

CIVIL AVIATION IN SADCC COUNTRIES:

A NEW TYPE OF CO-OPERATION ?

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To the Memory

of

My Parents

Cleto Joao de Deus (Txinguivane)

Clementina Coleta (Essitane)

A B S T R A C T

The 1st of April, 1980 is a landmark date for the peoples of Southern Africa, for the SOUTHERN AFRICAN DEVELOPMENT COORDINATION CONFERENCE - SADCC - came into being on that day in Lusaka. At first sight, SADCC would seem to be an organization like others scattered all over the African continent and aiming at common development. However, although it can be compared with others in terms of objectives and organisation, new elements have emerged since its inception: modest short-term objectives, and ambitious long-term ones; a light organizational structure, and a commitment of the Governments involved to achieve the goals.

One can ask what the trends in Civil Aviation are, given this background. This thesis presents a study not with the aim to fully respond to the question above, but to identify the path followed by Civil Aviation as a component of the integrated development sought by SADCC countries. For this purpose, special attention will be paid to the SOUTHERN AFRICA TRANSPORT AND COMMUNICATIONS COMMISSION - SATCC.

R E S U M E

La création de la CONFERENCE DE COORDINATION POUR LE DEVELOPPEMENT DE L'AFRIQUE AUSTRALE (SADCC selon son acronyme anglais) le 1er Avril 1980 à LUSAKA, marque un moment décisif de l'histoire du développement des peuples de cette région. A première view, le SADCC, comme bien d'autres organisations sur le continent africain, semble se fixer un objectif général de développement. Toutefois, cette similitude est à nuancer vu l'apparition de nouveaux éléments depuis la constitution de la Conférence: si ses objectifs à court terme paraissent modestes, sa stratégie à long terme s'avère fort ambitieuse. En outre, la structure du SADCC, certes légère, est renforcée par un engagement des gouvernements participants à la réalisation des buts de la Conférence.

Dans ces circonstances, il nous paraît approprié d'examiner les nouvelles tendances qui se dessinent dans le domaine de l'aviation civile.

Ce travail ne prétend pas traiter du problème en question de manière exhaustive, mais plutôt souligner les modalités du rôle de l'aviation civile comme facteur du développement intégré poursuivi par les pays du SADCC. A cette fin, une attention particulière sera accordée à l'oeuvre de la Commission des Transports et Communications de l'Afrique Australe, mise sur pied au sein de la Conférence.

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It is understood that the author is solely responsible for the contents.

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A B B R E V I A T I O N S

AFCAC	- African Civil Aviation Commission
AIP	- Aeronautical Information Publication
ANC	- African National Congress of South Africa
CIDMAA	- Centre d'Information et Documentation sur le Mozambique et l'Afrique Australe
DCA	- Department of Civil Aviation
DETA	- Direccao de Exploracao dos Transportes Aereos
DOC	- Document
DTA	- Divisao de Transportes Aereos
EAC	- East African Community
ECA	- Economic Commission for Africa
ECOWAS	- Economic Community of West African States
FRELIMO	- Frente de Libertacao de Mocambique
GDP	- Gross Domestic Product
GNP	- Gross National Product
LAM	- Linhas Aereas de Mocambique (Mozambique Airlines)
MPLA	- Movimento Popular de Libertacao de Angola
OAU	- Organization of African Unity
PAC	- Pan-Africanist Congress of Azania
PTA	- Preferential Trade Area for Eastern and Southern African States.
SACCAR	- Southern African Centre for Cooperation in Agricultural Research
SADCC	- Southern African Development Coordination Conference
SATCC	- Southern Africa Transport and Communications Commission
SWAPO	- South West Africa People's Organisation

- TAAG - Transportes Aereos de Angola (Angola Airlines)
- TTA - Empresa Nacional de Transporte e Trabalho Aereo
E.E
- UDEAC - Union Douaniere et Economique de l'Afrique
Centrale
- UNDP - United Nations Development Programme

I N T R O D U C T I O N

Cooperation seems to be the motto of international relations towards the end of our century, being multifold as to its object, form, scope, quality and quantity of participants. It is also a huge field for investigation, analysis and systematisation by eminent scholars all over the world.

It would be interesting to discuss the concept of cooperation, at least in order to have a framework as a starting point of this work. Yet, it is the writer's opinion that it would be more valuable to go through the SADCC activities without preconceived models, having as the starting point what the member states understand it to be.

Through this method, many of the inherent peculiarities of SADCC cooperation shall emerge, and then it will be appropriate to compare it with other similar organisations. By doing so, the models shall come out and the trends of this cooperation will be more clearly realised.

According to this conception, four chapters will be presented. In chapter one, an overview of the relevant political and economic data of the member states, as well as

the SADCC objectives and institutions will be presented. The SADCC objectives and institutions will be presented globally, and emphasis will be laid on transport and communications, and on SATCC respectively.

In chapter two, civil aviation in the SATCC framework will be presented, with emphasis being placed on the civil aviation infrastructures of a regional character, national airlines, and particularly the joint meetings of the Directors of Civil Aviation and National Airlines' Senior Executives of the member States.

In chapter three, a comparative analysis of similar organisations will be presented. It will be confined to some African organisations. Emphasis will be placed on the transport and communications area, especially the civil aviation sector.

In chapter four, the trends of civil aviation in SADCC countries will be discussed. Finally, a conclusion will be drawn, highlighting the principles which constitute the basis of these trends, and summarizing the role civil aviation has played.

CHAPTER I

SADCC MEMBER STATES, OBJECTIVES AND INSTITUTIONS

"We, the undersigned, as the Head of Government of majority-ruled States in Southern Africa, offer this declaration to our own peoples, to the peoples and Governments of the many countries who are interested in promoting popular welfare, justice and peace in Southern Africa and to the international agencies, who share this interest. In it, we state our commitment to pursue policies aimed at the economic liberation and integrated development of our national economies, and we call on all concerned to assist us in this high endeavour."

These are the introductory words through which the founding fathers of SADCC made a historic declaration in LUSAKA on the 1st of April, 1980.¹

The People's Republic of ANGOLA, the Republic of BOTSWANA, the Kingdom of LESOTHO, the Republic of MALAWI, the People's Republic of MOZAMBIQUE, the Kingdom of SWAZILAND, the United Republic of TANZANIA, the Republic of ZAMBIA, and the Republic of ZIMBABWE are the nine majority-ruled states in Southern Africa, signatories to the LUSAKA DECLARATION: SOUTHERN AFRICA: "TOWARD ECONOMIC LIBERATION." They constitute the SADCC, an association, which, through regional

¹ See Annex 1 p.132 - SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION. A Declaration by the Governments of Independent States of Southern Africa made at Lusaka on the 1st of April, 1980.

cooperation, works to accelerate economic growth in order to improve the living conditions of the peoples of Southern Africa, and which also aims at reducing economic dependence of its member states, not only on the Republic of South Africa, but also on any single external state or group of states.

