support dedicated cargo operations.

Another illustrative example of perishable goods is the export of fresh fish and seafood products. Traditionally, many countries bordering the sea have developed a fishing industry which provides opportunities for export. However, such countries have often developed their fishing industry over centuries with well established local distribution networks. Some nations have organized and managed their fisheries exports by traditional means such as transportation by sea or processing off-shore and freight forwarding by land, and some have assigned fishing rights to foreign operators.⁷²¹ Air transportation has created a new export market for some landlocked countries or for countries with access to large freshwater reservoirs. The production of freshwater fish such as the West Nile Perch or the Tilapia has become a very lucrative export sector for a few developing countries. A good example is Tanzania, where the West Nile Perch was artificially introduced into the Lake Victoria in the 1950s and 1960s. The processing and export industry that arose out of this freshwater fish

⁷²⁰ *Ibid.*, at 11.

⁷²¹ The case of Mauritania provides a good illustration of the fact that the fishing industry in developing countries often remains dominated by foreign operators, who control the export of these natural resources. It was estimated that Mauritanian vessels only accounted for 2 to 3 percent the total maritime catch. In some cases, foreign vessels have maintained fishing rights granted during the colonial era (e.g. by Spain), others operate without any formal agreement with the State. See: David Gibbs, "The Politics of Economic Development: The Case of the Mauritanian Fishing Industry" (1984) 27:4 *African Studies Review* 79 at 81.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

production created an export market of about US\$ 122 million in 2005.⁷²² The center for Tanzanian fishing operations and processing is the city of Mwanza. According to the City Council of Mwanza, the Lake Victoria fishing industry has created direct employment for over 8,000 local processing workers, and overall, another 300,000 indirect jobs. About 52,000 Tanzanian fishermen benefit directly from the Nile perch.⁷²³ The key logistic element for the timely export of the processed fish is air transportation. Mwanza has an airport with a 3,300 meter (10,827 feet) long runway, and two non-precision instrument approach procedures. This allows the take-off of medium-sized cargo aircraft which are able to transport the fish products directly to destinations for distribution in Europe.⁷²⁴

The one industry for which air transportation has become rather indispensable is tourism. The tourism industry is probably the largest sector overall if all related services and activities are included. On a worldwide scale, tourism generated US\$ 7,060 billion of economic activity (total demand) in 2007.⁷²⁵ It is expected that the demand for tourism activity will grow globally to

⁷²² International Trade Centre - UNCTAD/WTO, "International Trade Statistics by Country and Product Group", in *International Trade Statistics 2001-2005*, online: International Trade Centre website, <<http://www.intracen.org/tradstat/sitc3-3d/er834.htm>> (date accessed: 5 February 2008).

⁷²³ *Bofinger, Description and Assessment of Sample Export Markets*, *supra* note 711 at 19.

⁷²⁴ About 400,000 kilograms of fish pass through Mwanza airport each month. The declared value of the product is US\$3.20 per kilogram, and the estimated overall cost of transport to final destination as value added to the product is about US\$1 per kilogram. See *ibid.*, at 20.

⁷²⁵ World Travel and Tourism Council, *The 2007 Travel & Tourism Economic Research* (London: World Travel and Tourism Council, 2007) at 6 [WTTC, 2007 *Travel and Tourism Economic Research*].

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

US\$13,232 billion by 2017. In 2007, economic activity derived from tourism translated into a global GDP contribution of US\$ 1,851 billion or 3.6% of global GDP.⁷²⁶ The world's tourism and travel industry directly employed over 76 million people in 2007 (i.e., 2.7% of global employment). This global direct employment is expected to grow to over 87 million jobs by 2017.⁷²⁷ However, air transport can only support, and not generate, tourism related economic activity. The development of the tourism industry primarily depends on adequate investments in infrastructure and related services, as well as on other factors such as geographic, historical, or cultural attractiveness.

A growing proportion of international tourists are increasingly traveling by air to and from their destinations. In 2002, over 45% of all international tourists arrived by air as compared to only 35% in 1990.⁷²⁸ The direct effect of spending generated by tourists arriving via air transport created an estimated 6.7 million jobs in 2004, about 675,000 of which were in Africa.⁷²⁹ An additional 5.7 million indirect jobs from industries that support the tourism industry are created globally by tourists using air travel. Finally, the induced effect of tourism related air transportation generates 3.1 million jobs.⁷³⁰ The total job creation effect (direct, indirect, and induced) of tourism related air travel is

⁷²⁶ *Ibid.*, at 11.

⁷²⁷ *Ibid.*, at 12.

⁷²⁸ ICAO, *Economic Contribution of Civil Aviation*, Circular 292-AT/124 (2004) at 1-3 [ICAO, *Economic Contribution of Civil Aviation*].

⁷²⁹ Oxford Economic Forecasting, *The Economic and Social Benefits of Air Transport*, *supra* note 707 at 19.

⁷³⁰ *Ibid.*, at 18.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

estimated at 15.5 million jobs, which generates an estimated US\$ 300 billion of the World GDP.⁷³¹ However, the importance of air traveling tourist related spending varies greatly between different regions of the World. The largest impact of international tourism through the creation of jobs and increased prosperity is observed in several developing countries.⁷³² This explains why air transportation to and from developing countries has a proportionally higher economic impact than in the developed World.

6.1.3 Social impact of air transportation

Social impact of air transportation is a significant factor which is quite easy to understand but difficult to quantify with hard evidence. It is obvious that air transportation is often the only practical mode of transportation allowing the integration of remote populations in large countries. In that sense, air transportation has been recognized as playing an important role in shaping the global economy, by even facilitating the integration of new countries and regions into the global economy.⁷³³ Travel and tourism are important elements of this international integration, which air transportation facilitates. The resulting increased understanding of different cultures and nationalities is necessary for opening up trade and movement of people, which helps less developed nations in

⁷³¹ ICAO, *Economic Contribution of Civil Aviation*, *supra* note 728 at 1 – 7.

⁷³² In North America foreign (air travel) visitors only generate about 10% of the overall tourism spending. In contrast, in Africa over 50% of tourism spending comes from air traveling visitors. See the tourism satellite accounts in WTTC, *2007 Travel and Tourism Economic Research*, *supra* note 725 at 24.

⁷³³ Barrie Stevens, "The Impact of Air Transport" The *OECD Observer* (1997) (Special Edition on Sustainable Development) at 33.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

their efforts to integrate into a global world.⁷³⁴ By facilitating interaction and understanding between people of all races, air transportation can even be seen as a key facilitator for the creation of multi-cultural societies. Finally, a well developed air transport infrastructure facilitates the delivery of emergency and humanitarian aid relief, including the timely delivery of medical supplies and organs for transplantation.

The provision of air services to remote areas of large and sparsely populated countries is one of the most significant social benefits of air transportation. A good example is Australia, where the government subsidizes regional air services to remote territories. The government of Australia considers its support for such air services to be a community service obligation. The prime argument is that persons living in remote regions of the nation should have the same level of access to services that metropolitan communities provide, and that they “should be able to engage with other Australians”.⁷³⁵ Less developed countries, however, often do not have the necessary funding to support regional air transportation to remote destinations. Nevertheless, the social benefits are no less important than they are in developed nations. Ongoing interaction between parties is widely recognized as one of the most important factors in conflict resolution or avoidance.⁷³⁶ In Africa, for example, where the existing

⁷³⁴ See generally: Oxford Economic Forecasting, *The Economic and Social Benefits of Air Transport*, *supra* note 707.

⁷³⁵ *Commercial regional aviation services in Australia and transport links to major populated islands* by Standing Committee on Transport and Regional Services of the Parliament of Australia (Canberra) at 29.

⁷³⁶ See generally: Edward Azar & John Burton, eds., *International Conflict Resolution: Theory and Practice* (Boulder, Colorado: Lynne Rienner Publishers, 1986).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

infrastructure is comparatively poor, air transport is often the only means of transportation which can quickly support the integration of, and interaction with, remote populations. In summary, fostering social cohesion, facilitating access to services, and maintaining the viability of remote and rural communities, are social benefits that air transportation can provide. It is therefore a governmental responsibility that needs to be reflected in public sector policy.

6.2 Potential impact of liberalization of air transport services

The current international air transport system has its roots in the Chicago Conference of 1944, which was held during the final stages of World War II. The objective of the United States as the hosting State was to lay a liberal foundation for international air traffic which would assure sustainable growth of the air transport industry.⁷³⁷ However, this liberal strategy, which was proposed by the United States, was resisted by several nations and, in particular, by the United Kingdom which felt that it would face a serious disadvantage given that its air transport fleet would not have sufficient capacity to compete. As a result, the 1944 Chicago Conference failed to agree on the multilateral exchange of all of the five freedoms of the air, or on the use of market forces to determine capacity, frequencies, and fares for scheduled international air traffic. Instead, the conference adopted the Chicago Convention, which reaffirmed the principle of exclusive state sovereignty over national airspace. The result was that international air traffic rights had to be agreed upon and regulated bilaterally

⁷³⁷ This liberal foundation would have allowed all nations unrestricted operating rights up to the fifth freedom. See Dempsey & Gesell, *Air Commerce and the Law*, *supra* note 27 at 751.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

between individual pairs of nations.⁷³⁸ This led to numerous bilateral air service agreements, the first one being the so called Bermuda agreement of 1946 between the United States and Great Britain.

In 1978, the United States promulgated the Airline Deregulation Act, which called for gradual deregulation of the air transport industry in order to create competition among domestic US carriers.⁷³⁹ The move towards deregulation was driven by the notion that decades of economic regulation of the airline industry had resulted in high air fares, misallocation of funds, denial of price and service options to consumers, and excess capacity in the industry.⁷⁴⁰ Deregulation of the domestic US air transport market led to intense competition among the carriers. On the positive side, tariffs decreased, and connectivity grew mainly as a result of the newly established hub and spoke system. However, the negative effect was the collapse of many older legacy airlines, and the emergence of fierce battles between new entrants and the established carriers. While lower fares and higher connectivity are often attributed to deregulation, some argue that deregulation, in fact, increased (or reduced decreases in) fares, as routes became increasingly circuitous, service became poorer, and fewer carriers operated as a direct consequence of deregulation.⁷⁴¹ Occasionally, the case for re-regulating the

⁷³⁸ *Ibid.*, at 754.

⁷³⁹ Pub. L. 95-504; 92 Stat. 1705 (24 October 1978).

⁷⁴⁰ This criticism was voiced by Albert Kahn who was nominated Chairman of the US Civil Aeronautics Board in 1977. It was Kahn who introduced several deregulatory initiatives, such as liberalized entry and pricing. See generally Paul Stephen Dempsey, *Law and Foreign Policy in International Aviation* (Ardsley-on-Hudson, NY.: Transnational Publishers, Inc., 1987) at 24.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

domestic US airline market is made by proponents who also state that with the help of modern information technology, the regulatory aspects of regulation may be carried out in a more efficient manner than they were before deregulation in 1978.⁷⁴²

The first significant liberalization of international air services was undertaken by the EU in 1992 when it created an “Open Aviation Area” within the territory of its member States. The so-called “Third Package” of European Community regulations created a fully open and integrated air transport market for European carriers by removing all restrictions for airlines in terms of frequencies and destinations within the territory (both domestic and intra-EU international flights) of the EU, provided that the carrier was majority owned and controlled by EU nationals.⁷⁴³ Similar Open Aviation Areas have also been created between Australia and New Zealand, the Caribbean States, and some Latin American countries. However, according to IATA only 17% of international air traffic is currently conducted in a deregulated environment, and full

⁷⁴¹ Paul S. Dempsey notes that ten years after deregulation, passengers were paying 2.6% higher air fares than they would have given the observed decline of fares due to technology and market improvements prior to deregulation. He argues that the unprecedented level of competition among airlines resulted in an aging aircraft fleet, the disappearance of carriers, and a costly hub-and-spoke system that increased distances and time to final destination. Paul Stephen Dempsey, *Flying Blind: The Failure of Airline Deregulation* (Washington DC: Economic Policy Institute, 1990) at 33.

⁷⁴² See Paul Stephen Dempsey, "The Cyclical Crisis in Aviation: Causes and Potential Cures", (paper presented at the Seminar prior to the ICAO Worldwide Air Transport Conference, Montreal, 2003, at 12).

⁷⁴³ The “Third Package” of European Community (later the European Union) liberalization consists of three sets of regulations: (i) EC, *Council Regulation 2407/92 (EEC) on Licensing of Air Carriers*, (1992) O.J. L. 240/1; (ii) EC, *Council Regulation 2508/92 (EEC) on Access for Community Air Carriers to intra-Community Air Routes*, (1992) O.J. L. 240/8; and, (iii) EC, *Council Regulation 2402/92 (EEC) on Fares and Rates for Air Services*, (1992) O.J. L. 240/15.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

liberalization to the eighth freedom has been achieved only within the EU.⁷⁴⁴

Accordingly, IATA has called for greater liberalization of the air transport sector which would remove current constraints on access, frequency or capacity in existing bilateral air service agreements, as well as constraints arising from ownership restrictions. On the other hand, IATA advocates more effective regulation of airports and air navigation service providers, because most of these entities enjoy a natural monopoly and economic regulation could improve efficiency and productivity.⁷⁴⁵

In study conducted in 2006, the potential economic impact of liberalization was assessed by analyzing the effects of operational (e.g., product market) and ownership (e.g., capital market) liberalization in four different industries: (i) retail banking; (ii) energy (gas and electricity); (iii) telecommunications; and, (iv) media.⁷⁴⁶ Each industry shares certain common characteristics with the airline industry which were addressed during liberalization process.⁷⁴⁷ The study found that the benefits of liberalization for consumers can be found in three aspects. First, significant lower prices resulted from liberalizing the energy markets. In EU countries, for example, electricity prices were 10-20%,

⁷⁴⁴ IATA, *Airline Liberalisation* (IATA: Geneva, 2007) at 16.

⁷⁴⁵ *Ibid.*, at 18.

⁷⁴⁶ OXERA, *What are the economic impacts of relaxing product and capital market restrictions?* (report prepared for IATA, Oxford, 2006).

⁷⁴⁷ For example, efforts have been made to reduce regulation in the retail banking sector in the EU and the USA, allowing the creation of a single market and removing restrictions on ownership and control. Similar liberalization happened in the telecommunications and energy sector, where markets were liberalized and ownership restrictions lifted. See *ibid.*, at 1.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

and gas prices 35% lower than before liberalization. Even more significant were the effects on the telecommunications sector in Korea and Japan, where the cost of long-distance calls fell by up to 50%. Second, liberalization of the media market has increased output and choice, and this was demonstrated in India and New Zealand where TV and radio broadcast services increased in quality and diversity of channels. Finally, a significant improvement of service quality resulted in the US banking sector following relaxation of interstate ownership restrictions.⁷⁴⁸ However, although deregulation may have lowered prices and improved service quality in many cases, it also significantly increases the risk of sustainability for several industries, as the global economic crisis of 2008 demonstrates. Nevertheless, the study concludes that airline industry consumers could gain great benefits if the air transport markets were further liberalized in terms of access and ownership restrictions. Especially the latter is seen as a key element of liberalization which would allow airlines to improve capacity utilization (e.g., by sharing optimal size of aircraft), increase productivity, transfer best practices to associated carriers, and increase investments (including foreign investors), all of which would ultimately result in improved profitability and market value of individual airlines. This, in turn, would allow better service at lower cost to the traveling customer.⁷⁴⁹

At the firm level, the strategic response in a liberalized environment is typically to focus on: expansion into new markets (e.g., EU energy

⁷⁴⁸ *Ibid.*, at 23.

⁷⁴⁹ *Ibid.*, at 65.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

market); diversification into new products (e.g., Indian media market); specialization in niche products (e.g., US banking sector); or, market exit in response to stronger competition (e.g., German TV sector).⁷⁵⁰ For airlines, the increased flexibility of strategic choices that comes with liberalization is important both in a developed competitive environment, such as the US domestic market, and in a less developed market. The latter is highly relevant in Africa, where the air transport sector remains underdeveloped in many regions.

One of the most detailed recent research projects on the impact of liberalization of air services was conducted in 2006 by Intervistas on behalf of IATA.⁷⁵¹ Intervistas developed a mathematical model of air service liberalization which dealt with a variety of regulatory changes affecting numerous nation-pairs and airlines of great economic and demographic variation. The model's overall objective was to estimate the effect of liberalizing air services on passenger traffic, air freight movements, employment, gross domestic product, tourism and the resulting catalytic effects for any country-pair.⁷⁵² The methodology applied in the research included two methods. First, in the so called "Time Series or Case History" method, five representative country-pairs with multiple destinations were selected.⁷⁵³ A variety of traffic and economic data as well as socioeconomic

⁷⁵⁰ *Ibid.*, at 68.

⁷⁵¹ *The Economic Impact of Air Service Liberalization* by Intervistas (Washington DC, 2006).

⁷⁵² *Ibid.*, at 59.

⁷⁵³ These country pairs are the United States and the United Kingdom, the Intra European Community, the United Arab Emirates and the United Kingdom and Germany, Malaysia and Thailand, and Australia and New Zealand. *Ibid.*, at 20.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

indicators were analyzed by running various regressions on time series before and after a specific liberalization event. The second method applied was the “Cross-Sectional Approach”, which involved analyzing over 1400 country-pair aviation relationships at the same point in time.⁷⁵⁴ The analysis of these country-pairs had to be based on the assumption that a particular relationship between traffic, the extent of liberalization, and socioeconomic conditions applies to every market. The data sample was also individually (per country-pair) adjusted for variations in economic activity and other extraneous factors. Intervistas is confident that the large size of the sample and the fact that the survey involved all regions of the world yields an accurate estimate of the impact of liberalization for any arbitrary country-pair.⁷⁵⁵

The overall conclusion of the Intervistas research was as follows:

This study found extensive and significant evidence that supports the generally accepted “conventional wisdom” that liberalization of air services between countries generates significant additional opportunities for consumers, shippers, and the numerous direct and indirect entities and individuals affected by such liberalization. Conversely, it is also evident that restrictive bilateral air service agreements between countries stifle air travel, tourism and business, and, consequently, economic growth and job creation.⁷⁵⁶

⁷⁵⁴ With over 200 sovereign nations, over 40,000 country-pairs could be included in this method. However, relevant and accurate data could only be obtained for about 1400 pairs. *Ibid.*, at 62.

⁷⁵⁵ *Ibid.*, at 61.

⁷⁵⁶ *Ibid.*, at ES-2.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

The specific findings of the research include:

- The expected traffic growth after liberalizing air services agreements between countries typically average 12% to 35%, but in several cases exceeded 50%, and sometimes 100%.
- A simulation run on 320 country pairs that were not liberalized at the time of the study resulted in an estimated traffic growth of 63%, which is significantly higher than the typical world traffic growth of six to eight percent. The simulations further revealed that the liberalization of these 320 bilateral relationships alone could create 24.1 million full-time jobs and generate an additional US\$ 490 billion of GDP, which represented at the time of the study almost the entire economy of Brazil.
- The growth rate within the European Union region nearly doubled after the creation of the Single European Aviation Market in 1993, when comparing the period from 1990 to 1994 with that between 1995 and 2004. This alone produced about 1.4 million new jobs.
- The full liberalization of the aviation market between the United States and the United Kingdom would result in an estimated traffic increase of 29%, resulting from lower fares and multiple new destinations in the US serving London directly. The expected economic impact would result in the

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

creation of 117,000 new jobs and an incremental increase in GDP of US\$ 7.8 billion.

A 2002 study carried out on behalf of the European Commission specifically researched the potential economic impact of an Open Skies agreement between the European Union and the US.⁷⁵⁷ The methodology for assessing the impact of liberalization on restricted transatlantic routes was based on a regression analysis which estimated passenger volume changes that were observed on prior liberalization of certain routes between Europe and the US (e.g., Open Skies agreement between the Netherlands and the US). The regression analysis also determined the relationship between passenger volumes and relevant economic factors using data from the period prior to the specific Open Skies agreement which created the necessary baseline for the entire European Aviation Area.⁷⁵⁸ The adoption of an open EU-US aviation area would remove a set of market restrictions which would result in:

- no restrictions on ownership and control of US airlines by European investors (including European airlines), and no restrictions on ownership and control of European airlines by US investors (including US airlines);

⁷⁵⁷ *The Economic Impact of an EU-US Open Aviation Area* by The Brattle Group (Washington DC & London).

⁷⁵⁸ *Ibid.*, at A21.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

- EU investors or airlines would have the right of establishment in the US, and US investors or airlines would have the right of establishment in the European Union;
- EU and US carriers would enjoy up to full fifth and seventh freedom rights, as well as cabotage (based on foreign ownership of a domestic operator), and wet lease operations.⁷⁵⁹

The study concluded that the creation of an open EU-US aviation area would increase transatlantic travel by 4.1 million to 11 million passengers per year, which represents an increase of between 9 and 13%. The resulting increase on intra-EU routes would be an additional 13.6 million to 35.7 million passengers; an increase of between 5 and 14%.⁷⁶⁰ The liberalization would also create about US\$ 5.2 billion of consumer benefits per year resulting from lower fares and increased travel. The overall estimated increase in economic output of directly related industries was estimated to be between US\$ 3.6 and US\$ 8.1 billion per year. Finally, the direct effect on increased employment are estimated to range between 2,800 to 9,000 new jobs in the EU, and 2,000 to 7,300 new jobs in the US, which represents between 1 and 3% increase in EU and US aviation employment rates.⁷⁶¹

⁷⁵⁹ Wet lease operations under this example are based on a leasing arrangement whereby a domestic airline provides an aircraft, complete crew, maintenance, and insurance to a foreign airline, which pays on the basis of hours operated, but stands as operator. *Ibid.*, at 1-14.

⁷⁶⁰ *Ibid.*, at 6-1.

⁷⁶¹ *Ibid.*, at 6-4.

THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION

In 2007, the European Commission commissioned a new study to update the findings of the 2002 report.⁷⁶² The analysis for the report was carried out using updated parameters and on a revised baseline, with changes such as including the countries of the European Free Trade Association, and the new EU Member States.⁷⁶³ The conclusion of the study included the following findings:

- The increase in growth in traffic volume (traveling passengers) would span over five years following the signing of an Open Skies Agreement. Over that period, the liberalization would generate an additional 26 million passengers, which represents an estimated increase in growth of 6.4%. At the end of the five year period, the air transport market between the US and the EU would be 34% larger than it would have been without establishing the so called “Open Aviation Area” (OAA).⁷⁶⁴
- Like the passenger market, the air cargo market is also expected to experience strong growth with the establishment of the OAA. Based on the assumption that the average air cargo per enplaned passenger on combination carriers (cargo transported in the belly of

⁷⁶² *The Economic Impacts of an Open Aviation Area between the EU and the US* by Booz Allen Hamilton: Directorate General of Energy and Transport of the European Commission, January 2007) [*Booz Allen Hamilton*].