The establishment of SADCC followed an exploratory conference in Arusha in July 1979 attended by the five Front Line States, (Angola, Botswana, Mozambique, Tanzania and Zambia) and potential cooperating partners, at which time the initial ideas of a SADCC were discussed. On the eve of the independence of Zimbabwe, the rich experience gained by the Front Line States in coordinating their efforts to support the struggle for political liberation in Zimbabwe and Namibia, was thus useful as a source of inspiration for the economic liberation sought by SADCC.²

²

For further information, see: SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION - Edited by Amon J. Nsekela - Rex Collings London 1981 - (Papers presented at the Arusha and Lusaka meetings of the Southern Africa Development Coordination Conference).

A - THE MEMBER STATES - RELEVANT POLITICAL AND ECONOMIC DATA³**1 - A N G O L A****T H E L A N D A N D C L I M A T E**

Angola covers an area of 1,247,000 sq. km. and borders on Congo and Zaire to the north, Zaire and Zambia to the east, Namibia to the south and the Atlantic Ocean to the west.

The climate is tropical in the north, temperate on the high plateau and sub-tropical in the south. From October to March, it is hot and rainy with coastal temperatures of 23 degrees C. On the plateau, temperatures average about 19 degrees C. The south of the country is drier than the north.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Angola gained independence in November 1975, proclaimed by the Popular Movement for the Liberation of Angola (MPLA), while the country was still involved in a protracted war with the other Angolan movements fighting against MPLA, and from which this latter emerged victorious.

³

Sources: SADCC - Country Profiles, Arusha (Tanzania) August 1985; Proceedings of the Annual Consultative Conferences.

: Atlas of the World, 5th Edition. National Geographic Society, Washington DC, 1981; pp. 200 - 203.

Since 1976, MPLA has successfully established its authority. In December 1977, the MPLA was transformed into MPLA - PARTY OF LABOUR, adopting Marxism-Leninism as its guiding ideology.

The legislative bodies are provincial assemblies and the National People's Assembly. Parliamentary elections are under an indirect and one party electoral system.

The population of Angola was estimated at 9.9 million in 1984. The official language of the country is Portuguese.

G D P, C U R R E N C Y

The GDP in 1981 was US \$5.7 billion. Since 1977, the national currency unit has been the Kwanza, which is divided in 100 lwei. In June 1986, Kwanza (Kz) 29.62 were equal to US \$1.

E C O N O M I C P O T E N T I A L

Angola has the potential to become a very prosperous country. It has fabulous agricultural and mineral resources. In addition to oil, the prime source of foreign exchange, the country has vast agricultural and hydroelectric resources, large forests and numerous strategic minerals. Crude oil, diamonds, and coffee are the major export commodities among

others, namely sisal and timber. The potential for the fishing industry is also enormous.

2 - B O T S W A N A

T H E L A N D A N D C L I M A T E

Botswana is a landlocked country with an approximate area of 582,000 sq. Km. It borders on Zimbabwe to the northeast, the Republic of South Africa to the east and south, and Namibia, including Caprivi, to the west and northwest.

The climate of Botswana is never extreme, although it gets hot in the summer months (October to February), and the temperature can drop to as low as minus 7 degrees C. in the coldest of the winter months (May to August.) The average mid-day temperature in winter is between 18 and 27 degrees, and in summer, 28 and 35 degrees C.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Botswana gained independence on 30 September 1966. It is a multi-party democracy. Legislative power is vested in the 36-member National Assembly incorporating both the Government and the Opposition. The Government is headed by a President, who is elected by the majority party every five years.

The population in mid-1984 was estimated at 1,000,000. English is the medium of instruction and is widely spoken, together with Setswana.

G D P, C U R R E N C Y

The GDP in 1984 was estimated at US \$990 million and GNP per capita at US \$960. The national currency unit is Pula (P) which is divided into 100 thebe. The exchange rate in May 1986 was P1.5 to US \$1.

E C O N O M I C P O T E N T I A L

Mining and livestock are the basic components of the country's economy, although its growth is dependent on the market prospects of these components. Mining has been responsible for one of the biggest and fastest economic growth rates in the world. The most important metals and minerals are diamonds, coal, copper and nickel. There are indications of other major mineral resources, such as limestone gypsum, salt, gold, semi-precious stones, ceramic clays, glass-sand, uranium, manganese, and asbestos.

3 - L E S O T H O

T H E L A N D A N D C L I M A T E

Lesotho, a mountainous country with an area of 30,350 sq. km., is landlocked and is surrounded by the Republic of South Africa.

The climate is temperate, the lowland summer temperature being 27 degrees C. In the winter, the temperature drops to an average of 7 degrees C. and frosts occur between the months of May and August. There is sunshine more than 300 days a year. The mean annual rainfall is between 700 and 800 mm in the lowland and slightly higher in the mountains; however, 80 per cent of the precipitation occurs between October and March.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Lesotho, which was previously the British Protectorate of Basutoland, became fully independent on 4 October 1966. the country is a constitutional monarchy, headed by a king.

The population in mid 1984 was estimated at 1.5 million. There are two official languages in Lesotho: English and Sesotho.

G D P, C U R R E N C Y

The GDP in 1983 was estimated at US \$360 million and the per capita GNP in 1984 was US \$530.

The unit of currency is the Maloti, which is divided in 100 lisente. The exchange rate in June 1986 was M2.34 to US \$1.

E C O N O M I C P O T E N T I A L

Lesotho's economy is greatly influenced by the agricultural sector, of which the most important branches are crop production, which caters almost completely to subsistence requirements, and livestock, which is the main export commodity from this sector.

Although it is not endowed with mineral resources, it has some diamond mines whose exploitation is dependent on the state of the world diamond market.

4 - M A L A W I

T H E L A N D A N D C L I M A T E

Malawi is situated in the southeastern corner of Central Africa. It covers an area of 118,485 sq. km, of which approximately 28,000 sq. Km are inland waters. Malawi is a landlocked country, bordered by the United Republic of Tanzania to the north, Mozambique to the east, south and southwest and Zambia to the west. It is 901 km. long, with a width varying from 80 to 161 km. It has five lakes, Lake Malawi, Lake Chilwa, Lake Malombe, Lake Chiuta and Lake Kazuni.

There are three seasons in Malawi: the dry, the cool and the wet. It is cool and dry from May to August, July being the coldest month, with a maximum temperature of 22 degrees C. and a minimum of 11 degrees; September is hot and dry; October and November are the hottest months, when the maximum temperature is 29 degrees C. These temperatures are sustained until the rain starts in November. Towards April, temperatures start to decrease as the cool season begins. The rainy season extends from November to April. Rainfall varies according to altitude.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Malawi gained independence from British rule on 6 July 1964, and became a Republic within the Commonwealth, after the dissolution of the Federation of Rhodesia and Nyasaland on 31 December 1963. The President is the Head of State and Government. Malawi has only one political party, the Malawi Congress Party.

The population in mid 1984 was estimated to be 6.8 million. The official business language is English, while Chichewa is the national language.

G D P, C U R R E N C Y

The GDP in 1984 was estimated at US \$1,090 million and the per capita GNP was US \$180. The unit of currency is the Kwacha (K), which is divided in 100 tambala. The exchange rate in June 1986 was K 1.78 to US \$1.

E C O N O M I C P O T E N T I A L

Malawi's economy is predominantly agricultural. The main crops are tobacco, tea, sugar, coffee, and groundnuts. In addition, there are other basic resources, namely fish, forestry, hydropower and unexploited reserves of coal, bauxite, kaolinistic plastic clay, graphite, gypsum, uranium, and limestone.

5 - M O Z A M B I Q U E

T H E L A N D A N D C L I M A T E

Mozambique has a land area of 802,590 sq. Km, including 13,000 sq. km of inland waters. It is bordered by the United Republic of Tanzania to the north, Malawi, Zambia and Zimbabwe to the west, and South Africa and Swaziland to the south and southwest, with a land border totalling 4,330 km; to the east it is bordered by the Indian Ocean with a 2,470 km. coastline.

The greater part of the country is in the tropics, and it has two main seasons: hot and wet from October to March, and cooler and dry from April to September. The country is comprised of the coastal lowlands, a middle plateau zone varying between 800 feet and 2000 feet, and a higher plateau on the Zimbabwe frontier and in the District of Lichinga in the northwest of Niassa Province.

Mozambique has large rivers, including the Zambezi, Limpopo, Save, Pungwe, Rovuma, Incomati and Maputo.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Mozambique gained independence from Portugal on 25 June 1975, when the People's Republic of Mozambique was formed. The independence was the result of ten years of armed struggle

led by the Mozambique Liberation Front - FRELIMO. In February 1977, the Front was transformed into the FRELIMO PARTY, adopting Marxism - Leninism as its guiding ideology. The President of the Party is the Head of State. The highest Legislative body is the People's Assembly. The population of Mozambique in mid-1984 was estimated to be 13.4 million. The official language is Portuguese, as the African languages were completely neglected by the colonial regime. There are studies being carried out to restore and develop these languages.

G D P, C U R R E N C Y

The GDP in 1981 was US \$4,465 million. The unit of currency is the Metical MT, (plural Meticals), which is divided into 100 centavos. The exchange rate in June 1986 was MT 41.3 to US \$1.

E C O N O M I C P O T E N T I A L

Although Mozambique does not have as great an agricultural or mineral potential as some African countries, it has more development potential than many of them. Major rivers offer possibilities for irrigation; mineral resources include iron ore, tantalite, pegmatite, bauxite and fluoride; there are abundant energy-massive coal reserves, huge

hydroelectric potential, confirmed gas reserves and probably oil.

The industrial sector is, at present, under survey in order to determine the existing capacity and to formulate the future industrial strategy.

Cashew nuts, sugar, citrus, cotton, tea, copra, and timber are the main agricultural products. Fisheries and other marine resources potential are also considerable.

It has a privileged position in relation to transport routes, both surface (railways, roads), and maritime through its three systems of ports and railways. The ports of Maputo and Matola have railway connections with Swaziland, South Africa, and Zimbabwe in the south. The Beira Corridor port has railway connections with Zimbabwe and Malawi. The Nacala port system has railway connection with Malawi. It offers the shortest routes to the sea for the landlocked SADCC countries.

6 - S W A Z I L A N D

T H E L A N D A N D C L I M A T E

Swaziland is a landlocked country situated in the northeast corner of Southern Africa. It covers an area of 17,364 sq. km, and is bounded by Mozambique to the north and the Republic of South Africa to the east, south, and west. Swaziland has four climatic regions: the mountainous "veldt" where temperatures vary between 33.5 degrees C. in the mid-summer and -4.5 degrees C. in mid-winter, and the annual rainfall ranges from 1016 to 2287 mm.

In the undulating middle "veldt", temperatures range from 37.2 to 2.5 degrees C, and the annual rainfall is between 762 and 1143 mm.

The gently undulating low "veldt" embraces the largest region in the country. Temperatures vary from 41.8 to 26 degrees C. and the annual rainfall is between 508 and 870 mm.

The Lubombo plateau runs along the eastern border of Swaziland, where the climate is similar to that of the middle "veldt."

GOVERNMENT, POPULATION, LANGUAGE

Swaziland gained independence from British rule in 1968. It is a monarchy with a Cabinet Government and elected Parliament. The king is the Head of the State and rules the country in consultation with the Cabinet, Parliament, and the Swazi National Council. It has a dualistic political structure that combines the modern concept of government with the country's traditional system in order to provide the counter-balance necessary for harmonious social and economic development.

The population of Swaziland was estimated at 700,000 in mid-1984. Swazi and English are the main languages; English is the official language while Swazi is the main ethnic language.

GDP, CURRENCY

The GNP in 1984 was \$790 per capita. Lilangeni (plural Emalangeni, E) is the unit of currency. It is divided in 100 cents and the exchange rate in June 1986 was E2.10 to US \$1.

ECONOMIC POTENTIAL

The economic potential is based on agriculture, mining and a rising manufacturing sector. Sugar, maize, wood pulp, fruit, and timber are the main agricultural products. Mineral products include coal and asbestos.

7 - T A N Z A N I A

T H E L A N D A N D C L I M A T E

The United Republic of Tanzania is situated in the southern part of East Africa. The total area of the country is approximately 945,000 sq. km, of which 59,000 sq. km is made up of lakes and inland waters. It is bounded by Uganda to the north, Kenya to the northeast, by the Indian Ocean to the east, by Mozambique and Malawi to the south, and Zaire, Rwanda, and Burundi to the west. The country lies south of the equator at a latitude of between 0 degrees and 10 degrees. Its climate is tropical, with two main seasons.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

The United Republic of Tanzania was formed in 1964 by the merger of Tanganyika (mainland) and Zanzibar (islands) after securing their independence from the British in 1961 and 1963 respectively. Tanzania is a one-party state. Socialism is the country's ideology as contained in the Arusha Declaration.

There is an Executive President, Head of State and a Cabinet headed by a Prime Minister. The population of Tanzania in mid-1984 was estimated at 21.5 million.

Kiswahili is the national language, spoken by all the United Republic of Tanzania's more than 100 tribes; English is widely spoken and often used in official correspondence.

G D P, C U R R E N C Y

The GDP in 1983 was US \$4,410 million, and the GNP was US \$210 per capita. The unit of currency is the Tanzanian shilling (Tsh), which is divided into 100 cents. The exchange rate in June 1986 was Tsh40 to US \$1.

E C O N O M I C P O T E N T I A L

Tanzania's economy is predominantly an agricultural one. The main products are coffee, sisal, cashew nuts, tea, and cloves. It is also endowed with a wide range of mineral resources: diamonds, gold, and other precious metals, salt gypsum, kaolin, natural gas, phosphates, coal, and iron ore. Fisheries and the other marine resources potential are also considerable. For the SADCC countries, the Dar-es-Salaam Corridor, which includes the port of Dar-es-Salaam and the Tazara railway, plays an important role.

8 - Z A M B I A

T H E L A N D A N D C L I M A T E

Zambia is a landlocked country situated on a high plateau in central Africa. It borders Zimbabwe to the south, Malawi and Mozambique to the east, Angola to the west, Zaire to the north and Tanzania to the northeast.

The country acquired its name from the Zambezi river, which has its source in the northwest corner of the country.