⁷⁶³ See *ibid.*, table 37 at 150.

⁷⁶⁴ *Ibid.*, at 159.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

passenger planes) of 38 kg remains constant, it is estimated that cargo would increase from 67,000 to 105,000 tons in 2006 and from 371,000 to 423,000 tons by 2010.⁷⁶⁵ However, the liberalization of air services between the US and the EU would even have a significant impact on all-cargo freighter operations despite the fact that passenger flights handle a majority of intercontinental cargo traffic. The study found that integrated carriers would benefit from a significant impact resulting from the fact that they could improve and optimize their flight network based on economics rather than on agreed traffic rights.⁷⁶⁶ It was estimated that this impact would generate between 1,600 to 3,300 direct, and 4,500 to 8,900 indirect jobs. A smaller impact, due to the relatively small size of the market, is estimated for the all-cargo carriers, where about 140 direct and 411 indirect jobs would be created.⁷⁶⁷

- Liberalizing air transportation between the US and the EU will greatly stimulate trade in services and merchandise.

The overall trade between the US and the EU in 2005

⁷⁶⁵ *Booz Allen Hamilton, supra* note 762 at 75.

⁷⁶⁶ An integrated carrier is an air cargo operator, which operates its own flights. Prior to deregulation, freight forwarders were limited to the function of a common carrier, which had to rely on air carriers to perform the air haul. Prominent examples of integrated carriers include *Emery* and *UPS*. See generally William E. O'Connor, *An Introduction to Airline Economics* (London: Greenwood Publishing Group, 2000) at 175.

⁷⁶⁷ *Booz Allen Hamilton, supra* note 765 at 75.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

amounted to US\$ 880 billion, 71% of which resulted from merchandise trade and 29% from trade in services.⁷⁶⁸ Despite the fact that air carriers were handling a relatively low share of import and export shipments by weight, they transported about half of all goods by value which were exchanged between the US and EU. Of the services traded between the two markets, 25% were airline services or “air dependent services”.⁷⁶⁹ Given the importance of air transportation in the trade of services and merchandise, it is conclusive that an increase in passenger and cargo traffic, as expected to result from the OAA, will substantially promote trade and act as an economic stimulus on both markets.

Overall, the expected economic benefits of the OAA would be the result of three main effects: (i) additional GDP generated by increased demand for passenger and cargo air transportation; (ii) increase in employment in the air transportation sector as well as in related industries; and, (iii) higher purchasing power for air transportation of existing and new consumers as a direct result of price reduction.⁷⁷⁰ The reports argue that these effects are primarily generated by the removal of output constraints, such as regulatory restrictions on capacity,

⁷⁶⁸ *Ibid.*, at 136, calculated from Table 31.

⁷⁶⁹ *Ibid.*, at 137.

⁷⁷⁰ *Ibid.*, at 143.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

frequency and designation (e.g., which airline may operate in a given market). The removal of such constraints would allow new entrants to serve formerly restricted markets, and to compete on the basis of price and/or improved service (e.g., higher frequencies). An additional cost reduction will result from closer airline relationships (e.g., from code share operations to mergers and acquisitions), which become necessary measures in a more competitive environment. Finally, the economic benefits of opening the aviation market would also activate the multiplier effects generated by additional air travel and cargo transportation in a wide range of economic activities.⁷⁷¹

The effects of open skies agreements were also generically researched for air cargo. In another recent paper, Alejandro Micco and Tomas Serebrisky conclude that the signing of an Open Skies agreements generally reduce air transport costs by 9% and increase the share of imports arriving by air by 7%.⁷⁷² The paper further estimates that an Open Skies agreement could increase trade by 12%. However, there are major differences between developed and developing countries. In developed and upper-middle-income countries, air freight rates will decline by 6.8% within three years after an Open Skies agreement was signed, but in developing countries this reduction effect is expected to be below 1% (-0.8%).⁷⁷³ The authors conclude that the weak effect in low-income developing countries is due to the limited market size and due to the

⁷⁷¹ *Ibid.*, at 144.

⁷⁷² Alejandro Micco & Tomás Serebrisky, "Competition regimes and air transport cost: The effects of open skies agreements" (2006) 70 *Journal of International Economics* 25 at 45.

⁷⁷³ *Ibid.*, at 40.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

fact that other barriers to competition exist, preventing market participants to take full advantage of the open skies regime.

While many have recognized lower airfares and higher productivity of airlines as the key benefit of global air transport liberalization, criticism of liberalization is also rising at several levels. In the sociopolitical view, relevant at the macro level, fears exist that a global (or pan-African) push for air transport liberalization might create asymmetrical pressure on certain States, especially those with a low level of development. The result might be that carriers of less developed countries would be less prepared to adjust their strategy and to make the necessary investments to respond to rising competitive pressures, which requires a new business model. Governments tend to raise sovereignty as the key issue when defending their resistance to the pressure of liberalizing international air services. However, by doing so governments are usually defending their political standpoint, rather than addressing the economic cost of maintaining and often subsidizing noncompetitive domestic carriers.

Nevertheless, a recent study concluded that even if the economic cost of resisting liberalization clearly surpasses the political cost, political considerations generally prevail and influence government policy.⁷⁷⁴ Governments fear the short term political cost, which could take the form of social upheaval, labor action, or loss of political power during elections. In small or less developed African nations operating a dominating but non-competitive

⁷⁷⁴ Triant G. Flouris, "A Theoretical Justification of Global Air Transport Liberalization - The False Dilemma of Political versus Economic Cost" (2003) *Business Briefing - Aviation Strategies: Challenges & Opportunities of Liberalization* at 21 [Flouris].

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

state-owned carrier, additional arguments, such as national pride of having a “flag carrier” are sometimes used by politicians to resist liberalization of air services or privatization of their carrier. This motivates government officials to maintain continued support and subsidies for their carrier, often at the economic cost of higher taxes or reduced government services. This is especially flagrant in less developed countries, where inefficient flag carriers have been subsidized for many years while the provision of basic services by the authorities in the health, education, or nutrition sectors remain insufficient. One typical case is the Republic of Cameroon which supported its state-owned carrier for decades. After years of pressure from international organizations to privatize the carrier in order to reduce the massive subsidies necessary to keep it operating, the Government of Cameroon finally had to agree in 2007 to eliminate all budgetary subsidies for the airline.⁷⁷⁵ Soon thereafter, processes were initiated to liquidate the 36 year old carrier.

The economic cost of maintaining an inefficient and non-competitive air transport sector has long-term effects. However, Triant Flouris outlines in his research on the subject that economic intervention (e.g., liberalization of markets) may initially create public dissatisfaction, but will reach a point where the measures have positive effects and the political costs gradually disappear. He concludes that resisting liberalization measures due to the short-term political cost they entail is not a valid argument given the fact that the

⁷⁷⁵ Ephraim Inoni, *Letter from the Prime Minister and Head of Government of Cameroon to the International Monetary Fund*, online: Government of Cameroon website, <http://www.spm.gov.cm/detail_artbg.php?iddocument=459&lang=en&tpl=1&type=docbg> (date accessed: 7 May 2008).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

economic costs nearly always outweigh the political costs.⁷⁷⁶ This conclusion is particularly the case in poor countries where, often, only a very small part of the population can afford to travel by air.

6.3 Economic significance of the liberalization of air transport services in Africa

The above summarized reports and studies generally suggest that liberalization of air services results in lower costs, increased traffic, and better efficiency among the participating carriers. However, most of these studies focused on mature markets in which the competition was ready to respond to the new opportunities arising when certain restrictions were lifted. In terms of intra-African RPK, the African continent currently has less than a 1% share of the global air services market despite representing more than 12% of the World's population spread over the second largest continent after Asia.⁷⁷⁷ A key question to consider is whether liberalization of the thin air traffic in Africa would, in fact, create the same impacts as suggested or found in studies on the impacts of liberalization in developed markets.

As outlined in Chapter 5, the main growth of air traffic in Africa occurred in Eastern and Southern Africa, while the West and Central African region had much slower development. The Southern African region provides a good field for examination because of the fact that there are a variety of bilateral

⁷⁷⁶ *Flouris, supra* note 774 at 22.

⁷⁷⁷ The sizes of the various continents are as follows: Asia (44,579,000 sq km), Africa (30,065,000 sq km), North America (24,256,000 sq km), South America (17,819,000 sq km), Antarctica (13,209,000 sq km), Europe (9,938,000 sq km), and Australia/Oceania (7,687,000 sq km). See World Bank, *World Development Indicators*, *supra* note 693 at 14.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

relationships in operation there (ranging from very restrictive to *de facto* liberalized bilaterals), in addition to several instances of domestic liberalization, which together, provide evidence about the impact of liberalization on the market. A recent study on Southern African air transport markets examined the importance of liberalization of air services in the SADC region of Southern Africa as a stimulant of shared economic growth within this region.⁷⁷⁸

The following evidence of the impact of liberalization was found in specific cases studied:

- The Nairobi – Johannesburg route was initially liberalized in 2000 by the respective States agreeing to multiple designation of carriers, and increasing daily flights from 4 to 14. Subsequently, the route was fully liberalized in 2003. Following liberalization, the effect was an increase in passenger volumes by 69%.⁷⁷⁹
- The domestic market in South Africa was liberalized in 1990, by allowing new carriers to enter and compete. This led to the establishment of domestic low cost carriers in early 2000. The overall passenger market grew by 80% between 1994 and 2004. One remarkable observation is the fact that traffic on certain routes to remote destinations

⁷⁷⁸ Genesis Analytics *et al.*, *Clear Skies over Southern Africa* (South Africa: ComMark Trust, 2006) [*Genesis Analytics*].

⁷⁷⁹ *Ibid.*, at 16.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

experienced strong growth despite the fact that they served small communities with very low incomes.⁷⁸⁰

- Following the liberalization of traffic to destinations in the Eastern Cape region of South Africa, both passenger growth and the increase in the number of tourists were measured. The entry of a low cost carrier serving the Eastern Cape region in 2004 resulted in an increase of the overall passenger volume by 52%, with 13% more tourists visiting the region. The increase in the number of tourists is economically significant for this region given the fact that it is one of the poorest provinces in South Africa.⁷⁸¹
- The Johannesburg – Lusaka route is a particular case where South African Airways enjoyed high ticket prices due to the fact that they were the only carrier on this route following the liquidation Zambia Airways in 1995. However, in 2006 the newly established Zambian Airways signed a wet lease agreement with the South African low cost carrier Kulula, allowing it to serve the route on behalf of Zambia. The immediate effect was a significant drop in air fares between 33% at the top end and 38% at the bottom end, and an

⁷⁸⁰ One example was flights to and from George in the Western Cape, which increased by 159 percent, despite the fact that George is a small town (population 160,000 in 2005), where half of the population live on less than US\$250 per month. See *ibid.*, at 17.

⁷⁸¹ *Ibid.*, at 18.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

increase in passenger volumes by 38%. It is estimated that the increase translates into an additional 6,300 tourist arrivals in Zambia, which results in additional income from tourism of about US\$ 8.9 million on a yearly basis.⁷⁸²

- The case of Mozambique stands out as an example in which the protection of a national carrier results in high airfares thereby hindering the development of tourism. In 2006, airfares between Johannesburg and Maputo, Mozambique, were 163% more expensive than the fares for a same distance flown within South Africa (the example examined was Johannesburg – Darwin). While Mozambique has a very important tourism potential, including over 2,500 km of undeveloped coastline with white beaches and many national parks, game reserves and hunting areas, high airfares are negatively influencing the choice of Mozambique by international tourists who are finding cheaper vacation packages in neighboring South Africa.⁷⁸³

Based on the above examined cases of the observed effects of liberalization of air services in the SADC regions, two econometric models have

⁷⁸² *Ibid.*, at 18. See also Charles Schlumberger, "Air Transport: Revitalizing Yamoussoukro" in *Services Trade and Development: The Experience of Zambia* (Washington DC: The World Bank Group, 2006) at 201.

⁷⁸³ *Ibid.*, at 19.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

been applied to estimate the overall drop in prices and increase in passenger volumes that occurred in the region. The result was then used as the basis for calculating tourism expenditure likely to occur from further liberalization.

The first model, a volume analysis, estimated the impact of entering into a liberalized bilateral air service agreement in terms of the large one-off increase in capacity expected to occur under the new agreement. Using data from 16 countries in Africa, Europe, and Asia, the study found that the large one-off increase in passenger volumes was 12%, which eventually led to an overall increase in demand for air travel by 23%.⁷⁸⁴ A second model, a price analysis, examined the rate at which prices were lowered for air travel once the market was liberalized. Price developments on a total of 56 routes within SADC were analyzed by running various regression analyses.⁷⁸⁵ The conclusion of these analyses was that airfares on liberalized routes declined by an average of 18%. In cases where a low-cost carrier entered the market, airfares generally were 40% lower than prior to liberalization.⁷⁸⁶ Taking the findings of the case studies into account and consolidating the results of all regressions, the overall conclusion of

⁷⁸⁴ *Ibid.*, at 22.

⁷⁸⁵ Regression analysis is a technique used for statistical modeling and analyzing numerical data consisting of values of a dependent variable (in this case prices) and of one or more independent variables (in this case distance, the presence of a low-cost carrier, and a liberalized bilateral air service agreement). The dependent variable in the regression equation is modeled as a function of the independent variables, corresponding parameters ("constants"), and an error term. The parameters are estimated so as to give a "best fit" of the data. Most commonly the best fit is evaluated by using the least squares method, but other criteria have also been used.

⁷⁸⁶ *Genesis Analytics*, *supra* note 778 at 23.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

the study was that full liberalization throughout the SADC region would increase passenger volume by 20%.

To assess the overall potential economic impact that liberalization would have on the region, both the direct and the indirect economic impact had to be evaluated. The direct impact results from passengers' expenditures on airfare, accommodation, and local travel. The indirect impact of these passengers results, for example, from manufacturing, construction, and additional government expenditures. The calculations made in this research demonstrated that liberalizing air services within the SADC region would result in a substantial increase in employment and economic activity throughout the region. It was estimated that more than half a million additional foreign tourists would arrive by air, and they would spend over US\$ 500 million in the tourist sector. Taking into account the multiplier effect on the overall SADC economy, it was estimated that this spending would increase the region's GDP by about US\$ 1.5 billion (representing half a percent growth). In addition, 35,000 jobs in the tourism industry and an additional 35,000 jobs in the SADC-wide economy would be created.⁷⁸⁷

The above reviewed study confirms that the conclusions drawn from studies on markets in other regions (e.g., US EU) are also valid for Africa. Another study, which empirically measured the economic effects of progressive air transport liberalization on routes involving 20 city pairs to and from Addis Ababa (effectively analyzing the African route network of Ethiopian Airlines),

⁷⁸⁷ *Ibid.*, at 24.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

came to a similar conclusion.⁷⁸⁸ With regard to critical considerations such as Paul Dempsey's conclusion that passengers are flying 2.6% more after deregulation (resulting in higher costs) due to the concentration of carriers serving specific hubs, Africa must still be considered as an underdeveloped continent, where, in many cases, inefficient state-owned carriers dominate routes and hinder development. The removal of these carriers and the opening up of air services to destinations which were not previously served would have a significant impact even on regions with less developed markets. This has been particularly demonstrated by the example of Ethiopian, which has established a large intra-African network, even serving remote destinations on seventh freedom flights (see Annex IV).

6.4 Conclusion

It can be concluded that, in general, liberalization of air services in Africa would have a positive impact on the development of the air transport sector, which would lead to significant economic impacts in various other sectors. The air transport industry itself will enjoy a strong direct impact from liberalization as it typically employs a large range of personnel, from low-skilled labor to highly specialized technicians. The industry further affects a wide array of commercial activities which directly (e.g., catering) or indirectly (e.g. duty free

⁷⁸⁸ The study found that more benefits can be unlocked in the form of improvements in service quality by abandoning the currently restrictive regulatory regimes in international bilateral air service agreements in Africa. These benefits are derived from a significant increase in departure frequencies, while liberalization coefficients did not reveal any presence of damaging market dominance. Megersa Abera Abate, *The Economic Effects of Progressive Air Transport Liberalization in Africa: The Case of City-Pair Routes to/from Addis Ababa*, (M.Sc. (Economics) Thesis, School of Graduate Studies, Addis Ababa University, 2007) [unpublished], online: Addis Ababa University website, <etd.aau.edu.et/dspace/bitstream/123456789/1238/1/Megersa%20Abera.pdf>.

REVIEW OF THE ECONOMIC ASPECTS OF LIBERALIZATION OF AIR SERVICES IN AFRICA

shops in airports) depend upon air transportation. Finally, the financial sector in poor countries typically depends heavily on a few activities that generate hard currency income. Air transportation provides several sources of this hard currency income including airport and air navigation fees, fuel sales, maintenance of foreign aircraft, or tax revenue.

Given the fact that the continent is large with a relatively low population density, air transportation also has the potential of replacing difficult and long road travel for passengers and certain goods. This substitution has already resulted in increased trade both on an intercontinental and on a regional basis. Increased trade will support various sectors, ranging from perishables to high-tech goods. In addition, increased economic exchange is fostering foreign investments in production and infrastructure. The most significant economic impact would be felt in the tourism industry. This is due to the fact that, in Africa, about 20% of all tourism related jobs (675,000 in 2004) are supported by international visitors arriving by air, and this compares to only 4% (310,000 jobs) in North America.⁷⁸⁹

However, for many air transportation remains a relatively expensive mode of transportation. This is especially the case in Africa where a large part of the population lives in poverty. Lowering the cost of air transportation to a level where commercial activity would consider its gains in time, reliability, safety, and comfort a real alternative to road travel remains the most important element for the successful development of air transport services.

⁷⁸⁹ Oxford Economic Forecasting, *The Economic and Social Benefits of Air Transport*, *supra* note 707 at 19.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Several studies have demonstrated that liberalization of air services both in Africa and around the world has resulted in a significant reduction of airfares. The increased competitive environment has nearly always resulted in strong growth of traffic, leading to a reduction of airfares for passengers and cargo. The only exception where liberalization reduced air traffic typically concerned routes that were subsidized or on which a carrier enjoyed a monopoly until liberalization ended this advantage. Ending the subsidization or public funding of non-competitive or non-viable carriers in poor countries is in itself a viable argument for liberalization of air services in Africa.

Finally, the full liberalization of air services would facilitate the integration of remote countries or regions into international trade and the global economy, thereby opening up the possibility of those countries or regions becoming low cost manufacturing sites. This would not only support economic development, but would also facilitate social integration on a regional and national level in large countries. However, continued resistance against liberalization of intra-African air services would remain yet another obstacle in Africa's challenging path out of poverty.

CONCLUSIONS AND POLICY RECOMMENDATIONS FOR THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

CHAPTER 7

CONCLUSIONS AND POLICY RECOMMENDATIONS FOR THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

The Yamoussoukro Decision is a rather ambitious treaty framework which aims at opening up air services between all African States. It is, in fact, quite a progressive and radical move away from regulating air services between States on the basis of restrictive bilaterals, given the long history of Africa. However, the implementation of the Decision has encountered two realities which are very opposite. Implementation of the Decision, understood as the carrying out of formal public policy by States, has seen little progress on the pan-African level. Many of the key policy elements are still missing, or exist only on paper. On the other hand, in terms of operational implementation, there are many examples of countries opening up their air transport markets by applying the Yamoussoukro Decision on a bilateral basis. Given the current structure of the air transport sector in many African countries, it can be assumed that about *two thirds* effectively apply the Yamoussoukro Decision, as they see little value in protecting their own markets from outside competition.

In view of the foregoing, the Decision can also be regarded as a historic opportunity for implementing a pan-African accord both on a continent-

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

wide and on a regional level; an opportunity which is key for Africa's regional integration. As outlined in Chapter 1, the Yamoussoukro Decision was preceded by a long history of failed or ineffective efforts at integrating Africa, such as the Lagos Plan of Action. However, given the fact that the Decision is increasingly supported and applied by States which are backing their national carriers in their efforts to obtain traffic rights that are based on the Decision, the implementation has good prospects of being carried out in most regions in the future. This appears to be the case although the implementation of the missing elements of the Decision by the African Union or RECs continues to drag along.

From a policy standpoint, there are several elements of implementation which the AU and the RECs must continue to pursue. However, it must be recognized that none of these elements would hinder the continued application of the Yamoussoukro Decision on a bilateral basis between two or more Member States. An effective Executing Agency, competition regulation and a conflict resolution system are all necessary tools which need to be established. Nevertheless, an increasing number of Yamoussoukro Decision conforming bilateral relationships between States may become the motivating factor to set up these missing elements. In the meantime, operational implementation must continue on a bilateral or multilateral basis, regardless of the progress made in policy implementation.

To continue pan-African implementation of the Yamoussoukro Decision, *it is recommended that the ten countries which are not Member States of the Decision (i.e., Djibouti, Equatorial Guinea, Eritrea, Gabon, Madagascar,*

CONCLUSIONS AND POLICY RECOMMENDATIONS FOR THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Mauritania, Morocco, Somalia, South Africa, and Swaziland) review their current status. Some of these countries may not even be aware that technically they cannot be considered as Member States because they ratified or deposited their instruments of ratification too late.⁷⁹⁰ These countries, as well as those that never signed or ratified the Abuja Treaty, such as Morocco, might consider joining the Yamoussoukro Decision.⁷⁹¹

Regional implementation of the Decision must be continued, especially in those RECs which have come very close to liberalization. The EAC should amend its bilaterals to conform to the principles of the Decision, while COMESA must declare the establishment of the Joint Competition Authority the last obstacle for full implementation. The fact that there has been strong growth of air traffic in the region, driven by two main operators that are increasingly providing air transportation in markets abandoned by failing carriers, should be recognized as a strong argument for urging other countries to stop supporting their non-viable airlines. *Non-viable national air carriers are also the major obstacle that hinders the implementation of a liberalized market in Southern Africa.* The argument that SAA would destroy foreign weak carriers of the region can be countered with the fact that the domestic market in South Africa has prospered since the introduction of a truly competitive environment. Liberalization of the SADC region should therefore be possible even if it entails the disappearance or

⁷⁹⁰ Equatorial Guinea, Mauritania, South Africa, and Swaziland ratified and/or deposited their instruments of ratification after AU entered into force. They cannot be considered Member States of the Yamoussoukro Decision.