Zambia has an area of 753,000 sq. km. The climate is influenced by the altitude. There are three distinct seasons: cool and dry from May to August, when the temperatures vary from around 15 degrees to 26 degrees C; hot and dry from September to November; and warm and wet from December to April. During the latter two periods, temperatures vary from 26 to 32 degrees C. The average annual rainfall is about 1270mm in the north and between 500 and 800mm in the south.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Zambia was formerly the British Protectorate of Northern Rhodesia. From 1953 to 1963, North Rhodesia, along with South Rhodesia and Nyasaland, formed the Federation of Rhodesia and Nyasaland. The Federation was dissolved at the end of 1963,

and Zambia became an independent republic on 24 October 1964. The President of the Republic is the Head of State, and the Prime Minister, Cabinet Ministers and their departments constitute the Government. The Republic is a one-party participatory democracy, the United National Independence Party being the sole organ of political power, to which all Zambians may belong.

The National Assembly, the Parliament of the country, at present consists of members of the United National Independence Party elected in single-member constituencies by universal adult suffrage, and some members of the Central Committee, and up to 10 members nominated by the President.

The population of Zambia in mid-1984 was estimated to be 6.4 million. The official language of the country is English. The principal African languages used are Bemba, Kaonde, Lozi, Lunda, Luvale, Nyanja and Tonga.

G D P, C U R R E N C Y

The GDP in 1984 was US \$2,640 million and the GNP was US \$470 per capita. The unit of currency is the Kwacha (K). The exchange rate in June 1986 was K7.3 to US \$1.

E C O N O M I C P O T E N T I A L

For a long time, the economic potential was influenced by the abundant mineral resources of the country, mainly copper, cobalt and zinc. However, a high dependence on mineral production is combined with a low life expectancy of known reserves. Therefore, diversification of the economy has been considered of great importance.

9 - Z I M B A B W E

T H E L A N D A N D C L I M A T E

Zimbabwe is situated in South-Central Africa, between the Limpopo and Zambezi rivers. Bounded by Zambia to the north and northwest, by South Africa to the south, by Mozambique to the east and northeast, and to the southwest by Botswana, Zimbabwe lies wholly to the north of the Tropic of Capricorn. It is part of the great plateau that is a major feature of the geography of Southern Africa.

Zimbabwe has an area of 391,000 sq. km. Zimbabwe enjoys a remarkably comfortable climate. Temperate conditions prevail almost all year round, mainly because of the country's altitude, while its inland position keeps the humidity comfortably low. Generally speaking, the days are bright and sunny, the nights clear and cool. Breezes temper the heat of October, while the remainder of the summer months are cooled by seasonal rains. June and July are colder months. The temperature ranges from 27.8 degrees C. in the summer to 6.1 degrees C. in the winter.

G O V E R N M E N T , P O P U L A T I O N , L A N G U A G E

Following the constitutional agreement reached at Lancaster and the free elections in April, 1980, the Republic

of Zimbabwe (previously Southern Rhodesia), came into being and gained full international recognition as a sovereign State. Zimbabwe has a Parliament consisting of a Senate and a House of Assembly. A President is elected by members of the Senate and the House of Assembly.

The population in mid-1984 was estimated at 8.1 million. Zimbabwe uses three main languages: Shona, Ndebele and English. English is often used as the commercial language, while Ndebele and Shona are the two main ethnic languages.

G D P, C U R R E N C Y

The GDP in 1984 was estimated at US \$4,580 million and the GNP was US \$760 per capita. The unit of currency is the Zimbabwe dollar (Zim\$), which is divided into 100 cents. The exchange rate in June 1986 was \$Zim 1.70 to US \$1.

E C O N O M I C P O T E N T I A L

With a well-developed manufacturing sector, prosperous commercial farming, varied mineral resources, and a relatively dense infrastructure, Zimbabwe's economy is considered diversified.

The primary sectors are agriculture and mining, followed by the manufacturing sector. Tourism plays an important role

in the economy of the country. The most important minerals are asbestos, chrome ore, copper, nickel, iron ore, and gold. In agriculture, maize, tobacco, sugar, and citrus fruits are the main products. The resource potential of livestock is also considerable.

10 - COMBINED EVALUATION

Considering SADCC as a region and combining the individual states' statistical data and economic potential gives a striking picture. A total area of 4,903 million sq. km was inhabited by a population of more than 70 million in 1984. The region constitutes a transcontinental belt from Dar-es-Salaam and Maputo on the Indian Ocean to Luanda on the Atlantic. It experiences a variety of climatic conditions ranging from tropical to temperate climates. In terms of resources, agriculture forms the mainstay of the region. Major agricultural products include beef, cashew-nuts, citrus fruits, coffee, cotton, sisal, fish, maize, oilseeds, sugar, tea, timber, and tobacco. Mineral resources are fabulous: oil, diamonds, copper, cobalt, gold, asbestos, chrome, bauxite, iron ore, lead, and nickel are among the many exploited mineral resources. Energy resources are abundant. Rivers such as the Zambezi, Linyanti, Okavango, Rufigi, Kwando, and lakes, such as the Nyasa/Malawi, have enormous potential for hydro-electric power generation. Coal, which exists abundantly, is another energy source. These are, overall, prodigious resources for development, and, thus, for cooperation.

The individual presentation of the member states makes obvious their enormous diversity. They are of different

geographical size, population and density, level of development, economic potential, social and political regimes.

Taking into account this diversity, the SADCC founders set up the broad and ultimate objective of "promoting popular welfare, justice and peace in Southern Africa" through "policies aimed at economic liberation and integrated development of the national economies."

B - S A D C C O B J E C T I V E S

1 - G L O B A L

The Declaration's introductory words, referred to above, precede a deep and concise analysis of the political and economic context of the region. Realising that the current situation of economic dependence, particularly on South Africa, is the result of external policies - "metropolitan powers, colonial rulers and large corporations", which "deliberately incorporated the region into the colonial and sub-colonial structure centering in general in South Africa"⁴ - the nine countries decided to include economic liberation as a consolidating component of a genuine political liberation.

⁴ See the Lusaka Declaration, Annex 1, p.132

The objectives of the SADCC countries, as laid down in the LUSAKA DECLARATION, are as follows:

- 1 - The reduction of economic dependence, particularly, but not only on the Republic of South Africa;
- 2 - The forging of links to create a genuine and equitable regional integration.
- 3 - The mobilization of resources to promote the implementation of national, interstate, and regional policies;
- 4 - Concerted action to secure international cooperation, within the framework of [their] strategy for economic liberation.

How to reach these objectives is a matter of strategies and priorities. It is, therefore, necessary to identify areas where they can work in harmony with the possibility of stimulating national development.

Transport and communications, a regional trade system based on bilaterally negotiated annual trade targets and product lists, environmental protection and food security, exploitation of natural resources, in particular those of common hydrological basins, training, mining, industry, energy, and agriculture, constitute the first identified strategic areas. In these areas, concerted action can be implemented under regional coordination, which must be

operational, resulting consequently in concrete programmes and projects.

External cooperation is another important area for regional development, as it means that the aimed-for development will be achieved more rapidly and that it will be more effective if it takes place within the context of global cooperation. Therefore, international bodies and states outside Southern Africa are "invited to cooperate and participate in the implementation of the programmes towards economic liberation and development in the region."⁸

The objectives laid down in the LUSAKA DECLARATION reveal the conception of a global project, and have, in fact, far-reaching consequences, as will be seen throughout this work.

At this stage, one can say that the most important achievement is the realisation that only through regional coordination and international cooperation will SADCC succeed in overcoming the imposed economic fragmentation and in achieving regional and national economic development.

2-T H E T R A N S P O R T A N D C O M M U N I C A T I O N S A R E A

In terms of strategies and priorities, transport and communications was identified as a key area. After establishing the fact that Southern Africa is dependent on the Republic of South Africa as a focus of transport and communications, as an exporter of goods and services and as an importer of goods and cheap labour, and after establishing that the "dominance of the Republic of South Africa has been reinforced and strengthened by its transport system", it was concluded that "without the establishment of an adequate regional transport and communications system, other areas of cooperation became impractical"⁷. Therefore, it was decided to create an institution for coordinating the use of existing systems, and for planning and financing additional regional facilities. The institution is the "SOUTHERN AFRICA TRANSPORT AND COMMUNICATIONS COMMISSION" - SATCC

Coordination of the use of existing systems, and planning and financing of additional regional facilities, are the objectives in the transport and communications area. All modes of transport are included: surface - railways and roads; maritime and inland waters; and air transport.

⁷Ibidem p 134

Communications, with special reference to micro-wave and ground satellite facilities, international telephone switching systems and telex exchanges, are also included.

In respect to air transport, the coordination of airline schedules, so that movement within the region is practicable, is emphasised. This is the first priority assigned to civil aviation in the region.

C - S A D C C I N S T I T U T I O N S

1 - G L O B A L

THE MEMORANDUM OF UNDERSTANDING ON THE INSTITUTIONS OF THE SOUTHERN AFRICAN DEVELOPMENT COORDINATION CONFERENCE.⁸

The Memorandum of Understanding on the SADCC institutions was signed in Harare on the 20th of July, 1981. It was subsequently amended in Gaborone, on the 22nd of July, 1982. The objective of the Memorandum of Understanding is to set up the necessary institutions for the fulfilment of the objectives enunciated in the LUSAKA DECLARATION. The Memorandum consists of a Preamble and 17 Articles. The Preamble identifies the participants (signatories), and gives

⁸ Ibidem p.138 et seq.

the bases for the Memorandum of Understanding.

Articles I to VI enumerate the institutions, their composition, and their functions.

Articles VII and VIII deal with financial matters - budget and external audit.

Articles IX to XI deal with the matters related to the legal capacity of the organization, immunities and privileges, and the international character of the secretariat.

Articles XII to XV and Articles XVII deal with matters such as quorum, signature and entry into force, amendments, settlement of disputes, and rules of procedure of the institutions.

Article XVI deals with the status of the obligations assumed by the member States under the Memorandum, in case of termination of membership by any State.

THE INSTITUTIONS

According to Article I of the Memorandum of Understanding, the SADCC Institutions are:

- a) The Summit of Heads of State or Government - called "THE SUMMIT".

- b) The Council of Ministers - called "THE COUNCIL"
- c) Sectoral Commissions
- d) The Standing Committee of Officials - called "THE STANDING COMMITTEE".
- e) The Secretariat

a) THE SUMMIT

The SUMMIT consists of the Heads of State or Government of all member states and is the supreme institution of SADCC. It is responsible for the general direction and control of the functions of SADCC⁹, and the achievement of its objectives. The SUMMIT takes its decisions by consensus. Under the wording of Article II(1), the SUMMIT is given a very broad range of implied powers and attributes as may be needed for the general direction and control of the functions of SADCC and the achievement of its objectives. The SUMMIT decides upon a chairman from among its members for an agreed period (Article II(3)), and meets at least once a year (Article II(2)).

b) THE COUNCIL

The COUNCIL consists of one minister of each of the member States¹⁰ (Article III(1)). The COUNCIL is responsible for the overall policy of SADCC, its general coordination, the supervision of the institutions, and the supervision of the execution of its programmes (Article III(1)). The State holding the chairmanship of the SUMMIT appoints the chairman of the Council. The vice-chairman is elected from among the members of the Council for a two-year term of office¹¹ (Article II(2)). Taking its decisions by consensus and holding at least two meetings a year, adopting a work programme for SADCC, designating a member state to coordinate activities in specific areas, and convening annual consultative meetings with cooperating governments and agencies, are some of the most important functions of the Council.

¹⁰ Taking into consideration the functions to be carried out by the Council, it is understood that the ministers responsible for economic affairs in their own governments shall be members of the Council. See SADCC -A HANDBOOK (C) SADCC 1988, Second impression, p.7.

¹¹ In the previous wording, before the amendment, both the Chairman and Vice-Chairman were elected from among the members of the Council for a period of one year term of office.

c) SECTORAL COMMISSIONS (Art. IV)

These institutions are designed to deal with programmes in functional areas. They are governed by respective conventions to be adopted by the Council and ratified or acceded to by the SADCC member states. They report to the Council. The SOUTHERN AFRICAN TRANSPORT AND COMMUNICATIONS COMMISSION - SATCC, was the first to be established.¹²

d) STANDING COMMITTEE OF OFFICIALS

The Standing Committee is made up of officials of the member states, and is responsible to and advises the Council. The chairman and vice-chairman of the Standing Committee are appointed by the member State holding the chairmanship and vice-chairmanship respectively, of the Council (Article V(1,2)).

Subcommittees of officials for programmes in functional areas may be appointed by the Council which may designate, accordingly, SADCC member governments to convene meetings and to coordinate the work of such subcommittees. The

¹²

At present, there are only two Commissions. The SOUTHERN AFRICA TRANSPORT AND COMMUNICATIONS COMMISSION - SATCC, based in Maputo, Mozambique, and the SOUTHERN AFRICAN CENTRE FOR COOPERATION IN AGRICULTURAL RESEARCH - SACCAR, based in Gaborone, Botswana. See SADCC - A HANDBOOK, op.cit pp.8 et 15.

subcommittees report to the Standing Committee (Article V(5)). The Standing Committee meets at least once a year, reports to the Council and takes its decisions by consensus (Article V(3,4,6)).

e) THE SECRETARIAT

Headed by an Executive Secretary appointed by the SUMMIT on the recommendation of the Council, there is a Secretariat, which is responsible for the overall coordination of the execution of the tasks of SADCC and the liaison with other SADCC institutions (Article VI).

The Executive Secretary, his Deputy and other staff to be determined by the Council enjoy in the territory of member States such immunities and privileges as are necessary for the fulfilment of their functions (Article X). The Executive Secretary provides to the Council an Annual Report on the activities of SADCC.

P R O C E D U R A L M A T T E R S

A quorum of two-thirds of the member-states for all meetings of SADCC institutions, other than the Secretariat, the membership of the States not signatories through accession accepted by consensus and not subject to any reservations, and the possibility of amendments of the Memorandum of

Understanding by consensus are important aspects to be pointed out. It is also worth noting that the obligations assumed by member states under the Memorandum of Understanding will last, to the extent necessary to fulfil such obligations, beyond the membership of any state.