⁷⁹¹ The Yamoussoukro Decision provides for a simple procedure for non-treaty States, which wish to be parties to the Decision. See *Yamoussoukro Decision*, *supra* note 29, Annex 1(a).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

integration of certain national carriers such as those in Malawi or Mozambique. The only requirement to that will guarantee competition would be a policy of, for example, allowing more than one carrier to serve city pairs within the region, even if both carriers are registered in South Africa.

On a national level, several African countries continue to artificially support their failing national carriers. *These States should be encouraged to abandon this strategy by privatizing, disposing of or liquidating their carriers.* This is especially important when considering the large amounts of public funds that have been absorbed in keeping non-viable carriers operating. In addition, most countries in Africa that have abandoned their failing carriers and opened-up to foreign operators in applying the principles of Yamoussoukro have experienced positive development in their air services sector.

Finally, *achieving an adequate safety and security oversight regime remains the most urgent measure which must be implemented for the development of air services.* The fact that 31 African countries currently have poor safety standards remains the single most important policy measure to be addressed in the short-term. Failing to meet internationally accepted safety and security standards will not only hinder the development of air services regardless of progress made in the implementation of the Yamoussoukro Decision, but will also continue to push certain African States into isolation by being labeled as countries of poor governance.

ANNEX I – African Prewar Air Routes⁷⁹²

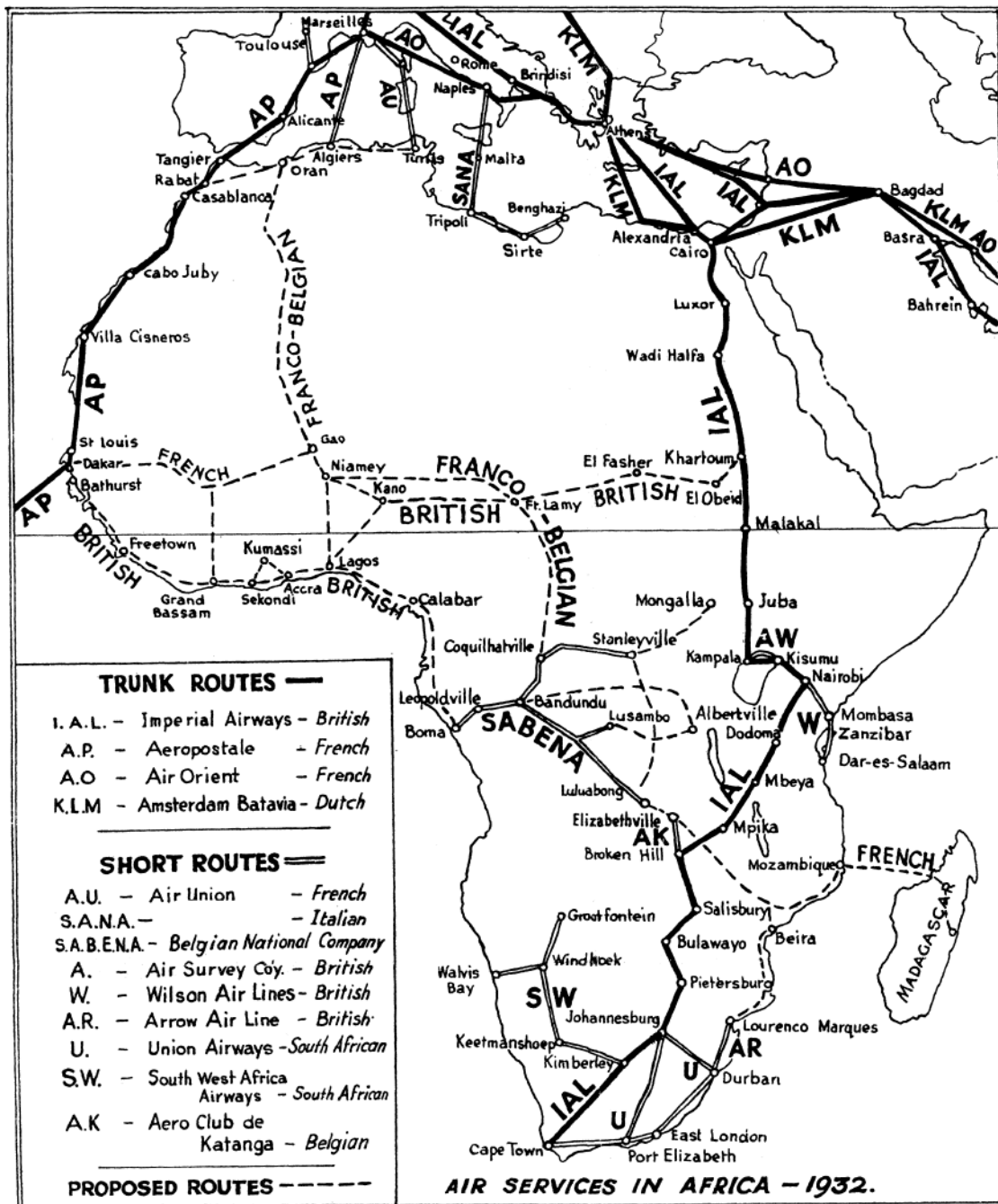


FIG. 3.

[To face p. 66.]

ANNEX II – Freedoms of the Air⁷⁹³

First Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a First Freedom Right).

Second Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (also known as a Second Freedom Right).

Third Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a Third Freedom Right).

Fourth Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a Fourth Freedom Right).

Fifth Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a Fifth Freedom Right).

Sixth Freedom of The Air - the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States (also known as a Sixth Freedom Right). The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated

⁷⁹³

Source: ICAO, *Manual on the Regulation of International Air Transport*, ICAO Doc. 9626, Part 4.

APPENDICES

as such into any widely recognized air service agreements such as the "Five Freedoms Agreement".

Seventh Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e. the service need not connect to or be an extension of any service to/from the home State of the carrier.

Eighth Freedom of The Air - the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (also known as a Eighth Freedom Right or "consecutive cabotage").

Ninth Freedom of The Air - the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (also known as a Ninth Freedom Right or "stand alone" cabotage).

Note: ICAO characterizes all "freedoms" beyond the Fifth as "so-called" because only the first five "freedoms" have been officially recognized as such by international treaty.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ANNEX III – African Country Overview

Country	AT ⁷⁹⁴ signed	AT ratified	AT deposited	YD member	RECs ⁷⁹⁵ member	RECs YD member ⁷⁹⁶	National airline ⁷⁹⁷	Remarks and observations about the implementation of the Yamoussoukro Decision
Algeria	03/06/91	21/06/95	18/07/95	YES	AMU	NO	YES	One fully State owned airline and one private carrier. The Government considers opening up, but is still quite restrictive.
Angola	03/06/91	11/04/92	23/06/92	YES	COMESA & SADC	Pending	YES	One fully State owned airline. Restrictive bilaterals policy.
Benin	27/02/92	10/05/99	31/05/99	YES	WAEMU	YES	NO	Three small operating carriers.
Botswana	03/06/91	27/06/96	03/07/96	YES	SADC	NO	YES	One 100% State owned carrier.
Burkina Faso	03/06/91	19/05/92	17/06/92	YES	WAEMU	YES	NO	One privately owned operator.
Burundi	03/06/91	05/08/92	06/10/92	YES	EAC & COMESA	Pending	NO	One privately owned operator.
Cameroon	03/06/91	20/12/95	08/04/96	YES	CEMAC	YES	YES	Liquidation of national airline in progress.
Cape Verde	03/06/91	12/04/93	11/05/93	YES	BAG & ECOWAS	NO	YES	Restructuring of national airline in progress.

⁷⁹⁴ AT – *Abuja Treaty*, *supra* note 32, the basis of the *Yamoussoukro Decision* (YD).

⁷⁹⁵ Regional Economic Communities (RECS): Arab Maghreb Union (AMU), Banjul Accord Group (BAG), Economic and Monetary Community of Central Africa (CEMAC), Common Market for Eastern and Southern Africa (COMESA), East Africa Community (EAC), Economic Community of Western African States (ECOWAS), Sothern African Development Community (SADC), and West African Economic and Monetary Union (WAEMU).

⁷⁹⁶ Some RECS have implemented the Yamoussoukro Decision with binding regulation within their community. This column answers the question if a given State, based on its membership in a REC, is currently bound to the Yamoussoukro Decision within this community.

⁷⁹⁷ The State owns and controls at least 51% of its national carrier. Source: FlightSafe Consultants Limited, *Countries in the FlightSafe database*; 2007.

APPENDICES

Country	AT⁷⁹⁴ signed	AT ratified	AT deposited	YD member	RECs⁷⁹⁵ member	RECs YD member⁷⁹⁶	National airline⁷⁹⁷	Remarks and observations about the implementation of the Yamoussoukro Decision
Central African Rep.	03/06/91	18/06/93	22/06/93	YES	CEMAC	YES	NO	No known operator.
Chad	03/06/91	26/06/93	24/08/93	YES	CEMAC	YES	NO	National carrier Air Chad 98% State owned, but no longer operating.
Comoros	03/06/91	06/06/94	20/06/94	YES	COMESA	Pending	YES	Majority State owned carrier.
Congo	03/06/91	30/07/96	15/01/97	YES	CEMAC	YES	NO	Three small private operators.
Democratic Republic of Congo	03/06/91	19/06/93	21/06/93	YES	COMESA & SADC	Pending	NO	Five small operators, all banned in Europe.
Djibouti	03/06/91	-	-	NO	COMESA	Pending	YES	One small State owned and one small private operator.
Egypt	03/06/91	18/12/92	26/01/93	YES	COMESA	Pending	YES	Dominant State owned carrier and one small private operator.
Equatorial Guinea	03/06/91	20/12/02	19/02/03	NO	CEMAC	YES	NO	Several small private operators, which all are banned in Europe.
Eritrea	-	-	-	NO	COMESA	Pending	NO	Two private operators.
Ethiopia	03/06/91	05/11/92	06/11/92	YES	COMESA	Pending	YES	One State owned operator. Government pursues a very open policy; most new BSAS are Yamoussoukro Decision conform.
Gabon	03/06/91	-	-	NO	CEMAC	YES	NO	Two private operators.
Gambia	03/06/91	20/04/93	14/05/93	YES	BAG & ECOWAS	NO	NO	Three private operators.
Ghana	03/06/91	25/09/91	25/10/91	YES	BAG & ECOWAS	NO	NO	State owned carrier ceased operations in 2004. One private operator.
Guinea	03/06/91	17/07/92	21/09/92	YES	BAG & ECOWAS	NO	NO	One private operator.
Guinea-	03/06/91	24/06/92	30/06/92	YES	WAEMU	YES	NO	One private operator.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Country	AT ⁷⁹⁴ signed	AT ratified	AT deposited	YD member	RECs ⁷⁹⁵ member	RECs YD member ⁷⁹⁶	National airline ⁷⁹⁷	Remarks and observations about the implementation of the Yamoussoukro Decision
Bissau								
Ivory Coast	03/06/91	22/02/93	11/05/93	YES	WAEMU	YES	NO	Air Ivoire is 49% State owned and 34% Air France.
Kenya	03/06/91	18/06/93	22/06/93	YES	EAC & COMESA	Pending	YES	Government pursues an open policy towards Yamoussoukro Decision. It retains only 23% of Kenya Airways, KLM 26%. Five other private operators.
Lesotho	03/06/91	12/08/97	11/02/98	YES	SADC	NO	NO	No known operators.
Liberia	03/06/91	23/06/93	29/06/93	YES	BAG & ECOWAS	NO	NO	Two private operators, both banned in Europe.
Libya	03/06/91	02/11/92	28/01/93	YES	COMSEA	Pending	YES	Three State owned and three private carriers.
Madagascar	03/06/91	-	-	NO	COMESA & SADC	Pending	YES	One majority State owned carrier.
Malawi	03/06/91	26/06/93	22/07/93	YES	COMESA & SADC	Pending	YES	One fully State owned carrier.
Mali	03/06/91	13/11/92	27/01/93	YES	WAEMU	YES	YES	One majority State owned carrier and two private carriers.
Mauritania	03/06/91	20/11/01	04/07/02	NO	AMU	NO	YES	One fully State owned carrier.

APPENDICES

Country	AT ⁷⁹⁴ signed	AT ratified	AT deposited	YD member	RECs ⁷⁹⁵ member	RECs YD member ⁷⁹⁶	National airline ⁷⁹⁷	Remarks and observations about the implementation of the Yamoussoukro Decision
Mauritius	03/06/91	14/02/92	27/02/92	YES ⁷⁹⁸	COMESA & SADC	Pending	YES	Reservations concerning Yamoussoukro Decision expressed at AU due to missing competition regulation Strong majority State owned carrier.
Morocco	-	-	-	NO	AMU	NO	YES	Not a member of AU. Strong majority State owned carrier and one private operator.
Mozambique	03/06/91	14/05/92	09/07/92	YES	SADC	NO	YES	Majority State owned carrier and one small private operator.
Namibia	03/06/91	28/06/92	01/07/92	YES	SADC	NO	YES	Fully State owned carrier.
Niger	03/06/91	22/06/92	22/07/92	YES	WAEMU	YES	NO	No known operators.
Nigeria	03/06/91	31/12/91	09/01/92	YES	BAG & ECOWAS	NO	NO	Eleven privately owned carries.
Rwanda	03/06/91	01/10/93	15/11/93	YES	EAC & COMESA	Pending	NO	One privately owned operator.
Saharawi Arab Democratic Republic	03/06/91	25/08/92	23/10/92	YES	-	NO	NO	No known operators. Not an ICAO contracting State, which renders aircraft registration and international airline operations difficult.
Sao Tome & Principe	03/06/91	02/06/93	22/06/93	YES	-	NO	NO	One 35% State and majority privately owned carrier.

⁷⁹⁸

The case of Mauritius is unclear. According to an interview with the Africa Union Legal Counsel, Mr. Fafré Camara, on 25 April 2007 in Addis Ababa, the Africa Union depository did not receive a letter from Mauritius indicating its withdrawal from the Yamoussoukro Decision in 2004. The Government of Mauritius is aware of the fact that it never submitted a formal notification of withdrawal. It seems that the pending situation provided some diplomatic advantages by not having formally notified the Africa Union (interview with Hon. C. G. Xavier Luc Duval, Deputy Prime Minister, on 17 September 2007 in Montreal, Canada). However, this is in contradiction with a recommendation on page 13 of the African Union Report of the Meeting of Experts on Air Transport in Sun City, South Africa 2005, which clearly mentions that Mauritius withdrew, and recommends “*necessary action to bring Mauritius to reconsider its position*”. In the absence of any formal document of withdrawal, Mauritius should still be considered a member of the Yamoussoukro Decision. See: AU, *Report of the Meeting of Experts in Addis Ababa, Ethiopia* 2007.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Country	AT ⁷⁹⁴ signed	AT ratified	AT deposited	YD member	RECs ⁷⁹⁵ member	RECs YD member ⁷⁹⁶	National airline ⁷⁹⁷	Remarks and observations about the implementation of the Yamoussoukro Decision
Senegal	03/06/91	26/02/92	18/03/92	YES	WAEMU	YES	NO	One private carrier, which is fully owned by Royal Air Maroc.
Seychelles	03/06/91	11/10/91	07/11/91	YES	COMESA	Pending	YES	Fully State owned carrier.
Sierra Leone	03/06/91	15/03/94	12/04/94	YES	BAG	NO	NO	Four privately owned carriers, of which three banned in Europe.
Somalia	03/06/91	-	-	NO	-	NO	NO	One known private carrier.
South Africa	10/10/97	31/05/01	25/06/01	NO	SADC	NO	YES	One majority State owned carrier and at least twelve private operators. The GoSA has declared an open skies policy and started to apply the Yamoussoukro Decision in bilaterals.
Sudan	03/06/91	08/02/93	15/05/93	YES	COMESA	Pending	YES	One fully State owned carrier and three private operators.
Swaziland	29/06/92	06/06/01	22/06/04	NO	COMESA & SADC	Pending	NO	Two private operators of which one is banned in Europe.
Tanzania	03/06/91	10/01/92	03/02/92	YES	EAC & SADC	NO	YES	One fully State carrier operator and five private operators. Government has displayed a quite open skies policy, especially within EAC and SADC.
Togo	03/06/91	05/05/98	18/05/98	YES	WAEMU	YES	NO	Two private operators of which one cargo only.
Tunisia	03/06/91	03/05/94	10/06/94	YES	AMU	NO	YES	One majority State owned carrier and two private operators.
Uganda	03/06/91	31/12/91	09/03/92	YES	EAC & COMESA	Pending	NO	Two private operators. Since its national carrier was liquidated in 2001, the government is applying an open skies policy within the Yamoussoukro Decision framework.

APPENDICES

Country	AT ⁷⁹⁴ signed	AT ratified	AT deposited	YD member	RECs ⁷⁹⁵ member	RECs YD member ⁷⁹⁶	National airline ⁷⁹⁷	Remarks and observations about the implementation of the Yamoussoukro Decision
Zambia	03/06/91	26/10/92	09/11/92	YES	COMESA & SADC	Pending	NO	One private operator. Government protects its market in view of a possible start-up of a new national carrier.
Zimbabwe	03/06/91	06/11/91	26/11/91	YES	COMESA & SADC	Pending	YES	One fully State owned carrier.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION
Country Overview by Population, Income, and Flights

Country	Population	Gross	Annualized Flights ⁷⁹⁹			Airline
	millions ⁸⁰⁰ 2005	natl. income ⁸⁰¹ \$ billions	2007 Seats	2007 Flights	2007 Capacity	status ⁸⁰² 2007
Algeria	33	89.6	9,188,724	64,056	143	2
Angola	16	22.5	2,437,692	15,660	156	2
Benin	8	4.3	716,208	5,676	126	3
Botswana	2	9.9	598,632	11,208	53	2
Burkina Faso	13	5.2	627,924	5,700	110	3
Burundi	8	0.7	439,812	3,588	123	3
Cameroon	16	16.4	1,535,508	10,656	144	2
Cape Verde Islands	0.4	1.3	1,135,080	13,452	84	2
Central African Republic	4	1.4	64,920	384	169	4
Chad	10	3.9	201,408	1,308	154	3
Comoros	0.7	0.4	844,668	8,916	95	2
Congo	4	3.8	1,171,152	9,072	129	3
Congo, Democratic Republic	58	7	1,623,132	11,508	141	3
Cote D'Ivoire	18	15.7	1,959,684	14,952	131	3
Djibouti	0.4	0.8	798,444	6,720	119	2
Egypt	74	93	22,948,836	131,400	175	1
Equatorial Guinea	0.5	9.5	332,712	2,340	142	3
Eritrea	4	0.8	561,096	3,576	157	3
Ethiopia	71	11.1	6,244,452	51,516	121	1
Gabon	1	6.9	886,728	15,060	59	3
Ghana	22	10	2,577,132	19,296	134	3
Guinea	9	3.9	419,316	3,156	133	3
Guinea-Bissau	2	0.3	32,544	516	63	3
Kenya	34	18.4	8,971,788	71,892	125	1
Lesotho	2	1.7	39,504	1,392	28	4
Liberia	3	0.4	344,628	2,628	131	3
Libyan Arab Jamahiriya	6	32.4	5,384,688	34,968	154	2
Madagascar	19	5.4	2,375,904	24,456	97	2
Malawi	13	2.1	954,348	8,304	115	2
Mali	14	5.2	1,130,184	8,196	138	2
Mauritania	3	1.8	419,064	3,444	122	2
Mauritius	1	6.5	3,217,272	18,816	171	2

⁷⁹⁹ Data extraction of the *Detailed Analysis of African Air Services Schedules* by Abbey.

⁸⁰⁰ World Bank, *World Development Indicators*, *supra* note 693 at 14.

⁸⁰¹ *Ibid.*

⁸⁰² Airline status represented in four groups: 1 = dominating state-owned carriers, 2 = weak or small state-owned carriers, 3 = only private operators and 4 = no known operators.

APPENDICES

Morocco	30	52.6	14,901,804	110,568	135	1
Mozambique	20	6.2	3,367,128	40,536	83	2
Namibia	2	6.1	1,128,360	14,988	75	2
Niger	14	3.3	271,368	1,992	136	4
Nigeria	132	74	12,555,348	95,112	132	3
Rwanda	9	2.1	690,948	4,956	139	3
Sao Tome and Principe	0.2	0.1	68,748	612	112	3
Senegal	12	8.2	3,541,860	23,820	149	3
Seychelles	0.1	0.7	1,179,288	26,328	45	2
Sierra Leone	6	1.2	470,556	3,468	136	3
Somalia	8	2.4	566,304	6,384	89	3
South Africa	47	223.5	42,980,148	361,680	119	1
Sudan	36	23.1	3,372,768	20,772	162	2
Swaziland	1	2.6	65,256	2,220	29	3
Tanzania, United Republic of	38	12.7	5,449,416	71,100	77	2
The Gambia	2	0.4	394,908	3,324	119	3
Togo	6	2.2	504,732	4,020	126	3
Tunisia	10	28.8	6,618,384	46,500	142	2
Uganda	29	8	1,775,148	14,556	122	3
Zambia	12	5.8	2,192,664	26,412	83	3
Zimbabwe	13	4.5	1,840,272	18,600	99	2

Summary by country group

Airline status 2007	Population millions 2005	Gr. natl. income \$ billions	Annualized Flights 2007		
			Seats	Flights	Capacity
Group 1	256	398.6	96,047,028	727,056	132
Group 2	244	276.4	52,975,824	467,676	113
Group 3	378	179.4	34,719,948	283,260	123
Group 4	20	6.4	375,792	3,768	100
G. 2 in %	27%	32%	29%	32%	113
G.1,3,4%	73%	68%	71%	68%	118

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ANNEX IV – Bilateral Air Service Agreements concluded by Ethiopia with other African States as of October 2006⁸⁰³

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
1	Algeria	10.Apr.85	Ethiopian	Air Algeria	Any in each country, 3 intermediate, 3 beyond	3rd, 4th, 5th	open	not specified	yes, but restricted to only three intermediate and beyond points	NONE
2	Angola	20.05.1977 and MOU 15.Sep.98	Ethiopian	TAAG	ADD - any intermediate - LAD - any beyond v.v.	3rd, 4th, 5th	4 PAX, 3 cargo per week	any type	no, due to limitation of frequency	3rd, 4th Freedom: 157 (113)
3	Benin	17.Jul.86	Ethiopian	to be designated	Route for Ethiopia includes 8 points (ADD-NBO-FIH-COO-ACC-MLW-CKY-BJL) and v.v. / for Benin 6 points, of which one outside Africa (COO-LBV- 2 other points - ABB -	3rd, 4th	3 per week for each carrier	B727, B767, AB3, DC10 or similar	no, too restricted	NONE

⁸⁰³ Compiled from Strategic Planning Consulting, *Digest of Bilateral Air Service Agreements Concluded by Ethiopia* (2006).