2-T H E T R A N S P O R T A N D C O M M U N I C A T I O N S A R E A

THE CONVENTION ON THE ESTABLISHMENT OF THE SOUTHERN AFRICA TRANSPORT AND COMMUNICATIONS COMMISSION - SATCC¹³

The establishment of an adequate regional transport and communications system was considered as the "conditio sine qua non" for the implementation of cooperation in the areas identified as strategic for the objectives of SADCC.

SATCC is, therefore, the institution through which the fulfilment of the objectives in the key area of transport and communications can be reached.

The SATCC was established by the convention approved by the SADCC SUMMIT in Harare in July, 1981.

¹³

See Annex. I p.146:

CONVENTION ON THE ESTABLISHMENT OF THE
SOUTHERN AFRICA TRANSPORT AND COMMUNICATIONS
COMMISSION.

The Convention is made up of a Preamble and 11 Articles. The general purposes of the Convention are set forth in the Preamble where the member-states, after recognising the need to:

- a) reduce economic dependence particularly, but not only, on the Republic of South Africa;
- b) forge links to create genuine and equitable regional integration;
- c) mobilise resources to promote the implementation of national, inter-state and regional policies;
- d) take concerted actions to secure international cooperation within the framework of member States strategy for economic liberation;
- e) promote rational and integrated utilisation of the various systems existing in the region;
- f) promote new concrete development programmes and projects and the modernisation of existing systems;
- g) seek participation of the independent States in the region;

declare the desire to foster and cultivate cooperation in the field of transport and communications, based on absolute equality, respect for individual sovereignty, and mutual benefit, with the aim of raising the living standards of their peoples as rapidly as possible; they also declare the desire to reduce the state of economic dependence in which they have found themselves.

Article I deals with the establishment of a Southern Africa Transport and Communications Commission which consists of three organs:

- a) a Committee of Ministers
- b) a Coordinating Committee and
- c) a Technical Unit.

Article II enumerates the objectives of the Commission which are:

- a) to provide coordination in overcoming transport and communication problems in the region;
- b) to provide economic and efficient means of transport and communications in the region;
- c) to achieve self-sufficiency in the maintenance of equipment and plant;
- d) to achieve self-sufficiency in technical manpower training and development;
- e) to encourage the efficient utilisation of available resources for the betterment of transport and communications within the region.

Article III deals with the organisational structure of the Commission. The Committee of Ministers is considered the supreme body of the Commission and is made up of one Minister from each member-State, being a Minister responsible for Transport and/or Communications. Observer status is given to one representative from each of the liberation movements of

Southern Africa¹⁴ recognised by the Organisation of African Unity (OAU), in the meetings of the Committee of Ministers. By definition, the chairman of the Committee of Ministers is the Minister of Mozambique responsible for Transport and/or Communications. A quorum of two-thirds of the member-states, the annual rotation of the venue among them, and one member State one vote provisions are established.

The Coordinating Committee is made up of one representative from each member-state, the representative of Mozambique being the chairman of the Committee. In the meetings of the Coordinating Committee, observer status is accorded to one representative from each of the liberation movements of Southern Africa recognised by the OAU.

The Technical Unit, which is located in Maputo, Mozambique, consists of technical experts recruited from all sources, and operates on a permanent basis, being responsible to the chairman of the Coordinating Committee.

¹⁴

The Liberation Movements of Southern Africa are - The African National Congress of South Africa - ANC, the Pan-Africanist Congress of Azania - PAC, and the South West Africa People's Organisation - SWAPO - They are also given the observer status for attending the SUMMIT meetings. See SADCC - HANDBOOK. op.cit. p.6

In terms of procedure, the organs of the Commission determine their own rules. Article IV deals with the functions of the SATCC organs. The overall formulation of the policies of the Commission, the review and approval of the work of the Coordinating Committee, and the approval of the budget and annual accounts are the most important functions of the Committee of Ministers (Article IV(1)).

The Coordinating Committee's functions (Article V(2)) are as follows:

- a) - [to] determine priorities and coordinate the work of the Technical Unit;
- b) - [to] disseminate information to member States;
- c) - [to] be responsible for the recruitment of the technical experts;
- d) - [to] monitor the progress of the work of the Technical Unit
- e) - [to] prepare and publicise regional development plans and projects in order to obtain technical and financial assistance for their implementation; and
- f) - [to] deal with such other transport and communications matters in the region as may be necessary.

The functions of the Technical Unit - Article IV(3) - are divided into two levels:

1 - General functions:

- a) Identification of the actual problems of traffic between countries in the region;

- b) Identification of the potential supplies of transport and communications equipment within and outside the region;
- c) Preparation and presentation to the Coordinating Committee of recommendations on policy and programmes relating to transport and communications and report on its activities.

2 - Specific functions which are designed for each mode of transport:

- a) [to] gather information on the actual transport and communications systems, including bilateral and transit traffic, and [to] compile and evaluate such information;
- b) [to] identify national development projects having a regional impact, and [to] coordinate such projects;
- c) [to] recommend measures to optimise the utilisation of the existing facilities;
- d) [to] recommend immediate, medium and long term measures necessary to meet traffic demands;
- e) when necessary, [to] assist member States with the preparation of documentation in connection with development;
- f) [to] assist working groups, formed by member-States, on a bilateral or multilateral basis.

PERFORMANCE OF FUNCTIONS

This section deals more specifically with the "modus operandi" of the Technical Unit vis-a-vis governmental institutions of each member-state.

That is why the Technical Unit, in performing its functions, shall liaise, as necessary, with the aforesaid governmental institutions, and the governments of the member

states may call the Technical Unit to assist in the appraisal of the work undertaken by consultants and contractors.

Article V deals with financial matters (budget and annual accounts).

Other matters, such as entry into force, amendments and settlement of disputes are dealt with in Articles VI to IX. Article VI refers to the location of the SATCC Headquarters in Maputo, Mozambique. Article X deals with the survival of the obligations assumed by member states under the Convention, to the extent necessary to fulfil such obligations, beyond the termination of membership by any state.

Article XI, although recognising the binding effects of the obligations assumed under any other convention or arrangement entered into among member States prior to this Convention, states that such conventions or arrangements are superseded by this Convention in regard to the objects of the Commission.

D - C O N C L U S I O N

At this stage, it is appropriate to make some legal observations. SADCC defines itself as "an association of the nine majority-ruled states of southern Africa, which, through regional cooperation, works to accelerate economic growth in

order to improve the living conditions of southern Africa, and also aims to reduce the dependence of its member states on South Africa.¹⁵

According to Public International Law,¹⁶ the basic elements for the constitution of an international organization are:

- Objects and tasks (CHARTER)
- Members (minimum 3 for multilaterals)
- Permanent structure (usually the secretariat and an unspecified number of bodies).

Analyzing the main instruments of SADCC - the Lusaka Declaration and the Memorandum of Understanding, apparently there is no difficulty in ascertaining the elements mentioned above. The objects and tasks, and the permanent structures are dealt with in the Lusaka Declaration and Memorandum of Understanding. The members are identified through the signatures in these instruments.¹⁷

SADCC is a conference with the objective of coordinating the development of Southern African countries. SADCC adopted

¹⁵ See SADCC - A HANDBOOK, op.cit p.2

¹⁶ Sources: Lecture on Public International Air Law III - Regional Aviation Organisations - delivered by Ludwig Weber at the Institute of Air and Space Law on the 4th of March, 1988.

¹⁷ See Annex 1, pp.133 et seq., p.137 , 138 et seq. and p.145 .

its constitution in the form of a Declaration and Memorandum. There is no Charter as such, that is to say, a single instrument containing the principles, purposes, organs, functions, and rules, as is classically the case. One can ask what kind of organisation SADCC is. To deal with this problem, it is useful and important to resort to some of the opinions of learned scholars in public international law. Three definitions related to the constitutional instruments of international organisations are presented as follows:

a) George Marshall defines a Convention as

"an agreement among the people concerned to work in a particular way and to adopt a particular rule of conduct."¹⁸

b) Paul Reuter defines the Treaty as:

"une manifestation des volontes concordantes imputables a deux ou plusieurs sujets de Droit International et destinee a produire des effets de droit selon les regles de droit international."¹⁹

(a declaration of agreed intentions by two or several subjects of international law aiming to produce legal effects under the rules of international law - writer's translation.)

c) In the Vienna Convention on the Law of Treaties, in

¹⁸ See - George Marshall: Constitutional Conventions: The rules and forms of Political Accountability. CLARENDON PRESS, OXFORD, 1984, p.9.

¹⁹ See Paul Reuter - Introduction au Droit des Traites - Presses Universitaires de France - 1985, 108 Boulevard Saint-Germain, 75006 Paris, 2eme edition, pp. 33 et seq.

Article 2(1a), the definition of Treaty runs as follows:

"Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

The three definitions above were chosen because they present different levels of comprehensiveness. The first is broad, the second is narrow, and the third is narrower. The first qualifies neither the subjects nor the rules.

The second qualifies the subjects, although in broad terms (all subjects of international law), as well as the rules, but allows the possibility of a verbal manifestation of intention in concluding agreements.

The third is narrower. It qualifies the subjects as states, the form of agreement has to be written and allows the possibility of multiplicity of instruments and their designation (under the condition to be interrelated). Treaty Declaration, Charter, Pact, Act, Statute, Treaty, Covenant, Agreement, Convention are the used designations.²⁰

²⁰

See International Law: Chiefly as Interpreted and Applied in Canada. 4th Edition 1987 Hugh M. Kindred et al. Emond Montgomery Publications Limited, p. 116.

Under this comparative analysis the conclusion to be drawn is that an agreement in a chosen form, concluded between subjects of international law, governed by international law, irrespective of the particular designation - constitute essential elements of the constitutional instruments of an international organization.

In the particular case of SADCC, according to the requisites of the Vienna definition of treaty, the following considerations can be made:

SADCC States concluded a written international agreement embodied in two inter-related instruments - the Lusaka Declaration (1980) and the Memorandum of Understanding (1981) - governed by international law.

In fact, the most qualified representatives of the Southern African majority-ruled states, in virtue of their functions, the Heads of State or Government²¹ signed both the Lusaka Declaration and the Memorandum of Understanding. In the Lusaka Declaration, they state their commitment to pursue policies aimed at the economic liberation and integrated

²¹

See Article 7(2) Vienna Convention on the Law of Treaties. See also Sir Ian Sinclair in The Vienna Convention on the Law of Treaties, Second Edition, 1984, Manchester University Press, p.31.

development of their national economies and they call on all concerned to assist them in that endeavour. In the Lusaka Declaration and Memorandum of Understanding, the production of legal effects under international law can be exemplified through the enforcement of Articles IX to XI and Articles XV and XVI of the Memorandum.

SADCC also defines itself as a regional organisation limited to southern Africa. The question is that of classification. The criteria for classifying international organisations are different. They can be geographic, functional, according to the type of the members, structures, or binding nature of their decisions.²² The classification

²² For further development, some examples:

A - BOWETT, DW in "THE LAW OF INTERNATIONAL INSTITUTIONS 4th ED. LONDON STEVENS & SONS 1982, p.10 et seq presents the following criteria:

- 1 - competence:
 - a) political or with comprehensive competence; administrative or with limited competence; judicial.
 - b) global or with general competence; regional or with limited competence;
- 2 -
 - a) Interstate - embracing the totality of state's institutions, its legislative and judicial machinery as well as administrative (ex. in Confederations).
 - b) Intergovernmental - embracing only the administrative machinery.

(continued...)

²²(...continued)

- 3 - a) with supranational powers, i.e. to bind the member-states by their decisions.
- b) without supranational powers.

B - S.A AKINTAN in "THE LAW OF INTERNATIONAL ECONOMIC INSTITUTIONS IN AFRICA - A.W. SIJTHOFF LEYDEN 1977, p.5, et seq. develops the classification based on the functions which cover international economic institutions, as follows:

- 1 - According to function:
 - a) general - without limitations on the economic functions it can perform or with scope of activities covering many areas within the province covered by International Economic Law. ex. EEC.
- 2 - According to limited duration
 - a) temporary or "ad hoc" (single purpose or multi-purpose)
 - b) for an unlimited period
- 3 - According to the scope of their jurisdiction:
 - a) Sectional - whose membership is restricted to a certain group of states not necessarily based on the geographical location of such states;
 - b) global - whose membership is open to states from all parts of the world without attaching any conditions based on ethnic link, religious or political belief of such states;
 - c) regional- whose membership is restricted to states located within specified geographical areas of the world;
- 4 - According to legislative powers :-
 - a) supranational - with the power to take decisions directly binding upon individuals, institutions and enterprises as well as governments of the member-states, and which they must carry out notwithstanding the wishes of such Governments.
 - b) not supranational - can only act or execute decisions by or through member-States.
- 5 - According to set-up:
 - a) Inter-state - when only states can be members.

(continued...)

criteria have the importance of methodological means in presenting subjects, and their adequacy has to be weighed accordingly.

In the geographic classification, there are global and regional international organisations according to whether they embrace the whole world or are confined to a particular region of the world. The functional classification can be divided into general or specialised, depending on whether the international organisation covers a general set of items or whether it deals with specific matters. The classification of international organisations according to the type of members qualifies them as inter-state and/or inter-governmental, and non-governmental, according to whether the parties are governmental or not. The classification according to the structure has to do with the possession or not of international legal personality by an international organisation. The concept of international legal personality in the context of international organisations is a relative concept, as it depends on each organisation.²³ That is to say, each organisation has to be examined to determine the

²²(...continued)

b) Inter-governmental - when only governments may become members.

²³ See op.cit footnote 20, p.75

existence and the type of international legal personality. It can be demonstrated directly if the constitutional instruments of international organisations indicate the existence of international legal personality, or indirectly through the functions, status of personnel of the international organisations, and the powers implied in it. Under these criteria, international organisations may be classified as having or not having international legal personality.