⁸⁰⁴ Flights per year in 2007 (2006). Source: Jonathan Soars, *Published and unpublished non-stop passenger departures* (Back Aviation Solutions) OAG Schedules Database, (2007 ed.).

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
					BOM) and v.v.					
4	Burkina Faso	14.Oct.03	Ethiopian	Air Burkina	Ethiopia: Any points in Ethiopia - any intermediate points - any point in BF - beyond points in Africa, North America & Europe (except France) / BF: any points in BF - any intermediate points - any points in Ethiopia - points beyond in Africa, Asia, and Middle East (except Saudi Arabia)	3rd, 4th, 5th	unlimited	any type	yes	NONE

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
5	Burundi	23.Mar.70	Ethiopian	Air Burundi	Points in Ethiopia - points in 4 intermediate States - Bujumbura and v.v. for both carriers	3rd, 4th, 5th	not stipulated	not specified	yes, but restricted to a few intermediate points	3rd, 4th, 5 th Freedom: 419 (282)
6	Cameroon	03.08.1973 and MOU 28.Aug.03	Ethiopian	Cameroon Airlines	Any point in Ethiopia – any intermediate points – any points in Cameroon – any beyond point in Africa and v.v. for both carriers	3 rd , 4 th , 5 th	unlimited	any type	yes	3 rd , 4 th Freedom: 104 (116); 5 th Freedom: 98 (52)
7	Cape Verde	29.Dec.89	Ethiopian	TACV	Ethiopia: ADD – any intermediate point – any point in CV – any point in North and South America / CV: Sal – any intermediate points – any point in Ethiopia – any points beyond	3 rd , 4 th , 5 th	unlimited	any type	yes, but commercial agreement for 5 th freedom between national carriers	NONE

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
8	Central African Republic	23.03.1972 and MOU 18.Mar.82	Ethiopian	open	Any point in Ethiopia (Central Africa Rep.) - only two defined intermediate points - any three points to be defined later beyond and v.v. for both carriers	3rd, 4th, 5th	two per week, DLA only once	not specified	no, due to restriction to a few intermediate and beyond points and limited frequency	NONE
9	Chad	04.Jan.88	Ethiopian	Air Chad	Any point in Ethiopia (Chad) - three defined intermediate points - three defined points beyond and v.v. for both carriers	3rd, 4th, 5th (limited)	3 per week for each carrier, 4th frequency under commercial cooperation.	A300, B727, B757, B767	no, too restricted	NONE
10	Comoros	27.Mar.84	Ethiopian	Air Comoros	Any point in Ethiopia (Comoros) - three open intermediate points - one point in Comoros (Ethiopia) - three open points beyond and v.v. for both carriers	3rd, 4th, 5th	3 per week for each carriers	B727, B737, B767, or similar	no, too restricted	NONE

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
11	Congo - Brazzaville	02. Apr. 83 and 22. Jan. 2005	Ethiopian	open	Any point in Ethiopia - any intermediate points - any points in Congo - any beyond point in Africa and v.v. for both carriers	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 261 (227); 5 th Freedom: 522 (227)
12	Congo - DRC	10. Oct. 72, revised 21. Oct. 2005	Ethiopian	Air Congo/LAC	Any point in Ethiopia (DRC) - seven defined intermediate points in Africa - 12 defined points in Africa (for DRC: 2 African, 3 intercontinental) beyond and v.v. for both carriers	3rd, 4th, 5th (limited)	Initially 5, then 6, and finally 7 per week	any type	no, due to limitation of frequency	3 rd Freedom: 40 (22); 4 th Freedom: 301 (249)
13	Djibouti	12.Jul.79, revised 3.Feb.98 & 23.Nov.98	Ethiopian	Air Djibouti & Djibouti Airlines	ADD - DIR - JIB & v.v. and beyond points	3rd, 4th, 5th	ET 4, Djibouti Airlines 3 per week alternating	any type	no, due to limitation of frequency	3 rd , 4 th Freedom: 209 (209)

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
14	Egypt	11.Mar.50, MOU 10.Jul.68 and 15.Jun.95	Ethiopian	Egypt Air	Any points in Ethiopia - several intermediary in Africa (and some in Europe for ET) points - any points in Egypt, several specified 5th points beyond in Africa	3rd, 4th, and limited 5th freedom	5 per week	any type	no, due to limitation of frequency and restricted 5th freedom	3 rd , 4 th Freedom: 62 (121); 5 th Freedom: 199 (178)
15	Equatorial Guinea	19.Dec.05	Ethiopian	open	Any points in Ethiopia (for ET) or ADD - any intermediate points - Malabo and beyond v.v.	3rd, 4th, and 5th freedom	unlimited	any type	yes	NONE
16	Eritrea	27.Sep.93	Ethiopian	Eritrean	Any points in Ethiopia - any points in Eritrea - any points beyond v.v.	3rd, 4th, and 5th freedom (with commercial agreement)	unlimited	any type	yes, but commercial agreement for 5th freedom	NONE
17	Gabon	23.Mar.06	Ethiopian	open	Any points in each country (capital only for counterpart) - any three points within Africa - and any five open points beyond	Limited 3rd, 4th, and 5th freedom	3 per week for each designated carrier	any type	no, due to limitation of frequency and restricted 3rd, 4th, and 5th freedom	3 rd , 4 th Freedom: 104 (80); 5 th Freedom: 104 (0)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
18	Gambia	01.Aug.03, new bilaterals 05.Feb.07	Ethiopian	Gambia Intl Airlines	Any points in each country - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	NONE
19	Ghana	09.Jun.60, new bilaterals 18.Nov.05	Ethiopian	open	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 0 (131); 5 th Freedom: 408 (74)
20	Guinea	01.Jun.60, revised 09.May.88	Ethiopian	open	Two fixed routes for each carrier with any points in each country, and 6 and 10 points for Ethiopian, and 6 and 5 points for a carrier of Guinea.	3rd, 4th, 5th (on limited routes only)	3 per week for each designated carrier, 4th frequency under commercial agreement	any type	no	NONE
21	Ivory Coast	02.05.1962, MOU 14.JUL.92	Ethiopian	open	Two fixed routes for each carrier stating at the capital city of each country, and 8 points for Ethiopian, and 6 points for a carrier of the Ivory Coast.	3rd, 4th, 5th (on limited routes only)	7 per week for Ethiopian, 1 must be jointly operated	any type	no	3 rd , 4 th Freedom: 36 (75); 5 th Freedom: 238 (323)

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
22	Kenya	05.Oct.67, MOU 13.Mar.05	Ethiopian	Kenya Airways	Any points in each country - any intermediate points - and points beyond, if COMESA	3rd, 4th, 5th (COMESA only)	unlimited	any type	yes, but 5th freedom COMESA only.	3 rd , 4 th Freedom: 400 (569); 5 th Freedom: 353 (48)
23	Liberia	25.May.60	Ethiopian	open	Any points in each country (capital only for counterpart) - seven defined points (ABJ, ACC, LOS, DLA, BCV, FIH, NBO) - and three open points beyond	3rd, 4th, and limited 5th freedom	One daily frequency for each designated carrier	any type	no, due to limitation of frequency and restricted 3rd, 4th, and 5th freedom	NONE
24	Libya	04.Dec.80	Ethiopian	Libya Arab Airlines	Any points in each country (capital only for counterpart) - any two intermediate points - and three points beyond	3rd, 4th, and limited 5th freedom	2 per week for each designated carrier	to be agreed by CAA later	no, due to limitation of frequency and restricted 5th freedom	NONE
25	Madagascar	15.Dec.05	Ethiopian	open	Two points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	no, due to limitation to two points in each country	NONE

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
26	Malawi	15.Jul.70, MOU 12.Oct.00	Ethiopian	Air Malawi	Any points in each country (capital for counterpart) - any intermediate points - and points beyond, except defined points for each carrier (ET not HRE, JNB, LUN, NBO; AM not CAI, KRT, NBO)	3rd, 4th, and limited 5th freedom	7 per week for each designated carrier	any type	no, due to limitation of frequency and restricted 5th freedom	3 rd , 4 th Freedom: 206 (76); 5 th Freedom: 412 (130)
27	Mali	22.Jul.81, rev. 25.Apr.95 & MOU 13.Jan.05	Ethiopian	open	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 121 (0); 5 th Freedom: 255 (237)
28	Mauritius	06.Nov.02	Ethiopian	Air Mauritius	not specified	not specified	Not agreed, but 1 weekly frequency per carrier proposed.	not specified	no	NONE
29	Mozambique	21.Nov.75	Ethiopian	LAM	Not specified, but for 5th freedom the two carriers must agree and obtain approval by their CAA	3rd, 4th, and limited 5th freedom	2 per week for each designated carrier	Long and/or medium range jet aircraft	no	NONE

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
30	Namibia	05.Feb.97	Ethiopian	open	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd & 4th	3 per week for each designated carrier	to be agreed by CAA later	no, due to limitation of frequency	NONE
31	Niger	28.Jul.81	Ethiopian	open	Any points in each country (capital only for counterpart) - one (1) intermediate points - and any three (3) points beyond	3rd, 4th, and limited 5th freedom	3 per week for each designated carrier	any type	no	NONE
32	Nigeria	07.Apr.77, new bilaterals 01.Apr.04	Ethiopian	Virgin Nigeria	Any points in each country (capital only for counterpart) - any ten (10) intermediate points - and any ten (10) points beyond	3rd, 4th, 5th	unlimited	any type	no, due to limitation of 10 intermediate and 10 beyond points	3 rd , 4 th Freedom: 665 (402); 5 th Freedom: 300 (37)
33	Rwanda	30.Apr.70, new bilaterals 02.Apr.04	Ethiopian	Rwanda Air Express	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 60 (226); 5 th Freedom: 413 (334)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
34	Senegal	22.Dec.62	Ethiopian	Air Senegal	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: none; 5 th Freedom: 191 (178)
35	Seychelles	22.Feb.79	Ethiopian	open	Any points in each country (capital only for counterpart) - three intermediate points (NBO, JRO, DAR) - and three (for ET) or five points (for Seychelles' carriers) beyond	3rd & 4th	2 per week for each designated carrier	any type	no	NONE
36	Somali Land	10.Nov.00	Ethiopian	Daalo	not defined	not defined	not defined	not defined	no	NONE
37	Somalia	22.Feb.69, MOU 3.Dec.88	Ethiopian	Somalia Airline	Any points in each country (capital only for counterpart) - up to five intermediate points to be defined - and points beyond	3rd & 4th (5th pending)	2 frequencies per week	F27, B737, B727, B707, B767, A310	no, due to limitation of frequency and pending 5th freedom	NONE

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
38	South Africa	4.Mar.93, new bilaterals 14.May97, MOU 22.May 00	Ethiopian	South African Airways	Any intl. entry points in each country - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 360 (264)
39	Sudan	6.Sep.56, MOU 23.May02, and notification by Sudan 9.Apr.03	Ethiopian	Sudan Airways	Any points in each country (capital only for counterpart) - any intermediate points - and defined points beyond but for Ethiopia only KRT-BEY	3rd, 4th, and limited 5th freedom	daily flights of each carrier	any type	no, due to limitation of frequency and restricted 5th freedom	3 rd , 4 th Freedom: 405 (347); 5 th Freedom: 199 (178)
40	Swaziland	06.Aug.81	Ethiopian	Royal Swazi National Airlines	ADD - any intermediate - MTS - defined points beyond v.v.	3rd, 4th, and limited 5th freedom	3 per week for each designated carrier	any type	no, due to limitation of frequency and restricted 5th freedom	NONE
41	Tanzania	19.Sep.67, new bilaterals 17.Dec.04	Ethiopian	Air Tanzania	Any points in own country and defined points in country of counterpart - any intermediate points - and any points beyond	3rd, 4th, and 5th freedom (with commercial agreement)	max. 28 frequencies for each designated carrier	any type	no, due to limitation of frequency and restricted 5th freedom	3 rd , 4 th Freedom: 353 (344)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
42	Togo	25.Apr.62, revised 10.Aug.89 & 10.Nov.05	Ethiopian	open	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 208 (161); 5 th Freedom: 208 (197)
43	Tunisia	17.Jul.02	Ethiopian	open	Any points in each country - any intermediate points - and points beyond	3rd, 4th, 5th (with CAA agreement)	unlimited	any type	yes	NONE
44	Uganda	25.Sep.67, MOU and new bilaterals 8.Apr.05	Ethiopian	Dario Air Services, East Africa Airlines, Eagle Air, and any other carrier	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, 5th	unlimited	any type	yes	3 rd , 4 th Freedom: 359 (339); 5 th Freedom: 359 (219)
45	Zambia	4.Apr.98, MOU 28.May.96 & 6.May05	Ethiopian	open	Any points in each country (capital only for counterpart) - any intermediate points - and points beyond	3rd, 4th, and 5th freedom (with commercial agreement)	unlimited	max. 400 seats for PAX and 100 tons cargo per frequency per direction	yes, but commercial agreement for 5th freedom (PAX & cargo limitations no factor)	3 rd , 4 th Freedom: 362 (167); 5 th Freedom: 0 (102)

APPENDICES

No.	Country	signed	Designated Carrier Ethiopia	Designated Carrier counterpart	Routes	Rights	Frequency	Type of aircraft	Yamoussoukro Decision Conformity	Routes currently flown ⁸⁰⁴
46	Zimbabwe	8.Mai.81, revised 21.Aug.90	Ethiopian	Air Zimbabwe	Any points in each country - any intermediate points - and points beyond	3rd, 4th, and 5th freedom (with commercial agreement)	7 per week for each designated carrier	any type with max. capacity B767	no, due to limitation in frequency, capacity and 5th freedom with commercial agreement for only	3 rd , 4 th Freedom: 0 (26); 5 th Freedom: 312 (167)

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Summary of intra-Africa Bilateral Air Service Agreements concluded by Ethiopia **in view of conformity with the Yamoussoukro Decision and actual routes flown**

Routes flown	Yamoussoukro Decision conform bilaterals	Yamoussoukro Decision not conform bilaterals
3 rd , 4 th Freedom	2	2
3 rd , 4 th and 5 th Freedom	11	8
NONE	6	17
TOTAL	19	27

APPENDICES

ANNEX V – Safety Review and Rating of African States

Country	ICAO Safety Audit ⁸⁰⁵	Date	FAA IASA ⁸⁰⁶	EU Ban of carries ⁸⁰⁷	IATA IOSA ⁸⁰⁸	Fatal Accidents (events/deaths) ⁸⁰⁹	Overall Rating	Remarks and special considerations about the safety rating
Algeria	1	29 JUN 04	-	-	-	15 / 353	2	Despite recent improvements, still existing lack in oversight. Several past accidents.
Angola	3	12 DEC 04	-	1	-	25 / 460	3	EU declared ban on the national carrier TAAG on 4 July 2007.
Benin	3	27 FEB 07	-	-	-	1 / 141	3	Serious lack of oversight reported in the accident report of the Guinea registered carrier "UTA" B737 accident, which occurred in Cotonou, Benin.
Botswana	3	05 SEP 06	-	-	-	2 / 81	3	
Burkina Faso	3	23 JUN 03	-	-	-	2 / 50	3	

⁸⁰⁵ Source: ICAO, *Universal Safety Audit Oversight Audit Reports*. Overall assessment rated in three categories: 1 = GOOD, 2 = MARGINAL, 3 = POOR.

⁸⁰⁶ Source: Federal Aviation Administration (FAA), *International Aviation Safety Assessment (IASA)*, online: FAA website, <http://www.faa.gov/safety/programs_initiatives/oversight/iasa/> (accessed 5 July 2007).

⁸⁰⁷ *List of Air Carriers banned within the EU*, *supra* note 206.

⁸⁰⁸ Source: IATA, *Operational Safety Audit (IOSA)*, online: IATA website, <<http://www.iata.org/ps/certification/iosa/>> (accessed 5 July 2007).

⁸⁰⁹ Source: Flight Safety Foundation, *Air Safety Network - Aviation Safety Database*, online: Flight Safety Foundation website, <<http://aviation-safety.net/index.php>> (accessed 29 June 2007). Accidents and deaths reported involve air transport category aircraft registered in the given State.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Country	ICAO Safety Audit ⁸⁰⁵	Date	FAA IASA ⁸⁰⁶	EU Ban of carriers ⁸⁰⁷	IATA IOSA ⁸⁰⁸	Fatal Accidents (events/deaths) ⁸⁰⁹	Overall Rating	Remarks and special considerations about the safety rating
Burundi	-	-	-	-	-	0 / 0	3	No audits were possible due to ongoing civil war during the past years.
Cameroon	3	09 JUN 06	-	-	-	18 / 445	3	Significant deterioration in safety oversight observed during 2006 ICAO Audit.
Cape Verde	2	10 FEB 03	1	-	-	2 / 19	1	Significant improvements led to IASA category 1 in 2003.
Central African Rep.	3	03 DEC 07	-	-	-	4 / 91	3	
Chad	3	16 FEB 01	-	-	-	2 / 10	3	
Comoros	2	19 NOV 04	-	1	-	3 / 34	3	One air carrier certified by Comoros has been operationally restricted by the EU.
Congo	3	27 JUN 01	-	-	-	4 / 42	3	
Democratic Republic of Congo (DRC)	3	18 SEP 06	2	51	-	48 / 656	3	All air carriers certified by DRC are banned by the EU.
Djibouti	3	17 DEC 00	-	-	-	5 / 93	3	
Egypt	1	14 NOV 05	1	-	1	33 / 745	1	EgyptAir IOSA certified.
Equatorial Guinea	3	14 MAY 07	-	5	-	3 / 127	3	All air carriers certified by Equatorial Guinea are banned by the EU.
Eritrea	3	08 JUN 01	-	-	-	3 / 67	3	

APPENDICES

Country	ICAO Safety Audit⁸⁰⁵	Date	FAA IASA⁸⁰⁶	EU Ban of carriers⁸⁰⁷	IATA IOSA⁸⁰⁸	Fatal Accidents (events/deaths) ⁸⁰⁹	Overall Rating	Remarks and special considerations about the safety rating
Ethiopia	2	04 DEC 06	1	-	1	15 / 217	1	Ethiopian Airlines IOSA certified.
Gabon	3	02 MAY 07	-	-	-	7 / 73	3	
Gambia	2	20 SEP 05	2	-	-	1 / 24	2	
Ghana	2	20 NOV 06	2	-	-	2 / 8	2	Downgraded to IASA category 2 in 2005.
Guinea	2	29 JAN 03	-	-	-	2 / 38	3	Serious lack of oversight reported in the accident report of the Guinea registered carrier "UTA" B737 accident resulting in 141 deaths in 2003.
Guinea-Bissau	3	27 JAN 03	-	-	-	0 / 0	3	A Significant Safety Concern issued by ICAO concerning the system for the issuance of Air Operator Certificate following their audit in April 2008.
Ivory Coast	2	17 MAR 04	2	-	-	5 / 260	2	
Kenya	2	30 NOV 01	-	-	1	17 / 183	2	Kenya Airways IOSA certified.
Lesotho	2	24 JUN 04	-	-	-	1 / 18	2	
Liberia	3	15 MAY 06	-	ALL	-	6 / 113	3	All air carriers certified by Liberia are banned by the EU.
Libya	2	26 MAY 01	-	-	-	20 / 474	2	
Madagascar	2	25 NOV 04	-	-	-	8 / 138	2	
Malawi	3	01 DEC	-	-	-	0 / 0	3	

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Country	ICAO Safety Audit ⁸⁰⁵	Date	FAA IASA ⁸⁰⁶	EU Ban of carries ⁸⁰⁷	IATA IOSA ⁸⁰⁸	Fatal Accidents (events/deaths) ⁸⁰⁹	Overall Rating	Remarks and special considerations about the safety rating
		04						
Mali	3	16 JUN 03	-	-	-	6 / 86	3	A Significant Safety Concern issued by ICAO concerning the system for the issuance of Air Operator Certificate following their audit in January 2008.
Mauritania	3	24 MAR 04	-	-	-	4 / 121	3	
Mauritius	2	15 JUL 04	-	-	1	0 / 0	2	Air Mauritius IOSA certified.
Morocco	2	07 JUL 04	1	-	1	19 / 792	1	Royal Air Maroc IOSA certified.
Mozambique	2	12 DEC 03	-	-	-	7 / 74	2	
Namibia	2	25 APR 06	-	-	-	2 / 127	2	
Niger	3	15 JAN 04	-	-	-	2 / 16	3	
Nigeria	2	07 NOV 06	-	-	-	42 / 1319	2	Several serious accidents in the recent past reveal a serious lack of oversight. However, the situation as begun to improve.
Rwanda	3	10 JUL 01	-	1	-	0 / 0	3	One air carrier banned by the EU. A Significant Safety Concern issued by ICAO concerning the system for the issuance of Air Operator Certificate following their audit in November 2007.
Saharawi Arab Democratic Republic	-	-	-	-	-	-	-	No database or any authority other than the African Union lists the country. It therefore cannot be rated.
Sao Tome	3	25 MAY	-	-	-	2 / 27	3	

APPENDICES

Country	ICAO Safety Audit ⁸⁰⁵	Date	FAA IASA ⁸⁰⁶	EU Ban of carriers ⁸⁰⁷	IATA IOSA ⁸⁰⁸	Fatal Accidents (events/deaths) ⁸⁰⁹	Overall Rating	Remarks and special considerations about the safety rating
& Principe		01						
Senegal	2	12 APR 06	-	-	-	7 / 141	2	
Seychelles	2	21 AUG 07	-	-	-	0 / 0	2	A Significant Safety Concern issued by ICAO concerning the system for the issuance of Air Operator Certificate following their audit in August 2007.
Sierra Leone	3	05 AUG 06	-	8	-	1 / 1	3	All air carriers certified by Sierra Leone are banned by the EU.
Somalia	-	-	-	-	-	5 / 101	3	
South Africa	1	05 JUL 07	1	-	3	19 / 146	1	Comair Limited, Nationwide Airlines, and South African Airways IOSA certified.
Sudan	2	21 NOV 06	-	1	-	26 / 476	3	One air carrier banned by the EU. Several serious accidents in the past.
Swaziland	3	12 MAR 99	-	6	-	1 / 2	3	All air carriers certified by Swaziland are banned by the EU.
Tanzania	2	18 DEC 03	-	-	1	7 / 51	2	Recent improvements observed during missions in October 2005 and June 2006. Precision Air IOSA certified.
Togo	3	19 FEB 07	-	-	-	0 / 0	3	
Tunisia	1	02 JUL 04	-	-	-	2 / 29	1	
Uganda	3	05 DEC 01	-	-	-	3 / 13	3	
Zambia	3	05 FEB 04	-	-	-	6 / 77	3	Missions in April 2006 and March 2007 confirmed poor safety oversight.
Zimbabwe	2	21 JUL 04	2	-	-	6 / 13	2	Little information available other than ICAO audit result.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

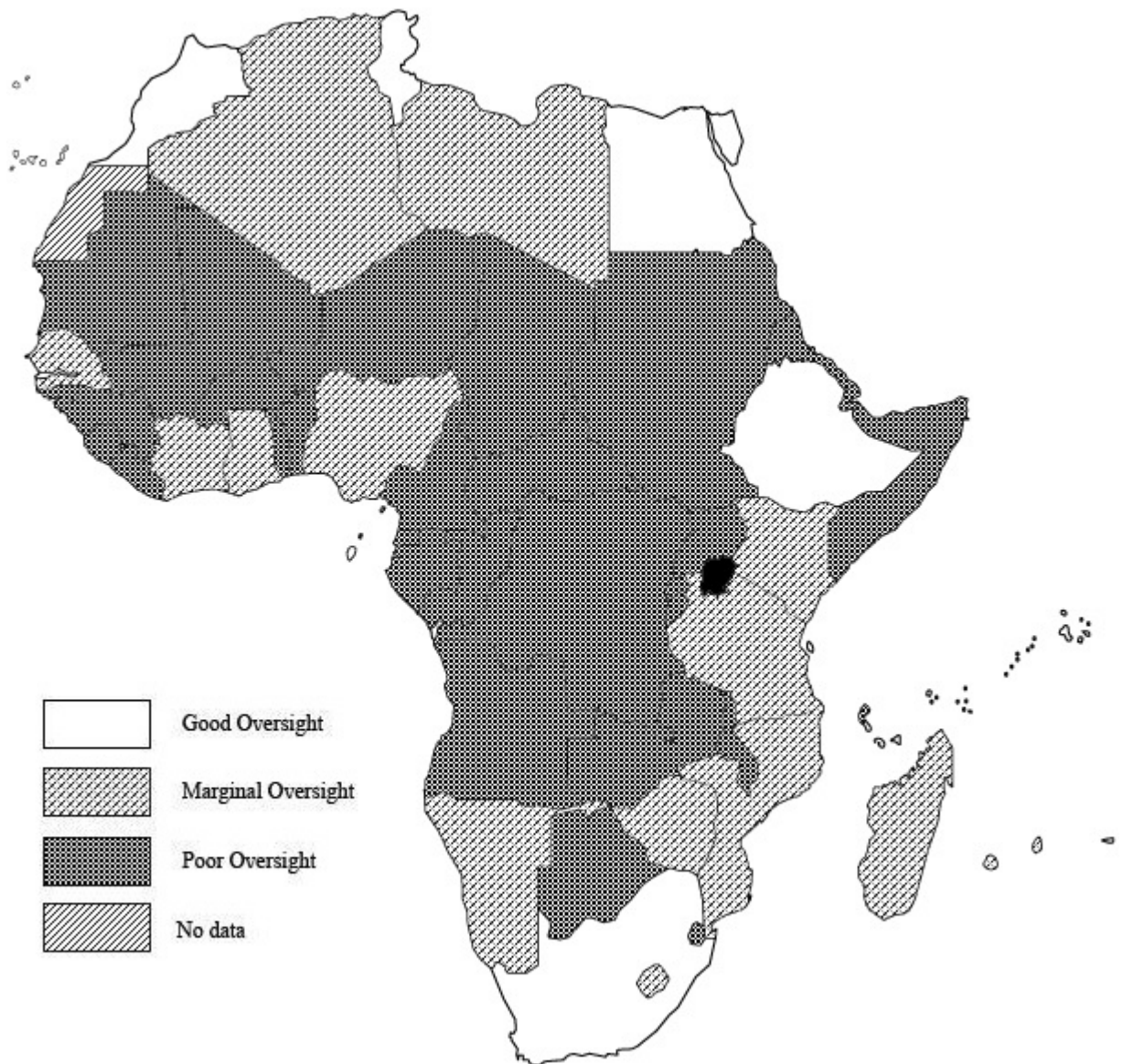
Summary of Safety Review and Rating of African States

- ❖ **ICAO Audit Report**: 4 States rated 1 = “GOOD”, 21 States rated 2 = “MARGINAL”, and 26 States rated 3 = “POOR”;
- ❖ **FAA IASA program**: 5 States are certified as category 1 (compliant with ICAO SARP), and 5 States are category 2 (non compliant);
- ❖ **EU ban list of carriers**: 9 States have one or more banned carriers registered;
- ❖ **IATA IOSA**: 7 States have carriers, which were certified by IATA Operational Safety Audit (IOSA);
- ❖ **Overall rating**: 6 States rated "GOOD", 16 States considered "MARGINAL", and 31 States to be "POOR".

APPENDICES

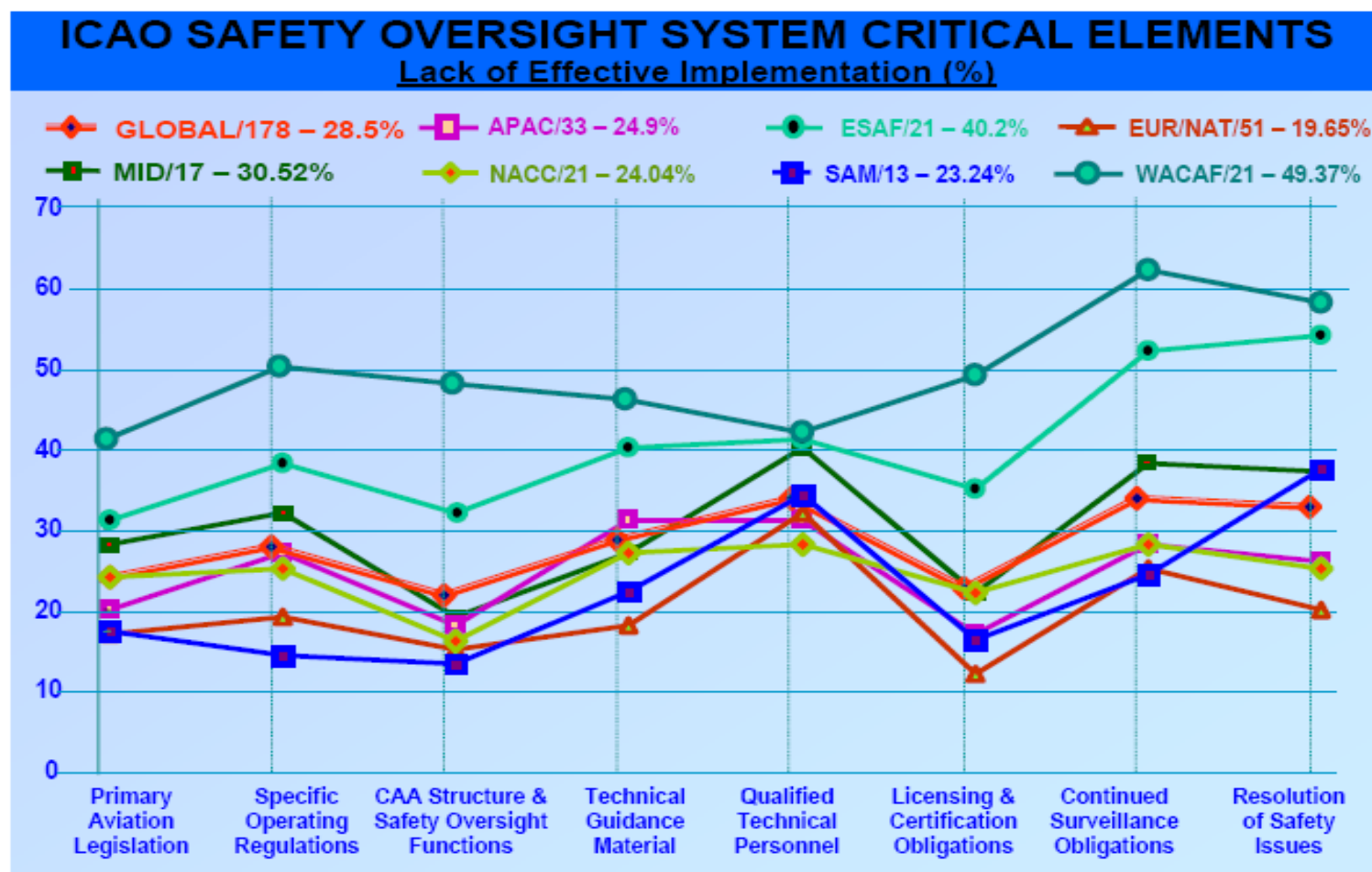
Safety Oversight Ratings of African States

(Derived from table above)



THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

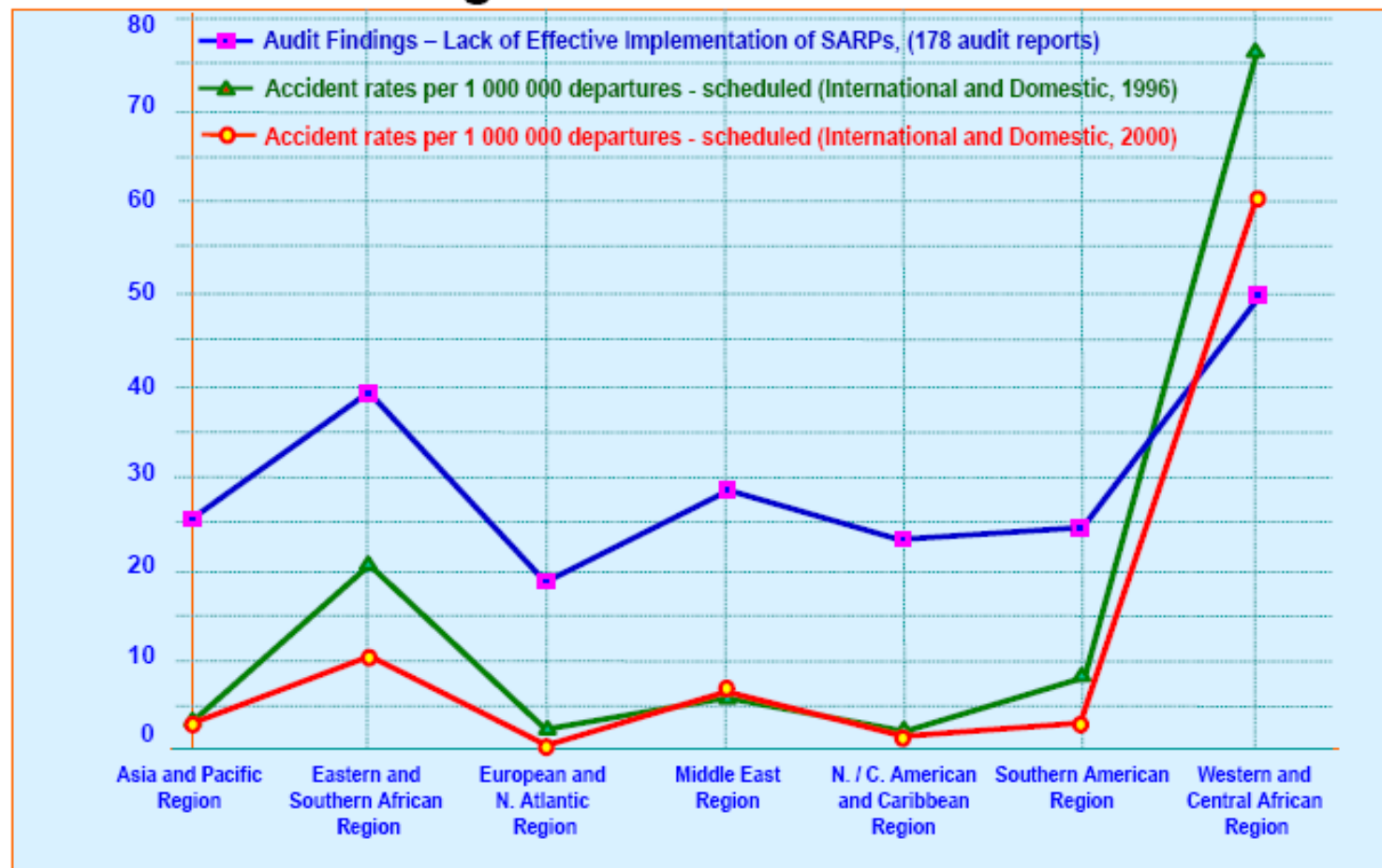
ANNEX VI – Safety Oversight and Accident Rates⁸¹⁰



⁸¹⁰ Source ICAO, *ICAO Universal Safety Oversight Audit Programme*

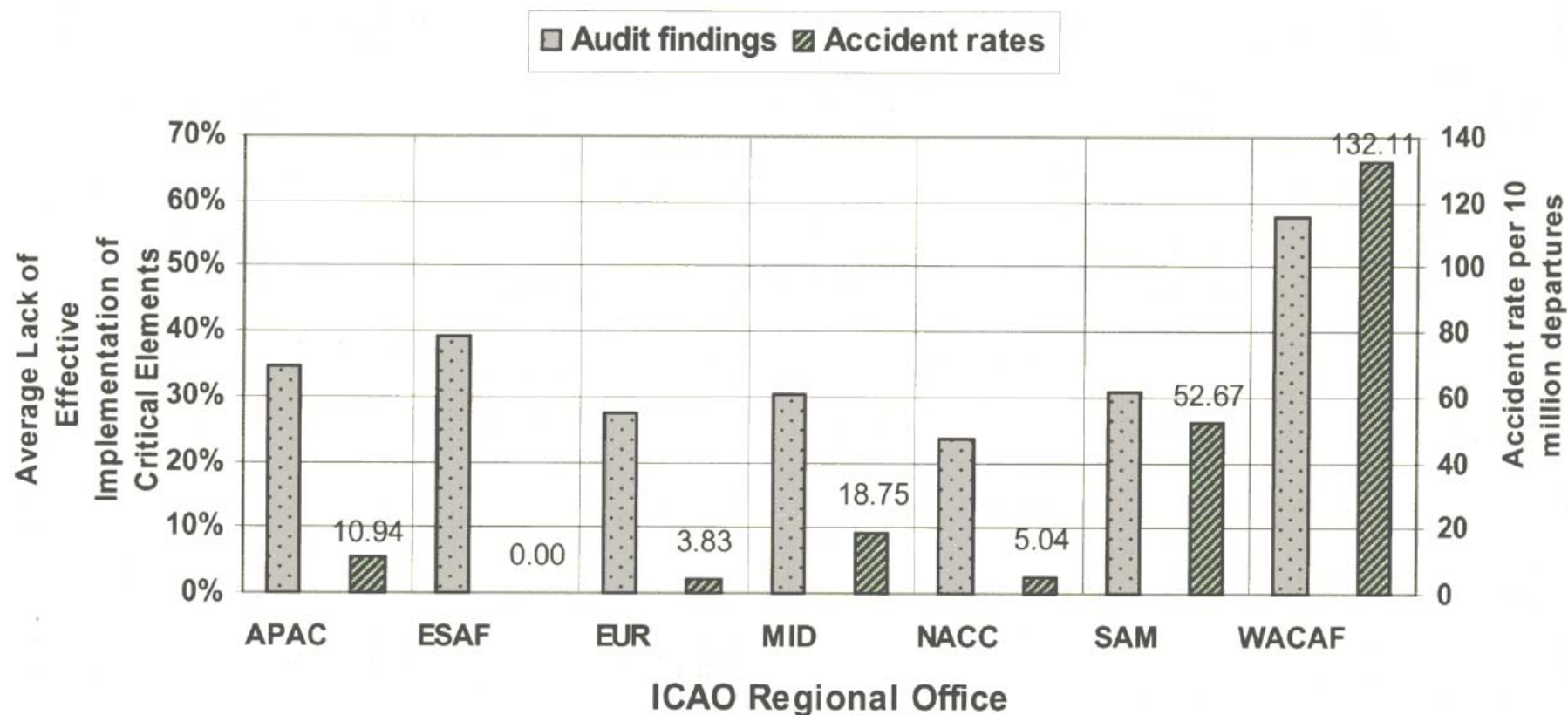
APPENDICES

Association between ICAO audit findings and regional accident rates



THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

**Regional Analysis between the Lack of Effective
Implementation and Accidents⁸¹¹**



⁸¹¹ The correlation between the lack of effective implementation of critical elements (based on ICAO USOAP findings) and accident rates per departure is very significant in West and Central Africa, and in South America. Source: ICAO, *Universal Safety Oversight Audit Programme - Analysis of Audit Reports (April 2005 to May 2007)* at 80.

APPENDICES

ANNEX VI – Regional Implementation and Traffic Impact

<i>Reg. Econ. Community</i>	<i>Status of YD implementation General</i>	<i>Current Liberalization of Air Services</i>	<i>Competition Regulation and Arbitration</i>	<i>Traffic</i>
				<i>Seats</i>
AMU	No implementation	No liberalization within AMU initiated, but need is recognized.	None	20%
BAG	Principles of YD agreed upon in a multilateral air service agreement.	Up to fifth freedom granted, tariffs are free and capacity / frequency is open.	None. However, States can intervene if tariffs are abused, and disputes on agreement should be settled by negotiation.	80%
CEMAC	Principles of YD agreed upon in an air transport program. Some minor restrictions remain.	Up to fifth freedom granted, tariffs are free and capacity / frequency is open. Maximum of two carriers per State may participate.	Joint competition regulations were adopted against anticompetitive behavior, and abuse of market domination.	-30%
COMESA	Full liberalization decided ("legal Notice No. 2"), but application and implementation remain pending until a Joint Competition Authority is established.	Pending. Once applied, operators will be able to serve any destination (all freedoms), tariffs and capacity / frequency will be free.	Joint COMESA, EAC, and SADC Regulations for Competition in Air Transport Services enacted. Joint Competition Authority pending.	20%
EAC	EAC Council issued a directive to amend bilaterals among EAC States to conform with YD.	Air services are not liberalized, as the amendments of bilaterals remains pending.	Joint COMESA, EAC, and SADC Regulations for Competition in Air Transport Services enacted. Joint Competition Authority pending.	25%
ECOWAS	Project secretariat created to monitor development and implementation of the YD.	Left to sub-regions BAG and WAEMU.	Left to sub-regions BAG and WAEMU.	65%
SADC	No steps towards implementation done, despite the fact that Civil Aviation Policy includes gradual liberalization of air services within SADC.	No liberalization within SADC initiated.	Joint COMESA, EAC, and SADC Regulations for Competition in Air Transport Services enacted. Joint Competition Authority pending.	25%
WAEMU	Within WAEMU the YD is fully implemented.	All freedoms, including cabotage, granted. Tariffs are liberalized.	Competition regulations are enacted. Enforcement by the WAEMU Commission.	-15%

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ANNEX VIII - Top 30 intercontinental routes for Africa⁸¹²

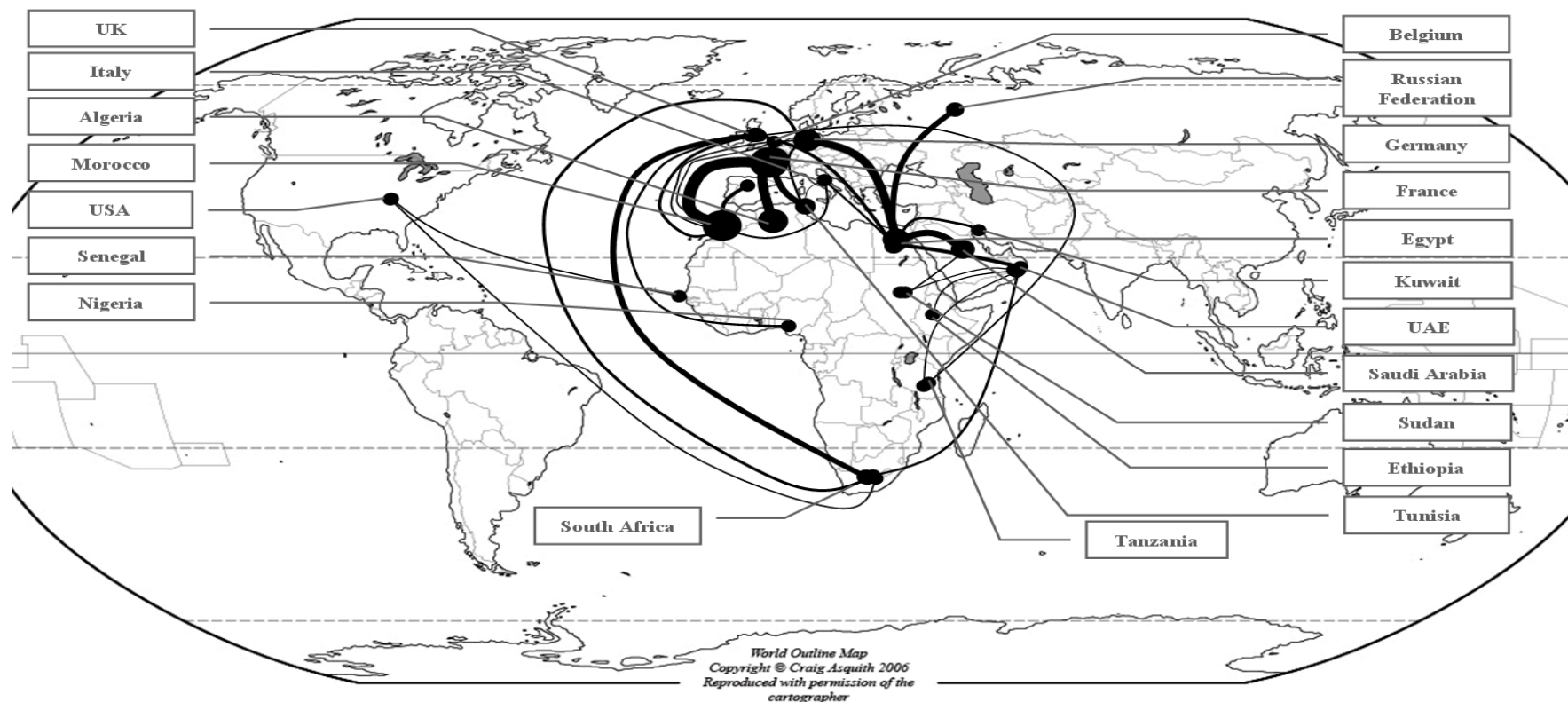


Figure 4: Top 30 intercontinental routes for Africa as of November 2007, measured using seats available per week. The routes are displayed as country pairs, though there often is more than one airport served in a country, with the thickness of the connecting lines being in proportion to volume. The most important routes are the north African countries Morocco, Algeria, and Tunisia connecting with France. The most important sub-Saharan route is between the U.K. and South Africa. Cairo is both important as an entry point for Europe (mainly Germany) and the Middle East.

⁸¹²

Source: *Bofinger, supra* note 656 at 21 and 22.

APPENDICES

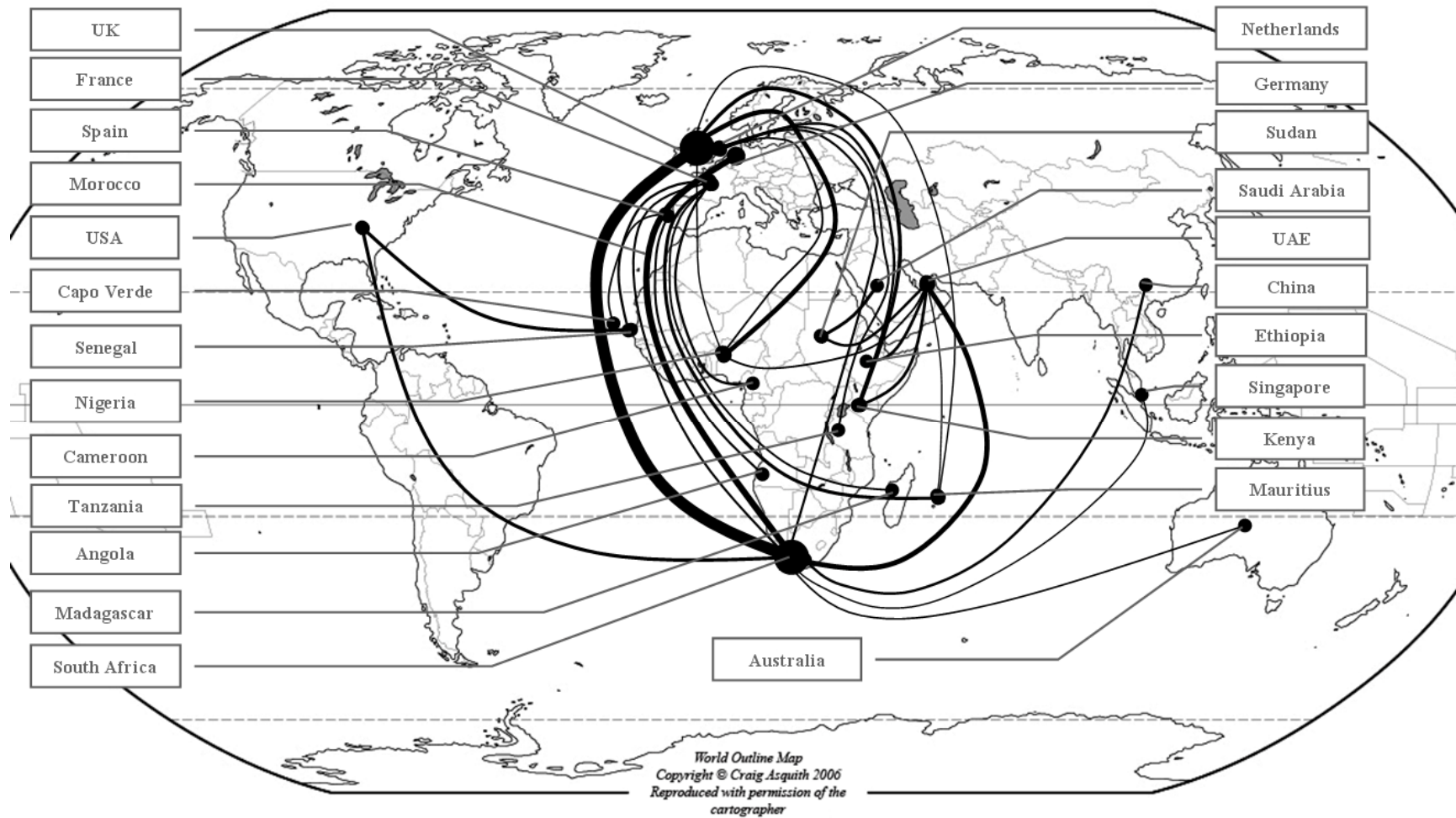


Figure 5: Top 30 intercontinental routes for sub-Saharan Africa as of November 2007, with the North African traffic subtracted. Johannesburg serves as the most important entry point, with the three largest partners (excluding North Africa) being the U.K, Germany, and the UAE.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ANNEX IX – Codification of Aircraft Types for the Fleet Analysis

IATA Code	ICAO Code	Aircraft	Grouping 01	Grouping 02
100	F100	Fokker 100	06 Western Somewhat Recent	03 Com Jet
141	BA46	British Aerospace 146-100 Pax	06 Western Somewhat Recent	03 Com Jet
142	BA46	British Aerospace 146-200 Pax	06 Western Somewhat Recent	03 Com Jet
143	BA46	British Aerospace 146-300 Pax	06 Western Somewhat Recent	03 Com Jet
146	BA46	British Aerospace 146 all pax models	06 Western Somewhat Recent	03 Com Jet
14F	BA46	British Aerospace 146 Freighter (-200/300QT & QC)	06 Western Somewhat Recent	03 Com Jet
310	A310	Airbus A310 all pax models - Travel-Images.com recommends Airbus	06 Western Somewhat Recent	06 Widebody
312	A310	Airbus A310-200 Pax	06 Western Somewhat Recent	06 Widebody
313	A310	Airbus A310-300 Pax	06 Western Somewhat Recent	06 Widebody
318	A318	Airbus A318	08 Western Recent	04 CitiJet
319	A319	Airbus A319	08 Western Recent	04 CitiJet
320	A320	Airbus A320-100/200	08 Western Recent	04 CitiJet
321	A321	Airbus A321-100/200	08 Western Recent	04 CitiJet
32S	n/a	Airbus A318/319/320/321	08 Western Recent	04 CitiJet
330	A330	Airbus A330 all models	08 Western Recent	06 Widebody
332	A330	Airbus A330-200	08 Western Recent	06 Widebody
333	A330	Airbus A330-300	08 Western Recent	06 Widebody
340	A340	Airbus A340 all models	08 Western Recent	06 Widebody
342	A340	Airbus A340-200	08 Western Recent	06 Widebody
343	A340	Airbus A340-300	08 Western Recent	06 Widebody
345	A340	Airbus A340-500	08 Western Recent	06 Widebody
346	A340	Airbus A340-600	08 Western Recent	06 Widebody
380	A380	Airbus A380 pax	08 Western Recent	07 SuperWidebody
38F	n/a	Airbus A380 Freighter	08 Western Recent	07 SuperWidebody
662		Unkown	00 Unkown	00 Unkown
703	B703	Boeing 707-300 pax	02 Western Very Old	05 Large Jet
707	n/a	Boeing 707/720 all pax models	02 Western Very Old	05 Large Jet
70F	B703	Boeing 707 Freighter	02 Western Very Old	05 Large Jet
70M	B703	Boeing 707 Combi	02 Western Very Old	05 Large Jet

APPENDICES

717	B712	Boeing 717	08 Western Recent	04 CitiJet
721	B721	Boeing 727-100	03 Western Very Old/Old	04 CitiJet
722	B722	Boeing 727-200	03 Western Very Old/Old	04 CitiJet
727	n/a	Boeing 727 all pax models	03 Western Very Old/Old	04 CitiJet
72A	B722	Boeing 727 Advanced pax	04 Western Old	04 CitiJet
72F	n/a	Boeing 727 Freighter (-100/200)	03 Western Very Old/Old	04 CitiJet
72M	n/a	Boeing 727 Combi	03 Western Very Old/Old	04 CitiJet
72S	B722	Boeing 727-200 Advanced pax	04 Western Old	04 CitiJet
731	B731	Boeing 737-100 Pax	02 Western Very Old	04 CitiJet
732	B732	Boeing 737-200 Pax	02 Western Very Old	04 CitiJet
733	B733	Boeing 737-300 Pax	04 Western Old	04 CitiJet
734	B734	Boeing 737-400 pax	06 Western Somewhat Recent	04 CitiJet
735	B735	Boeing 737-500 Pax	06 Western Somewhat Recent	04 CitiJet
736	B736	Boeing 737-600 Pax	06 Western Somewhat Recent	04 CitiJet
737	n/a	Boeing 737 All pax models	Western Age Unkown	04 CitiJet
738	B738	Boeing 737-800 Pax	08 Western Recent	04 CitiJet
739	B739	Boeing 737-900 Pax	08 Western Recent	04 CitiJet
73A	B732	Boeing 737 Advanced pax	06 Western Somewhat Recent	04 CitiJet
73C		Boeing 737-300	04 Western Old	04 CitiJet
73F	n/a	Boeing 737 All freighter models	Western Age Unkown	04 CitiJet
73G	B737	Boeing 737-700 Pax	08 Western Recent	04 CitiJet
73H		Boeing 737-800 Winglets	08 Western Recent	04 CitiJet
73M	B732	Boeing 737-200 Combi	03 Western Very Old/Old	04 CitiJet
73S	B732	Boeing 737-200 Advanced pax	03 Western Very Old/Old	04 CitiJet
73W		Boeing 737-700 Winglets	08 Western Recent	04 CitiJet
73X	B732	Boeing 737-200 Freighter	03 Western Very Old/Old	04 CitiJet
73Y	B733	Boeing 737-300 Freighter	04 Western Old	04 CitiJet
741	B741	Boeing 747-100 Pax	02 Western Very Old	06 Widebody
742	B742	Boeing 747-200 Pax	02 Western Very Old	06 Widebody
743	B743	Boeing 747-300 Pax	04 Western Old	06 Widebody
744	B744	Boeing 747-400 Pax	06 Western Somewhat Recent	06 Widebody
747	n/a	Boeing 747 All pax models	Western Age Unkown	06 Widebody
74C	B742	Boeing 747-200 Combi	04 Western Old	06 Widebody

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

74D	B743	Boeing 747-300 Combi	06 Western Somewhat Recent	06 Widebody
74E	B744	Boeing 747-400 Combi	06 Western Somewhat Recent	06 Widebody
74F	n/a	Boeing 747 All freighter models	Western Age Unkown	06 Widebody
74L	B74S	Boeing 747SP	Western Age Unkown	06 Widebody
74M	n/a	Boeing 747 All combi models	Western Age Unkown	06 Widebody
74R	B74R	Boeing 747SR Pax	Western Age Unkown	06 Widebody
74X	n/a	Boeing 747-100/200/SR Freighter	04 Western Old	06 Widebody
74Y	B744	Boeing 747-400 Freighter	06 Western Somewhat Recent	06 Widebody
752	B752	Boeing 757-200 pax	06 Western Somewhat Recent	05 Large Jet
753	B753	Boeing 757-300 Pax	06 Western Somewhat Recent	05 Large Jet
757	n/a	Boeing 757 All pax models	06 Western Somewhat Recent	05 Large Jet
75F	B752	Boeing 757 Freighter	06 Western Somewhat Recent	05 Large Jet
75W		Boeing 757-200 Winglets	06 Western Somewhat Recent	05 Large Jet
762	B762	Boeing 767-200 Pax	06 Western Somewhat Recent	06 Widebody
763	B763	Boeing 767-300 Pax	06 Western Somewhat Recent	06 Widebody
764	B764	Boeing 767-400 Pax	08 Western Recent	06 Widebody
767	n/a	Boeing 767 All pax models	07 Western Somewhat Recent/Recent	06 Widebody
76F	n/a	Boeing 767 Freighter	07 Western Somewhat Recent/Recent	06 Widebody
772	B772	Boeing 777-200 pax	08 Western Recent	06 Widebody
773	B773	Boeing 777-300 pax	08 Western Recent	06 Widebody
777	n/a	Boeing 777 All pax models	08 Western Recent	06 Widebody
77W		Boeing 777-300 ER	08 Western Recent	06 Widebody
A26	AN26	Antonov AN-26	Eastern - Age Undetermined	06 Widebody
A28	AN28	Antonov AN-28 / PZL Miele M-28 Skytruck	Eastern - Age Undetermined	
A30	AN30	Antonov AN-30	Eastern - Age Undetermined	
A32	AN32	Antonov AN-32	Eastern - Age Undetermined	
A40	A140	Antonov AN-140	Eastern - Age Undetermined	
A4F	A124	Antonov AN124 Ruslan	Eastern - Age Undetermined	
AB3	A30B	Airbus A300 Pax	06 Western Somewhat Recent	06 Widebody
AB4	A30B	Airbus A300B2/B4/C4 Pax	06 Western Somewhat Recent	06 Widebody
AB6	A306	Airbus A300-600 Pax	06 Western Somewhat Recent	06 Widebody
ABF	A30B	Airbus A300C4/F47-600 Freighter	06 Western Somewhat Recent	06 Widebody
ACD	n/a	Gulfstream/Rockwell Commander/Turbo Commander (Aero)		

APPENDICES

ACP	AC68	Gulfstream/Rockwell (Aero) Commander		
ACT	AC90	Gulfstream/Rockwell (Aero) Turbo Commander		
AN4	AN24	Antonov AN24	Eastern - Age Undetermined	08 Eastern - Undetermined
AN6	AN2 or AN30 or AN32	Antonov AN26 or Antonov AN30 or Antonov AN32	Eastern - Age Undetermined	08 Eastern - Undetermined
AN7	AN72	Antonov AN72/74	Eastern - Age Undetermined	08 Eastern - Undetermined
ANF	AN12	Antonov An12	Eastern - Age Undetermined	08 Eastern - Undetermined
APH	n/a	Eurocopter (Aerospatiale) SA330 Puma / AS332 Super Puma		
AR1	BA46	Avro RJ100 Avroliner	07 Western Somewhat Recent/Recent	03 Com Jet
AR7	BA46	Avro RJ70 Avroliner	07 Western Somewhat Recent/Recent	03 Com Jet
AR8	BA46	Avro RJ85 Avroliner	07 Western Somewhat Recent/Recent	03 Com Jet
ARJ	BA46	Avro RJ Avroliner	07 Western Somewhat Recent/Recent	03 Com Jet
AT3	AT43 or AT44	Aerospatiale/Alenia ATR 42-300 or Aerospatiale/Alenia ATR 42-400	07 Western Somewhat Recent/Recent	02 Com Prop
AT4	n/a	Aerospatiale/Alenia ATR 42	07 Western Somewhat Recent/Recent	02 Com Prop
AT5	AT45	Aerospatiale/Alenia ATR 42-500	07 Western Somewhat Recent/Recent	02 Com Prop
AT7	AT72	Aerospatiale/Alenia ATR 72	07 Western Somewhat Recent/Recent	02 Com Prop
ATP	ATP	British Aerospace ATP		
ATR	n/a	Aerospatiale/Alenia ATR 42/72	07 Western Somewhat Recent/Recent	02 Com Prop
B11	BA11	British Aerospace (BAC) One Eleven / RomBAC One Eleven	02 Western Very Old	04 CitiJet
B12	BA11	British Aerospace (BAC) One Eleven 200	02 Western Very Old	04 CitiJet
B13	BA11	British Aerospace (BAC) One Eleven 300	02 Western Very Old	04 CitiJet
B14	BA11	British Aerospace (BAC) One Eleven 400/475	02 Western Very Old	04 CitiJet
B15	BA11	British Aerospace (BAC) One Eleven 500 / RomBAC One Eleven	02 Western Very Old	04 CitiJet

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

B72	B720	Boeing 720B Pax		
BE1	B190	Beechcraft 1900/1900C/1900D	07 Western Somewhat Recent/Recent	02 Com Prop
BE2	n/a	Beechcraft twin piston engines	Western Light	01 GA
BEC	n/a	Beechcraft light aircraft	Western Light	01 GA
BEH	B190	Beechcraft 1900D	07 Western Somewhat Recent/Recent	02 Com Prop
BEP	n/a	Beechcraft lighth aircraft - single engine	Western Light	01 GA
BES	B190	Beechcraft 1900/1900C	07 Western Somewhat Recent/Recent	02 Com Prop
BET	n/a	Beechcraft light aircraft - twin turboprop engine		
BH2	n/a	Bell Helicopters		
BN1	BN2P or BN2T	Pilatus Britten-Norman BN-2A/B Islander or Pilatus Britten-Norman BN-2T Islander	Western Light	01 GA
BNT	TRIS	Pilatus Britten-Norman BN-2A Mk III Islander	Western Light	01 GA
BUS	n/a	Bus		
CCJ	CL60	Canadair Challenger		
CD2	NOMA	Nomad N22B/N24A		
CL4	CL44	Canadair CL-44		
CN1	n/a	Cessna light aircraft - single piston engine	Western Light	01 GA
CN2	n/a	Cessna light aircraft - twin piston engine	Western Light	01 GA
CNA	n/a	Cessna light aircraft	Western Light	01 GA
CNC	n/a	Cessna light aircraft - single turboprop engine	Western Light	01 GA
CNJ	n/a	Cessna Citation		
CNT	n/a	Cessna light aircraft - twin turboprop engine	Western Light	
CR1	CRJ1	Canadair Regional Jet 100	08 Western Recent	03 Com Jet
CR2	CRJ2	Canadair Regional Jet 200	08 Western Recent	03 Com Jet
CR7	CRJ7	Canadair Regional Jet 700	08 Western Recent	03 Com Jet
CR9	CRJ9	Canadair Regional Jet 900	08 Western Recent	03 Com Jet
CRJ	n/a	Canadair Regional Jet	08 Western Recent	03 Com Jet
CRV	S210	Aérospatiale (Sud Aviation) Se.210 Caravelle	02 Western Very Old	03 Com Jet
CS2	C212	CASA/IPTN 212 Aviocar	08 Western Recent	02 Com Prop
CS5	CN35	CASA/IPTN CN-235	07 Western Somewhat Recent/Recent	02 Com Prop
CV4	CVLP	Convair CV-440 Metropolitan Pax	02 Western Very Old	02 Com Prop

APPENDICES

CV5	CVLT	Convair CV-580 Pax	02 Western Very Old	02 Com Prop
CV6	CVLT	Convair CV-600/640 Pax	02 Western Very Old	02 Com Prop
CVF	n/a	Convair CV-440/580/600/640 Freighter	02 Western Very Old	02 Com Prop
CVR	n/a	Convair CV-440/580/600/640 Pax	02 Western Very Old	02 Com Prop
CVX	CVLP	Convair CV-440 Freighter	02 Western Very Old	02 Com Prop
CVY	CVLT	Convair CV-580/600/640 Freighter	02 Western Very Old	02 Com Prop
CWC	C46	Curtis C-46 Commando		
D10	DC10	Douglas DC-10 Pax	04 Western Old	06 Widebody
D11	DC10	Douglas DC-10-10/15 Pax	04 Western Old	06 Widebody
D1C	DC10	Douglas DC-10-30/40 Pax	04 Western Old	06 Widebody
D1F	DC10	Douglas DC-10 Freighter	04 Western Old	06 Widebody
D1M	DC10	Douglas DC-10 Combi	04 Western Old	06 Widebody
D28	D228	Fairchild Dornier Do.228	07 Western Somewhat Recent/Recent	02 Com Prop
D38	D328	Fairchild Dornier Do.328	07 Western Somewhat Recent/Recent	02 Com Prop
D3F	DC3	Douglas DC-3 Freighter	01 Western Very Old Vintage	09 Vintage Prop
D6F	DC6	Douglas DC-6A/B/C Freighter	01 Western Very Old Vintage	09 Vintage Prop
D85	DC85	Douglas DC-8-50 Pax	02 Western Very Old	05 Large Jet
D86	DC86	Douglas DC-8-61 Pax	02 Western Very Old	05 Large Jet
D87	DC87	Douglas DC-8-71 Pax	02 Western Very Old	05 Large Jet
D8A	DC86	Douglas DC-8-63 Pax	02 Western Very Old	05 Large Jet
D8B	DC87	Douglas DC-8-73 Pax	02 Western Very Old	05 Large Jet
D8F	n/a	Douglas DC-8 Freighter	02 Western Very Old	05 Large Jet
D8L	DC86	Douglas DC-8-62 Pax	02 Western Very Old	05 Large Jet
D8M	n/a	Douglas DC-8 Combi	02 Western Very Old	05 Large Jet
D8Q	DC87	Douglas DC-8-72 Pax	02 Western Very Old	05 Large Jet
D8X	n/a	Douglas DC-8-50/61/62/63 Freighter	02 Western Very Old	05 Large Jet
D8Y	DC87	Douglas DC-8-71/72/78 Freighter	02 Western Very Old	05 Large Jet
D91	DC9	Douglas DC-9-10 Pax	04 Western Old	04 CitiJet
D92	DC9	Douglas DC-9-20 Pax	04 Western Old	04 CitiJet
D93	DC9	Douglas DC-9-30 Pax	04 Western Old	04 CitiJet
D94	DC9	Douglas DC-9-40 Pax	04 Western Old	04 CitiJet
D95	DC9	Douglas DC-9-50	04 Western Old	04 CitiJet

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

D9F	DC9	Douglas DC-9 Freighter	04 Western Old	04 CitiJet
D9S	DC9	Douglas DC-9-30/40/50 Pax	04 Western Old	04 CitiJet
DC3	DC3	Douglas DC-3 pax	01 Western Very Old Vintage	09 Vintage Prop
DC4	DC4	Douglas DC-3 pax	01 Western Very Old Vintage	09 Vintage Prop
DC6	DC6	Douglas DC6A/B Pax	01 Western Very Old Vintage	09 Vintage Prop
DC8	n/a	Douglas DC-8 Pax	01 Western Very Old Vintage	05 Large Jet
DC9	DC9	Douglas DC-9 Pax	04 Western Old	04 CitiJet
DF2	n/a	Dassault (Breguet Mystere) Falcon 10/20/100/200		
DF3	n/a	Dassault (Breguet Mystere) Falcon 50/900		
DFL	n/a	Dassault (Breguet Mystere) Falcon		
DH1	DH8A or DH8B	De Havilland Canada DHC-8 Dash 8-100 or De Havilland Canada DHC-8 Dash 8-200	06 Western Somewhat Recent	02 Com Prop
DH3	DH8C	De Havilland Canada DHC-8 Dash 8-300	08 Western Recent	02 Com Prop
DH4	DH8D	De Havilland Canada DHC-8 Dash 8-400	08 Western Recent	02 Com Prop
DH7	DHC7	De Havilland Canada DHC-7 Dash 7	05 Western Old/Somewhat Recent	02 Com Prop
DH8	n/a	De Havilland Canada DHC-8 Dash 8	07 Western Somewhat Recent/Recent	02 Com Prop
DHB	n/a	De Havilland Canada DHC-2 Beaver/Turbo Beaver	Western Light	09 Vintage Prop
DHC	DHC4	De Havilland Canada DHC-4 Caribou	01 Western Very Old Vintage	09 Vintage Prop
DHC5	DCH5	de Havilland DHC-5	02 Western Very Old	02 Com Prop
DHD	DOVE	De Havilland DH.104 Dove		
DHH	HERN	De Havilland DH.114 Heron		
DHL	DHC3	De Havilland Canada DHC-3 Turbo Otter	Western Light	01 GA
DHO	DHC3	De Havilland Canada DHC-3 Otter / Turbo Otter	Western Light	01 GA
DHP	DHC2	De Havilland Canada DHC-2 Beaver	Western Light	01 GA
DHR	DHC	De Havilland Canada DHC-2 Beaver	Western Light	01 GA
DHS	DH2T or DHC3	De Havilland Canada DHC-2 Turbo Beaver or De Havilland Canada DHC-3 Otter	Western Light	01 GA
DHT	DHC6	De Havilland Canada DHC-6 Twin Otter	05 Western Old/Somewhat Recent	02 Com Prop
E70		Embrear EMB 170/175	08 Western Recent	03 Com Jet
E70	E170	Embraer 170	08 Western Recent	03 Com Jet
E90	E190	Embraer 190	08 Western Recent	03 Com Jet

APPENDICES

E95		Embrear EMB 195	08 Western Recent	03 Com Jet
EM2	E120	Embraer EMB.120 Brasilia	08 Western Recent	03 Com Jet
EMB	E110	Embraer EMB.110 Bandeirante	08 Western Recent	03 Com Jet
EMJ		Embrear 170/190	08 Western Recent	03 Com Jet
ER3	E135	Embraer RJ135	08 Western Recent	03 Com Jet
ER4	E145	Embraer RJ145 Amazon	08 Western Recent	03 Com Jet
ERJ	n/a	Embraer RJ135/145	08 Western Recent	03 Com Jet
F21	F28	Fokker F.28 Fellowship 1000	04 Western Old	02 Com Prop
F22	F28	Fokker F.28 Fellowship 2000	04 Western Old	02 Com Prop
F23	F28	Fokker F.28 Fellowship 3000	04 Western Old	02 Com Prop
F24	F28	Fokker F.28 Fellowship 4000	04 Western Old	02 Com Prop
F27	F27	Fokker F.27 Friendship / Fairchild F.27	04 Western Old	02 Com Prop
F28	F28	Fokker F.28 Fellowship	04 Western Old	02 Com Prop
F50	F50	Fokker 50	06 Western Somewhat Recent	02 Com Prop
F70	F70	Fokker 70	06 Western Somewhat Recent	02 Com Prop
FA7	n/a	Fairchild Dornier 728JET		
FK7	F27	Fairchild FH.227		
FRJ	J328	Fairchild Dornier 328JET	08 Western Recent	03 Com Jet
GRG	G21	Grumman G.21 Goose	Western Light	
GRJ	n/a	Gulfstream Aerospace G-1159 Gulfstream II/III/IV		
GRM	G73T	Grumman G.73 Turbo Mallard		
GRS	G159	Gulfstream Aerospace G-159 Gulfstream I	02 Western Very Old	02 Com Prop
H25	n/a	British Aerospace (Hawker Siddley) HS.125		
HEC	COUC	Helio Courier		
HOV	n/a	Hovercraft		
HPH	HPR7	Handley Page Herald		
HS7	A748	Hawker Siddley HS.748	03 Western Very Old/Old	02 Com Prop
HS8	HS780	Hawker Sidney 780	02 Western Very Old	02 Com Prop
I14	I114	Ilyushin IL114	Eastern - Age Undetermined	08 Eastern - Undetermined
IAT	ICAO	Aircraft		
ICE	n/a	Train - Inter-City Express		
IL6	IL62	Ilyushin IL62	Eastern - Age Undetermined	08 Eastern - Undetermined
IL7	IL76	Ilyushin IL76	Eastern - Age Undetermined	08 Eastern - Undetermined

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

IL8	IL18	Ilyushin IL18	Eastern - Age Undetermined	08 Eastern - Undetermined
IL9	IL96	Ilyushin IL96-300	Eastern - Age Undetermined	08 Eastern - Undetermined
ILW	IL86	Ilyushin IL86	Eastern - Age Undetermined	08 Eastern - Undetermined
J31	JS31	Brittish Aerospace Jetstream 31	06 Western Somewhat Recent	02 Com Prop
J32	JS32	Brittish Aerospace Jetstream 32	06 Western Somewhat Recent	02 Com Prop
J41	JS41	British Aerospace Jetstream 41	06 Western Somewhat Recent	02 Com Prop
JU5	JU52	Junkers Ju52/3M		
L10	L101	Lockheed L-1011 Tristar Pax	04 Western Old	06 Widebody
L11	L101	Lockheed L-1011-1/50/100/150/200/250 Tristar Pax	04 Western Old	06 Widebody
L15	L101	Lockheed L-1011-500 Tristar Pax	04 Western Old	06 Widebody
L1F	L101	Lockheed L-1011 Tristar Freighter	04 Western Old	06 Widebody
L49	CONI	Lockheed L-1049 Super Constellation	01 Western Very Old Vintage	09 Vintage Prop
L4T	L410	LET 410	Eastern - Age Undetermined	02 Com Prop
LCH	n/a	Launch - Boat		
LMO	n/a	Limousine		
LOE	L188	Lockheed L-188 Electra Pax	01 Western Very Old Vintage	09 Vintage Prop
LOF	L188	Lockheed L-188 Electra Freighter	01 Western Very Old Vintage	09 Vintage Prop
LOH	C130	Lockheed L-382 (L-100) Hercules	Western Misc	
LOM	L188	Lockheed L-188 Electra Combi	01 Western Very Old Vintage	09 Vintage Prop
LRJ	n/a	Gates Learjet		
M11	MD11	McDonnell Douglas MD11 Pax	06 Western Somewhat Recent	06 Widebody
M1F	MD11	McDonnell Douglas MD11 Freighter	06 Western Somewhat Recent	06 Widebody
M1M	MD11	McDonnell Douglas MD11 Combi	06 Western Somewhat Recent	06 Widebody
M80	MD80	McDonnell Douglas MD80	06 Western Somewhat Recent	04 CitiJet
M81	MD80	McDonnell Douglas MD81	06 Western Somewhat Recent	04 CitiJet
M82	MD80	McDonnell Douglas MD82	06 Western Somewhat Recent	04 CitiJet
M83	MD80	McDonnell Douglas MD83	06 Western Somewhat Recent	04 CitiJet
M87	MD80	McDonnell Douglas MD87	06 Western Somewhat Recent	04 CitiJet
M88	MD80	McDonnell Douglas MD88	06 Western Somewhat Recent	04 CitiJet
M90	MD90	McDonnell Douglas MD90	06 Western Somewhat Recent	04 CitiJet
MBH	B105	Eurocopter (MBB) Bo.105		
MIH	MI8	MIL Mi-8		
MTL	n/a	Train - Metroliner		
MU2	MU2	Mitsubishi Mu-2	Western Light	

APPENDICES

ND2	N262	Aerospatiale (Nord) 262 / Mohawk 298		
NDC	S601	Aerospatiale SN.601 Corvette		
NDE	AS50 or AS55	Eurocopter (Aerospatiale) AS350 Ecureuil or Eurocopter (Aerospatiale) AS355 Ecureuil 2		
NDH	S65C	Eurocopter (Aerospatiale) SA365 Daupin 2		
PA1	n/a	Piper light aircraft - single piston engine	Western Light	01 GA
PA2	n/a	Piper light aircraft - twin piston engine	Western Light	01 GA
PAG	n/a	Piper light aircraft	Western Light	01 GA
PAT	n/a	Piper light aircraft - twin turboprop engine	Western Light	01 GA
PL2	PC12	Pilatus PC-12	Western Light	01 GA
PL6	PC6T	Pilatus PC-6 Turbo Porter	Western Light	01 GA
PN6	P68	Partenavia P.68		
RFS	n/a	Road Feeder Service - Cargo Truck		
S20	SB20	Saab 2000		
S58	S58T	Sikorsky S-58T		
S61	S61	Sikorsky S-61		
S76	S76	Sikorsky S-76		
SF3	SF34	Saab SF340A/B	07 Western Somewhat Recent/Recent	02 Com Prop
SH3	SH33	Shorts SD.330		
SH6	SH36	Shorts SD.360	06 Western Somewhat Recent	02 Com Prop
SHB	BELF	Shorts SC-5 Belfast		
SHS	SC7	Shorts SC-7 Skyvan		
SSC	CONC	Aerospatiale/BAC Concorde		
SWM	n/a	Fairchild (Swearingen) Metro/Merlin/Expediter	04 Western Old	02 Com Prop
T20	T204	Tupolev Tu204	Eastern - Age Undetermined	08 Eastern - Undetermined
TAT	n/a	Train - Auto Train		
TCM	n/a	Train - Commuter Train		
TEE	n/a	Train - Trans-Europe Express		
TGV	n/a	Train - Train a Grand Vitesse		
THS	n/a	Train - High Speed Train		
THT	n/a	Train - Hotel Train		
TIC	n/a	Train - Inter-City Train		
TRN	n/a	Train - All types		

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

TSL	n/a	Train - Sleeper Train		
TU3	T134	Tupolev Tu134	Eastern - Age Undetermined	08 Eastern - Undetermined
TU5	T154	Tupolev Tu154	Eastern - Age Undetermined	08 Eastern - Undetermined
VCV	VISC	Vickers Viscount	02 Western Very Old	02 Com Prop
VGf		British Aerospace (Vickers) Merchantman		
WWP	WW24	Israel Aircraft Industries 1124 Westwind		
YK2	WK42	Yakovlev Yak 42	Eastern - Age Undetermined	08 Eastern - Undetermined
YK4	WK42 or YK40	Yakovlev Yak-42 or Yakovlev Yak 40	Eastern - Age Undetermined	08 Eastern - Undetermined
YN2	Y12	Harbin Yunshuji Y12	Eastern - Age Undetermined	08 Eastern - Undetermined
YN7	AN24	Xian Ynshuji Y7	Eastern - Age Undetermined	08 Eastern - Undetermined
YS1	YS11	NAMC YS-11	04 Western Old	02 Com Prop

BIBLIOGRAPHY

BIBLIOGRAPHY

PRIMARY MATERIALS

INTERNATIONAL MATERIALS

Treaties and Other International Agreements

Additional Protocol Number 1 [2003] Bulletins Officiels de l'UEMOA.

Agreement establishing the Common Market for Eastern and Southern Africa
(COMESA); 1994.

Agreement of Arab Free Trade Area, (Tunis, 1981).

Agreement on the Liberalisation of Air Transport between the Arab States.
Damascus; 2004.

Agreement on the Mechanism for Arab Collective Negotiations with Regional and
Sub-Regional Groupings; 2004.

Agreement to establish the Banjul Accord Group and implement the Banjul
Accord for the accelerated implementation of the Yamoussoukro
Declaration, 4 April 1997. (Banjul, 2004).

Air Transport Agreement between the United States of America and Singapore, 3
CCH Avi. / 26495a.

Annex 13 to the Convention on International Civil Aviation - Aircraft Accident
and Incident Investigation, (2001).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Annex 17 to the Convention on International Civil Aviation – Security, (2002).

Charter of the Organization of African Unity 13 September 1963, 479 U.N.T.S.

39

Consolidated Versions of the Treaty on European Union and of the Treaty establishing the European Community, [2006] O.J.

Constitutive Act of the African Union, (2000).

Convention for the Unification of Certain Rules for International Carriage by Air,
28 May 1999, ICAO Doc. 9740

Convention on International Civil Aviation, 7 December 1944, 15 U.N.T.S. 295.

Council Regulation (EEC) on Access for Community Air Carriers to intra-Community Air Routes [1992] O.J. L. 2402/8.

Council Regulation (EEC) on Fares and Rates for Air Services [1992] O.J. L. 2402/15

Council Regulation (EEC) on Licensing of Air Carriers, [1992] O.J. L. 2402/1.

Décision portant Adoption du Programme Commun du Transport Aérien des Etats Membres de l'UEMOA, (2002) 08/2002: CM/UEMOA Bulletins officiels de l'UEMOA.

BIBLIOGRAPHY

Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa (2002).

Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa (1999).

Declaration of Yamoussoukro on a New African Air Transport Policy (1988).

East Africa Community Treaty – 1999, (1999).

International Air Services Transit Agreement, Chicago; 1944.

Judgment of the Court (ECJ) [1992] O.J. C. 323/8.

La Décision de Yamoussoukro et le Transport Aérien en Afrique (Paris: Servedit, 2004).

Memorandum of Understanding for the Implementation of a Co-operative Development of Operational Safety and Continuing Airworthiness Project for the Banjul Accord Group (COSCAP-BAG). Banjul; 2004.

Multilateral Air Service Agreement for the Banjul Accord Group. Banjul; 2004.

Pact of the League of Arab States (1992) 7:2 Arab Law Quarterly 148.

Protocol on Transport, Communications and Meteorology in the Southern African Development Regions (1994).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Protocole d'Accord entre L'Union Économique et Monétaire Ouest Africaine et l'Organisation de l'Aviation Civile Internationale (OACI) relatif à la mise en oeuvre du Projet "COSCAP" pour la Supervision de la Sécurité Aérienne dans les États Membres de l'UEMOA, (2003).

Règlement relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA (2002) 02/2002:CM/UEMOA Bulletins officiels de l'UEMOA.

Regulation (EC) No 2027/97 of 9 October 1997 on Air Carrier Liability in the Event of Accidents, 1997

Regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC), No 295/91

Revised Treaty In: Economic Community of West African States ECOWAS, ed.: Executive Secretariat of ECOWAS, (Abuja, Nigeria: ECOWAS, 1993).

Traité instituant la Communauté Économique et Monétaire de l'Afrique Centrale. (N'Djaména, Chad: CEMAC, 1994).

Traité modifié de l'Union Economique et Monétaire Ouest Africaine (UEMOA) (Dakar, Senegal: 2003).

Traité portant création de l'Union Economique et Monétaire Ouest Africaine (UEMOA). (Dakar, Senegal: UEMOA, 1994).

BIBLIOGRAPHY

Treaty Creating the Arab Union of the Maghreb reproduced in (1992) 7: 3 Arab Law Quarterly 205.

Treaty Establishing the African Economic Community. Abuja, Nigeria; 1991.

Treaty establishing the European Union [2002] O.J. C. 325/33

Treaty of the Southern African Development Community; 1992.

Vienna Convention on the Law of Treaties 27 January 1155 U.N.T.S 331.

Documents of International and Regional Organizations

African Airlines Association AFRAA. *Final Resolutions adopted by the 38th Annual General Assembly*, (Cairo: AFRAA, 2006).

African Civil Aviation Commission. *AFAC Commission Objective* (Dakar, Senegal: AFCAC, 2007).

African Union. *The 4th Meeting of the Monitoring Body for the Implementation of the Yamoussoukro Decision, Meeting of African Ministers responsible for Air Transport, First Ordinary Session*, (Addis Ababa: AU, 2005).

---. *Accra Declaration* (Accra: African Union, 2007).

---. *Addis Ababa Resolution on Entrusting the Functions of the Executing Agency of the Yamoussoukro Decision to the African Civil Aviation Commission*

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Third African Union Conference of Ministers responsible for Air Transport, (Addis Ababa, Ethiopia: AU, 2007).

---. *Decisions of the 6th Ordinary Session of the Assembly of Heads of State and Government 6th African Union Summit (Khartoum, Sudan: AU, 2006).*

---. *Declaration on Aviation Security Third African Union Conference of Ministers responsible for Air Transport, (Addis Ababa, Ethiopia: AU, 2007).*

---. *Draft Competition Rules for Air Services (2007).*

---. *Final Communiqué of the Second Session of the Conference of African Ministers Responsible for Air Transport, (Libreville, Republic of Gabon: AU, 2006).*

---. *Libreville Resolution on Aviation Safety in Africa Conference organized by the African Union on Civil Aviation Safety in Africa, (Libreville, Gabon: AU, 2006).*

---. *List of Countries which have signed, ratified / acceded to the African Union Convention on Treaty establishing the African Economic Community, (2006).*

---. *List of Countries which have signed, ratified/acceded to the African Union Convention on Constitutive Act of the African Union, (2006).*

BIBLIOGRAPHY

- . *Projet de Décision portant Règles Communes sur la concurrence et Project de Décision fixant les Exemptions aux Règles de Concurrence en Matière de Transport Aérien*, (2007).
- . *Report of the Experts Meeting in Libreville Gabon* presented at the 2006 Conference of African Ministers Responsible for Air Transport, (Libreville, Republic of Gabon: AU, 2006).
- . *Report of the Meeting of Experts in Addis Ababa, Ethiopia 2007* presented at the Third African Union Conference for Air Transport, (Addis Ababa, Ethiopia: AU, 2007).
- . *Report of the Meeting of Experts on Air Transport in Sun City, South Africa 2005* presented at the Second Meeting of African Ministers responsible for Air Transport, (Sun City, South Africa: AU, 2005).
- . *Report of the Meeting of Ministers in Addis Ababa, Ethiopia 2007* presented at the Third African Union Conference of Ministers responsible for Air Transport, (Addis Ababa, Ethiopia: AU, 2007).
- . *Rules of Procedure of the Assembly of the Union Assembly of the African Union - First Ordinary Session*, (Durban, South Africa: AU, 2002).
- Chérif, Taïeb. *Address by the Secretary General of ICAO 38th Annual General Assembly of the African Airlines Association*, (Cairo: ICAO, 2006).
- Common Market for Eastern and Southern Africa (COMESA) Secretariat. "The COMESA Air Transport Liberalization Experience" presentation delivered

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

at the *Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization*, (Montreal, September 2003).

---. *COMESA in Brief*, 3rd. ed. (Lusaka, Zambia: COMESA, 2007).

---. *Draft COMESA Competition Regulations*, (2003).

---. *Legal Notice No. 2* (1999).

---. *Report and Decisions 17th Meeting of the COMESA Council of Ministers*, (Kampala, Uganda: COMESA, 2004).

---. *The Development and Implementation of Competition Regulations in Eastern and Southern Africa, Meeting of African Ministers responsible for Air Transport*, (Sun City, South Africa: COMESA, 2005).

Council of Ministers for the Implementation of the Yamoussoukro Decision on Air Transport Liberalization in West and Central Africa. *Resolution of the Second Ordinary Session Second Meeting of the Council of Ministers* (Lomé, Togo: 2003).

Council of Ministers of COMESA and EAC responsible for Civil Aviation and the Committee of Ministers of Transport and Communications of SADC. *Regulations for Competition in Air Transport Services within COMESA, EAC and SADC* (2004).

East African Community Secretariat. *Protocol on the Establishment of the East African Community Civil Aviation Safety and Security Oversight Agency*

BIBLIOGRAPHY

Extra Ordinary Council of Ministers Meeting, (Arusha, Tanzania: EAC, 2007).

---. *Report of the Meeting 11th Meeting of the Council of Ministers*, (Arusha, Tanzania: EAC, 2006).

---. *Report of the Meeting of the Heads of Civil Aviation and Airport Authorities*, (Arusha, Tanzania: EAC, 2008).

Economic and Monetary Community of Central Africa. *Code de l'Aviation Civile de la CEMAC*, (2000).

---. *Protocol Additionnel au Traité de CEMAC Relative au System Institutionnel et Juridique Communautaire*, (Libreville, Gabon: CEMAC, 1996).

---. *Règlement portant adoption de l'Accord relatif au Transport Aérien entre les Etats membres de la CEMAC*, (CEMAC, 1999).

---. *Règlement portant adoption du Code de l'Aviation Civile de la CEMAC*, (CEMAC, 2000).

---. *Réglementation des Pratiques Commerciales Anticoncurrentielles* (CEMAC, 1999).

Economic Community of West African States ECOWAS. *Air Transport Policy in Economic Community of West African States*, presentation delivered at the 36th Session of the Assembly of the International Civil Aviation Organization. (Montreal, 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

ECOWAS and CEMAC. "Implementation of the Yamoussoukro Decision on the Liberalisation of Air Transport Markets in Africa - Report of Activities January 2001 - November 2004", presented at the Third Meeting of the Coordination and Monitoring Committee for the Implementation of the Yamoussoukro Decision in West and Central Africa, (Libreville, Gabon, 2004).

European Commission. *Developing the agenda for the Community's external aviation policy Communication from the Commission*; 2005.

---. *European Neighbourhood Policy - Who participates?* (Brussels: EU, 2007).

---. Information Note - EU-Morocco Euro-Mediterranean Air Transport Agreement *Air Transport Portal of the European Commission*; 2005.

---. List of Airlines banned within the EU (2007).

European Conference of Ministers of Transport. *Towards the Development of Coordinated and Harmonised Transport Systems in the Western Mediterranean Region*, presented at the Meeting of Ministers of Transport of Western Mediterranean Countries (Paris, 1995).

International Air Transport Association (IATA). *Airline Liberalisation* (Geneva: IATA, 2007).

---. *IATA Operational Safety Audit (IOSA)*, (Montreal & Geneva: IATA, 2007).

Safety Report - 2004 Edition by ---. (Montreal & Geneva, April 2005).

BIBLIOGRAPHY

Safety Report - 2006 Edition by ---. (Montreal & Geneva, April 2007).

International Bank for Reconstruction and Development. *Grant for Building Capacity for Implementing a Program for Liberalization of Air Transport Services in West and Central Africa* - IDF Grant No. TF051220 (2002).

---. *Grant for the Implementation of Air Transport Agenda in West and Central Africa* - IDF Grant No. TF027394 (2000).

International Civil Aviation Organization. *Developments in the Statistics and Forecasting Programmes 36th Assembly of ICAO. Montreal*, (Montreal: ICAO, 2007).

---. *Economic Contribution of Civil Aviation*, Circular 292-AT/124 ed. (Montreal, Canada: International Civil Aviation Organization, 2004).

---. ICAO Universal Safety Oversight Audit Programme *Eighteenth Meeting of Directors of Civil Aviation of the Eastern Caribbean*. Port of Spain, Trinidad and Tobago: 18 E/CAR DCA - IP/03; 2003.

---. *Manual on the Regulation of International Air Transport*.

---. *Proceedings of the third Session of the Council: Doc 7310 (C/846)*; 1948.

---. *Safety Oversight Audit Manual* (ICAO Doc. 9735, AN/960, 2000).

---. *Universal Safety Oversight Audit Programme - Analysis of Audit Reports (April 2005 to May 2007)* (Montreal, 2007).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

---. *Working Paper 15: General Review of the Past Work of the Organization in the Air Navigation Field and Consideration of the Future Programme and Policies in the Light of Action Taken on Resolutions of Previous Sessions of the Assembly 12th Session of the Assembly* (San Diego, CA: 1959).

---. *Working Paper 31: Regionalization of Safety* presented at the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety, (Montreal, Canada: 2006).

---. *Working Paper 87: Instituting Mechanisms for Fair Competition* presented at the Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization, (Montreal: ICAO; 2003).

Significant Safety Concerns on Djibouti by ---. (Montreal, 10 March 2008).

International Monetary Fund. *Directory of Economic, Commodity and Development Organizations*, (2006).

Interstate Aviation Committee. *The State of Flight Safety of the Aircraft designed and manufactured in the former USSR for the 30 years of operation*, *Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety*. Montreal, 2006.

League of Arab States. *About the Arab League - Current general structure and administrative Organization - Arab Specialized Organizations*, (2007).

Organization of African Unity. *Lagos Plan of Action for the Economic Development of Africa, 1980-2000*, (Lagos: OAU, 1980).

BIBLIOGRAPHY

---. "Profile: The Organization of African Unity" (2000).

---. *10th Summit Anniversary*, (1973).

Southern African Development Community (SADC). *Annotated Record Ninth Meeting of the SADC Civil Aviation Committee*, (Manzini, Swaziland: SADC, 2006).

---. *Major Achievements and Challenges* (Gaborone, Botswana: SADC Secretariat, 2005).

Status of the Implementation of the Yamoussoukro Decision in SADC and EAC as of 04 May 2007 by ---.

UEMOA. Programme Commun du Transport Aérien des Etats Membres de l'UEMOA (2002).

United Nations Economic Commission for Africa. Report of the First Meeting of the Monitoring Body of the Yamoussoukro Decision *First Meeting of the Monitoring Body of the Yamoussoukro Decision*. Addis Ababa, Ethiopia; 2000.

United Nations Information Organization (UNIO). *Report of the Chicago Conference on International Civil Aviation*.

International Trade Statistics 2001-2005 by United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO), International Trade Centre, 2005.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Van den Boogaerde, Pierre & Tsangarides, Charalambos. "Ten Years after the CFA Franc Devaluation: Progress toward Regional Integration in the WAEMU" (2005) WP/05/145 IMF Working Paper.

The World Bank. *Air Transport Trends and Economics in Western and Central Africa*, (Washington DC: The World Bank Group, 1998).

---. *République Démocratique et Populaire Algérienne: La Reforme du Sector des Transports* (Washington DC: The World Bank Group, 2005).

---. *World Development Indicators* (Washington DC: The World Bank Group, 2007).

---. *World Development Indicators* (Washington DC: The World Bank Group, 2008).

World Travel & Tourism Council. *The 2007 Travel & Tourism Economic Research* by (London, 2007).

SECONDARY MATERIALS

BOOKS AND BOOK SECTIONS

Adedeji, Adebayo. "ECOWAS: A Retrospective Journey" in Adekeye Adebajo & Ismail Rashid, ed., *West Africa's Security Challenges* (Boulder, Colorado: Lynne Rienner Publishers, 2004).

BIBLIOGRAPHY

Adésínà, J. O., Graham, Yao & Olukoshi, A. eds., *Africa & Development - Challenges in the New Millennium* (London: Zed Books Ltd., 2006).

Akanle, O. ed., *The Legal and Institutional Framework of the African Economic Community* (Lagos: Nigerian Institute of Advanced Legal Studies, 1993).

Akintan, S. A. *The Law of International Economic Institutions in Africa* (Leyden: Brill, 1977).

Alnasrawi, Abbas. *Arab Nationalism, Oil and the Political Economy of Dependency* (New York: Greenwood Press, 1991).

Amerasinghe, Chittharanjan Felix. *The Law of the International Civil Service* (Cambridge: Cambridge University Press, 2005).

Azar, Edward & Burton, John. eds., *International Conflict Resolution: Theory and Practice* (Boulder, Colorado: Lynne Rienner Publishers, 1986).

Benvenisiti, Eyal & Hirsch, Moshe. eds., *The Impact of International Law on International Cooperation* (Cambridge: Cambridge University Press, 2004).

Brownlie, Ian. *Principles of Public International Law*, 6th ed. (Oxford: Oxford University Press, 2003).

---. *Principles of Public International Law*, 7th ed. (New York: Oxford University Press, 2008).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Buergenthal, Thomas. *Law-Making in the International Civil Aviation Organization* (New York: Syracuse University Press, 1969).

Chazournes, Laurence Boisson de & Gowlland-Debbas, Vera. eds., *The International Legal System in Quest of Equity and Universality* (The Hague: Martinus Nijhoff Publishers, 2001).

Dempsey, Paul Stephen. *Flying Blind: The Failure of Airline Deregulation* (Washington DC: Economic Policy Institute, 1990).

---. *Law and Foreign Policy in International Aviation* (Ardsley-on-Hudson, NY.: Transnational Publishers, Inc., 1987).

---. *Public International Air Law* (Montreal: McGill University, 2006).

Dempsey, Paul Stephen & Gesell, Laurence E. *Air Commerce and the Law* (Chandler, Arizona: Coast Aire Publications, 2004).

Easton, David. *A Systems Analysis of Political Life* (New York: John Wiley & Sons, 1965).

Evans, Malcom D. *International Law* (Oxford: Oxford University Press, 2006).

El-Ayouty, Yassin & Zartman, I. William. eds., *The OAU after twenty years - A SAIS Study on Africa* (New York: Praeger Publisher, 1984).

Feige, Irene. *Transport, Trade and Economic Growth - Coupled or Decoupled?* (Berlin: Springer-Verlag Berlin, 2007).

BIBLIOGRAPHY

- Geddes, Charles L. *A Documentary History of the Arab-Israeli Conflict*. (New York: Praeger Publishers, 1991).
- Guttery, Ben R. *Encyclopedia of African Airlines* (Jefferson, North Carolina: McFarland & Company, 1998).
- Kayizzi-Mugerwa, Steve. ed., *The African Economy: Policy, Institutions and the Future* (London: Routledge, 1999).
- Klee, Ulrich. ed., *JP Airline-Fleets International* (Zurich, Switzerland: Bucher & Co., 1997, 2001, 2004, and 2007).
- Le Roy, Etienne, Le Bris, Emil & Mathieu, Paul. eds., *Le foncier de l'arbre et le foncier de la forêt* (Paris & Karthala, 1991).
- M'buyinge, Elenga. *Pan Africanism or Neo-Colonialism: The Bankruptcy of the O.A.U.* (London, 1982).
- Mandaza, Ibbo & Tostensen, Arne. *In Search of a Common Future - from the Conference to the Community* (Gaborone, Botswana: Southern African Development Community (SADC), 1994).
- Masson, Paul R. & Pattillo, Catherine. *The Monetary Geography of Africa* (Washington DC: Brookings Institution, 2004).
- Niblock, Tim. *Pariah States & Sanctions in the Middle East: Iraq, Libya, Sudan*. (Boulder, Colorado: Lynne Rienner, 2001).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

O'Connor, William E. *An Introduction to Airline Economics* (London: Greenwood Publishing Group, 2000).

Oxera Consulting Ltd. *What are the economic impacts of relaxing product and capital market restrictions?* (Oxford: Oxera, 2006).

Peaslee, Amos Jenkins. *International Governmental Organizations* (The Hague: Martinus Nijhoff, 1974).

Peaslee, Amos Jenkins & Peaslee Xydis, Dorothy *International governmental organizations: constitutional documents*, rev. 3rd ed. (The Hague: Martinus Nijhoff, 1976).

Ranney, Austin. *Political Science and Public Policy* (Chicago: Markham Publishing Company, 1968). *Civil Aircraft Accident Report CAV/ACC/8/2003* by Republic of Kenya - Ministry of Transport Department of Air Accident Investigation.

Rosenau, James N. & Czempiel, Ernst Otto. *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992).

Schlumberger, Charles E. "Air Transport: Revitalizing Yamoussoukro" in Aaditya Mattoo & Lucy Payton, eds., *Services Trade & Development - The Experience of Zambia* (Washington DC: The World Bank, 2007).

Seidman, Ann *et al.* eds., *Africa's Challenge* (Trenton, New Jersey: Africa World Press Inc., 2007).

BIBLIOGRAPHY

Thomas, Geoffrey & Smith, Christine Forbes. *Flightpaths* (Perth, Australia: Aerospace Technical Publications International Pty. Ltd., 2003).

Doganis, Rigas. *The Airline Business in the 21st Century* (London and New York: Routledge, 2001).

JOURNAL AND MAGAZINE ARTICLES

Aghrout, Ahmed & Sutton, Keith. "Regional Economic Union in the Maghreb" (1990) 28:1 Journal of Modern African Studies 115.

Arab Union of the Maghreb. "Treaty Creating the Arab Union of the Maghreb" (1992) 7: 3 Arab Law Quarterly 205.

Atiba, Aduke. "Taking the Bold Step" Aviation and Allied Business (June 2007)

Bekker, Peter H. F. "Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment" (1998) 92: 4 A.J.I.L. 751.

Blackwell Synergy. "Liberia: Charles Taylor on Trial" (2007) 44: 6 Africa Research Bulletin: Political, Social and Cultural Series 17107B.

Burchall, H. "Air Services in Africa" (1933) 32: 126 Journal of the Royal African Society 55.

Burke-White, William W. "International Legal Pluralism" (2004) 25: 4 Mich. J. Int. L. 963.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Dempsey, Paul Stephen. "Compliance & Enforcement in International Law: Achieving Global Uniformity in Aviation Safety" (2004) 30: 1 N.C.J. Int. L. & Com. Reg.

Flouris, Triant G. "A Theoretical Justification of Global Air Transport Liberalization - The False Dilemma of Political versus Economic Cost" (2003) Business Briefing - Aviation Strategies: Challenges & Opportunities of Liberalization.

Ford, Neil. "Rwanda, Burundi to join East African Community" (April 2007) African Business.

Frankel, Jeffrey A. & Romer, David. "Does Trade Cause Growth?" (1999) 89: 3 The American Economic Review 379.

Gibbs, David. "The Politics of Economic Development: The Case of the Mauritanian Fishing Industry" (1984) 27: 4 African Studies Review 79.

Higgins, Rosalyn. "The Development of International Law through the Political Organs of the United Nations" (1963) 64 A.J.I.L.

Jordan J. Paust. "Self-Executing Treaties" (1988) 82: 4 A.J.I.L. 760.

Kahn, Paul W. "Speaking law to power: Popular sovereignty, human rights, and the new international order" (2000) 1 Chi. J. Int. L.

BIBLIOGRAPHY

- Kamto, Pierre. La Mise en Œuvre du Droit Communautaire dans les Etats Membres de la CEMAC *Institut International de Droit d'Expression et d'Inspiration Françaises (I.D.E.F.)* 2002.
- Kofele-Kale, Ndiva. "Cameroon and Its Foreign Relations" (1981) 80: 319 African Affairs 197.
- Langewiesche, William. "Congo from the Cockpit" Vanity Fair (July 2007).
- Leigh, Monroe. "Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)" (1985) 79: 2 A.J.I.L. 442.
- Leinbach, Thomas R. & Jr., John T. Bowen. "Air Cargo services and the Electronics Industry in Southeast Asia" (2004) 4: 3 Journal of Economic Geography 299.
- Matthews, Jacqueline. "Economic Integration in Southern Africa: Progress or Decline?" (1984) 52: 3 South African Journal of Economics 171.
- McMahon, John F. "The Court of the European Communities Judicial Interpretation and International Organization" (1961) 320 B.Y.I. L.
- Mead, Donald C. "Economic Co-Operation in East Africa" (1969) 7: 2 Journal of Modern African Studies 277.
- Micco, Alejandro & Serebrisky, Tomás. "Competition Regimes and Air Transport Cost: The Effects of Open Skies Agreements" (2006) 70 Journal of International Economics 25.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Mugomba, Agrippah T. "Regional Organisations and African Underdevelopment:

The Collapse of the East African Community" (1978) 16: 2 Journal of Modern African Studies 261.

Petersen, Tina Loevom. "The EAC: The Fast Guide" MShikamano Magazine Vol. 1/2005 (April 2005).

Radhi, Hassan. "The Arab Organisation for Civil Aviation" (1996) 11: 3 Arab Law Quarterly 285.

Rother, Philipp C. "Money Demand in the West African Economic and Monetary Union - The Problems of Aggregation" (1999) 8: 3 Journal of African Economies.

Rowlands, Ian H. "Mapping the Prospects for Regional Co-operation in Southern Africa" (1998) 19: 5 Third World Quarterly 917.

Stevens, Barrie. "The Impact of Air Transport" The OECD Observer, Special Edition on Sustainable Development (1997).

Tsie, Balefi. "States and Markets in the Southern African Development Community (SADC): Beyond the Neo-Liberal Paradigm" (1996) 22: 1 Journal of Southern African Studies 75.

BIBLIOGRAPHY

OTHERS

Abate, Megersa Abera *The Economic Effects of Progressive Air Transport Liberalization in Africa* (Thesis submitted to the School of Graduate Studies, Addis Ababa University, 2007) [unpublished].

Detailed Analysis of African Air Services Schedules by Abbey, Douglas (Washington DC: The Velocity Group) [unpublished].

Liste des pays ayant ratifié la Convention sur la Libéralisation du Transport Aérien by Alj, Mohamed El (Arab Civil Aviation Commission, 10 October 2007) [unpublished].

Andorno, Roberto, *The Invaluable Role of Soft Law in the Development of Universal Norms in Bioethics Workshop jointly organized by the German Ministry of Foreign Affairs and the German UNESCO Commission* (Berlin; 2007) [unpublished].

Impact of International Trade on Income and Income Inequality by Aradhyula, Satheesh, Rahman, Tauhidur & Seeivasan, Kumaran (Tucson, Arizona: University of Arizona, 2007).

The Economic and Social Benefits of Air Transport by Air Transport Action Group (ATAG) (Geneva, Switzerland: ATAG, 2005).

Country Profile Madagascar by Bernard Krief Consultants (Addis Ababa, Ethiopia: The ICT Africa Market Place, 2008).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Country Profile Mauritius by ---. (Addis Ababa, Ethiopia: The ICT Africa Market Place, 2008).

Current Market Outlook by Boeing Company (Seattle: The Boeing Company, 2006).

Air Transport: Challenges to Growth by Bofinger, Heinrich C. (Washington DC: The World Bank, 2008).

Description and Assessment of a Sample of Export Markets with Dependence on Air Cargo in Developing Countries by ---. (Washington DC: The World Bank, 2007) [unpublished].

Note on the Air Transport Sector of the Republic of Malawi by ---. (Washington DC: The World Bank, 2007) [unpublished].

The Economic Impacts of an Open Aviation Area between the EU and the US by Booz Allen Hamilton (London: Directorate General Energy and Transport of the European Commission, 2007).

Accident survenu le 25 décembre 2003 sur l'aérodrome de Cotonou Cadjèhoun (Benin) au Boeing 727-223 immatriculé 3X-GDO exploité par l'Union des Transports Africains by Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile.

Accident which occurred on 30 January 2000 in the sea near Abidjan Airport to the Airbus 310-304 registered 5Y-BEN operated by Kenya Airways by ---.

BIBLIOGRAPHY

Voluntary Peer Review of Competition Policy: West African Economic and Monetary Union, Benin and Senegal by Charrier, Guy & Coulibaly, Abou Saïb (New York and Geneva: United Nations, 2007).

Report on the accident on 6 March 2003 at Tamanrasset to the Boeing 737-200 registered 7T-VEZ operated by Air Algérie by Democratic People's Republic of Algeria - Ministry of Transport - National Commission of Inquiry.

Dempsey, Paul Stephen. "The Cyclical Crisis in Aviation: Causes and Potential Cures", paper presented to the Seminar prior to the ICAO Worldwide Air Transport Conference (Montreal, 2003).

Lufthansa Annual Report 2007 by Deutsche Lufthansa AG (Cologne, 2008).

Factual Report of Investigation of Accident: Flash Airlines flight 604, January 3, 2004, Boeing 737-300 SU-ZCF, Red Sea odd Sharm El-Sheikh, Egypt by Egyptian Ministry of Civil Aviation.

Euromed Transport Project. Ministerial Conclusions. *Euro-Mediterranean Ministerial Conference on Transport* (Marrakesh; 2005).

European Aviation Safety Agency. *Annual Safety Review 2006* (Cologne, 2006).

Federal Aviation Administration. International Aviation Safety Assessment (IASA) *Results by Country*; (Washington DC, 2007).

Flight Safety Foundation. Air Safety Network - Aviation Safety Database; 2007.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

FlightSafe Consultants Limited. Countries in the FlightSafe database; 2007.

Genesis Analytics *et al.* *Clear Skies over Southern Africa* (Woodmeat, South Africa: ComMark Trust, 2006).

Gifis, Steven H. *Law Dictionary*. Hauppauge, New York: Barron's Educational Series, Inc.; 1991.

Government of Uganda. *Statutory Instruments Supplement No. 27* The Uganda Gazette XCVIX: 64. Uganda Printing and Publishing Corporation; Kampala, 2006.

An International Comparison of Road Haulage Prices. Africa, South-East Asia, Central America. by Gwet, Pr. Henri & Rizet, C., 1998.

Roads in Africa by Gwilliam, Ken (Washington DC: The World Bank, 2007).

Henshaw, Amber. "Sudan crash airline is grounded" *BBC News* (London, 2008).

Inoni, Ephraim. Letter to the International Monetary Fund of the Prime Minister, Head of Government of Cameroon. (Yaoundé: IMF, 2007).

Institute for Security Studies. Profile: Arab Maghreb Union; 2007.

Institute of Air Transport. "Africa and the Liberalization of the Air Transport Regulatory System" (1990) Vol. 20 ITA Studies and Reports.

Lagos Plan of Action for the Economic Development of Africa, 1980-2000 by International Institute for Labour Studies (Geneva, 1981).

BIBLIOGRAPHY

The Economic Impact of Air Service Liberalization by Intervistas (Washington DC, 2006).

Kaminski, Bart. Morocco's Integration into the European Common Aviation Area: Should Tunisia follow? *Tunisia Global Integration Study: Further Integration Services and Manufacturing Sectors to Boost Growth*; World Bank; 2007.

Kirby, Coel. Deeper Legal Pluralism: Overcoming the Legacy of Legal Positivism in the Postcolonial African State *Annual Conference 2007 - Graduate Law Students Association*. Toronto, Ontario, Canada: Institute of Comparative Law; 2007.

Kotaite, Assad. Address of the President of ICAO, Dr. Assad Kotaite. *Eight Session of the General Assembly of ACAC*. Marrakech, Morocco; 2006.

Macdonald, Donald. Yamoussoukro Decision - Kill or Cure *ICAO - World Bank - ATAG Air Transport Development Forum*. Montreal; 2006.

Meinzen-Dick, Ruth & Nkonya, Leticia. Understanding Legal Pluralism in Water Rights: Lessons from Africa and Asia *International Workshop on "African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa"* Johannesburg, South Africa; 2005.

Middle East Online. Maghreb Countries plan Open Skies Deal. Skhirat, Morocco; 2007.

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Final Report on the Accident to Sosoliso Airlines DC9-32 aircraft registered 5N-BFD at Port Harcourt International Airport on 10 December 2005 by Ministry of Aviation - Federal Republic of Nigeria.

Existing bi-lateral Air Service Agreements of Tanzania as of 30 November 2006 by Munyagi, Margaret T. (Dar-es-Salaam, Tanzania: Tanzania Civil Aviation Authority).

Aircraft Accident Brief - EgyptAir Flight 990, Boeing 767-366ER, SU-GAP, 60 Miles South of Nantucket, Massachusetts, October 31, 1999 by National Transportation Safety Board, 13 March 2002.

---. Three Nigerian investigations *International Society of Air Safety Investigators*. Singapore; 2007 [unpublished].

The Context of Development through a Regional Cooperation Strategy: the Case Study of ECOWAS by Obuah, Emmanuel: University of Sussex; 1997.

The Economic and Social Benefits of Air Transport by Oxford Economic Forecasting (Geneva: Air Transport Action Group, September 2005).

Sabooni, Amin. "Maghreb Countries Plan Open Skies" *Iran Daily* (04 April 2007).

Schmeling, Ursula. "Royal Air Maroc (RAM) - Competition on the upswing" (2007) *International Transport Journal*.

BIBLIOGRAPHY

Formation of a National Airline in Zambia by SH&E Limited and Ernst and Young Zambia (Lusaka: 2005).

Soars, Jonathan. Back Aviation Solutions OAG Schedules Database In: Published and unpublished non-stop passenger departures, ed.; 2007 [unpublished].

Commercial regional aviation services in Australia and transport links to major populated islands by Standing Committee on Transport and Regional Services of the Parliament of Australia (Canberra, 2003).

Privatization of TACV: Market Research and Strategic Options by Sterling Merchant Finance Ltd (Washington DC, 2007) [unpublished].

Digest of Bilateral Air Service Agreements Concluded by Ethiopia by Strategic Planning Consulting (Addis Ababa, 2006) [unpublished].

The Economic Impact of an EU-US Open Aviation Area by The Brattle Group (Washington DC & London, 2002).

The Institute for Security Studies. History and Background of the Organisation of African Unity, the African Economic Community, and the African Union. Pretoria, 2007.

"Soft Law", "Hard Law", and the European Integration: Toward a Theory of Hybridity by Trubek, David M., Cottrell, Partick & Nance, Mark (Madison, WI: University of Wisconsin, 2005).

THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Usim, Uche. "How poor business model ruined African carriers - Interview with Christian Folly-Kossi, Secretary General, African Airlines Association" *The Daily Sun* (1 October 2007).

Wikipedia. Multilingual, web-based, free content Encyclopedia *Wikipedia*; 2007.