In the particular case of SADCC, Article IX of the Memorandum indicates that "SADCC shall have in the territory of each member state, to the extent consistent with its laws, such legal capacity as may be necessary for the exercise of its functions under this Memorandum of Understanding." This wording definitely means that SADCC has legal capacity under the domestic laws of its members. However, when interpreted with due regard to the Article XI of the same Memorandum of Understanding, which affirms the international character of the Secretariat, and Article X, which confers immunities to the Secretariat personnel, the conclusion to be drawn is that SADCC has international personality.

The classification according to the "binding nature of the measures of international organisations" is in relation

to whether members are bound or not by the measures taken by international organisations. In other words, whether international organisations are supranational or not.

Under these criteria of classification, SADCC is geographically regional as its membership is limited to the Southern African states. Functionally, it is general, as it covers a general set of items; it is inter-state; its international legal personality can be demonstrated as a corollary of having legal capacity (Article IX of the Memorandum of Understanding) as well as by the international character of personnel indicated in Article X of the same Memorandum. Finally, SADCC is not supranational. There is no indication that SADCC has the power to make treaties. On the contrary, its practice indicates that the members act collectively and by consensus. The basic instrument is the "Program of Action", which comprises the programmes and projects in selected sectors. Each sector is coordinated by a member state designated according to Article III(4) of the Memorandum of Understanding.²⁴ Once a programme is prepared

²⁴ See SADCC - A HANDBOOK op.cit. p.12. The selected sectors are as follows:

- Energy Conservation and Development - coordinated by Angola
 - Food, Agriculture and Natural Resources comprising:
 - overall coordination
 - Zimbabwe
- (continued...)

and approved, the regional projects are, where necessary, presented to SADCC's cooperating partners at the annual consultative conference. If a cooperating partner expresses interest in a project, it is then the primary responsibility of the country or countries directly involved and assisted as appropriate by the sector coordinator, to negotiate and implement the project. The role of SADCC, its commissions and committees, is to help define regional priorities, to assist in mobilising resources, and to maximise the regional impact of projects; that is to say, SADCC is a coordinating rather than an executive agency: it can only act or execute decisions by or through member-States.

²⁴(...continued)

- | | |
|--|----------------------------|
| - Agricultural Research | - Botswana |
| - Fisheries, Forestry and Wildlife | - Malawi |
| - Food security | - Zimbabwe |
| - Livestock Production and Animal Disease control | - Botswana |
| - Soil and Water Conservation and Land Utilization | - Lesotho |
| - Industry and Trade | - coordinated by Tanzania |
| - Manpower Development | - coordinated by Swaziland |
| - Mining | - coordinated by Zambia |
| - Tourism | - coordinated by Lesotho |
| - Transport and Communication | " " Mozambique |

In terminating this chapter, it is worth mentioning that there exists a:

"JOINT DECLARATION ON EXPANDED ECONOMIC AND CULTURAL COOPERATION BETWEEN THE NORDIC COUNTRIES (DENMARK, FINLAND, ICELAND, NORWAY and SWEDEN) and SADCC MEMBER STATES SIGNED AT HARARE ON 29TH JANUARY 1986²⁵"

It was signed by all SADCC member-States.

CHAPTER I I

CIVIL AVIATION IN THE SATCC FRAMEWORK

A - S A T C C F R A M E W O R K

SATCC, as presented above,²⁶ is the institution through which SADCC pursues its objectives in the key area of transport and communications. It deals with all modes of transport and communications: surface transport, including railways and road transport; maritime and inland waters transport; air transport; posts and telecommunications. Its basic objective is to coordinate transport and communications links among SADCC member states.

It is important to recall the principles set up in the Preamble of the Convention on the establishment of the SATCC. There it is stated that cooperation in the field of transport and communications is based on absolute equality, respect for individual sovereignty, and mutual benefit.²⁷ It is also the philosophy of SADCC that regional cooperation must be operational, that is to say, it must result in concrete programmes and projects.²⁸

²⁶ See supra p.38 et seq.

²⁷ See Annex I - Convention on the establishment of SATCC. p.146

²⁸ See the Lusaka Declaration Annex 1 p.134

Given these principles, SATCC manages to cover the vast area of transport and communications by resorting to its flexible and operational organisation. The Technical Unit prepares and presents to the Coordinating Committee recommendations on policy and programmes relating to transport and communications on the one hand, and identifies national development projects having a regional impact, on the other. The Coordinating Committee prepares and publicises development plans and projects in order to obtain technical and financial assistance for implementation. All this work is done under the overall guidance of the Committee of Ministers, which presents, where necessary, the regional projects to the SADCC's cooperating partners at the annual consultative conference.

B - C I V I L A V I A T I O N S E C T O R

Air transport is the most important focus of civil aviation activity. Air transport as such is the result of civil aviation concurrent activities from which it cannot be separated. That is why SATCC, since its onset, has had to decide on the way in which cooperation in civil aviation would be dealt with, and what the starting point would be. In other words, there was a need to adapt the global objectives of SATCC, as set up in Article II(1) of the Convention, to the specific sector of civil aviation.

For this purpose, the "Feasibility Study in Civil Aviation" project was undertaken. The objective of the project was to evaluate and recommend possibilities for cooperation in the various fields of civil aviation as well as to define what should be the objectives and areas of cooperation. The study covered the following issues:

- i - airline integration and joint operation,
- ii - harmonisation of route network and schedules,
- iii - flight equipment utilisation and standardisation,
- iv - consolidation of engineering and maintenance facilities,
- v - development of adequate and reliable civil aviation communication for air traffic services,
- vi - commonality of civil aviation legislation and regulations,
- vii - future purchase of flight and ground equipment.

This enumeration of issues is far from representing a "numerus clausus". Furthermore, there is a need to have a policy for concurrent activities as well as for infrastructures which are of primary importance for air transport activity. However, as the objective is to deal with regional coordination, emphasis will be placed on regional infrastructures and national airlines with the purpose of providing a framework within which such coordination takes place.

1 -CIVIL AVIATION REGIONAL INFRASTRUCTURES AND NATIONAL AIRLINES

a) PEOPLE'S REPUBLIC OF ANGOLA²⁸

ANGOLA has 2 designated international airports: Luanda 4 de Fevereiro International Airport, and Huambo. The Luanda Airport is capable of accepting widebodies and therefore all regional traffic.

LINHAS AEREAS DE ANGOLA (ANGOLA AIRLINES) - TAAG -

TAAG is the national airline. It is the successor of the Divisao de Transportes Aereos -DTA, a branch of the "Servicos dos Portos, Caminhos de Ferro e Transportes de Angola" - Ports, Railways, and Transport Services - and was created in 1938. The fleet of DTA was made up of Fokker 27s when Angola gained its independence. DTA was transformed into TAAG, a State-owned enterprise. TAAG acquired its first Boeing 737s in 1976, and Boeing 707s in 1977. TAAG's present fleet consists of:

8 Boeing 707-320s, 5 Boeing 737-200s, 1 Lockheed L100-30 Hercules, 6 Fokker F-27s, and 3 Yakovlev YAK-40s. In addition, it is awaiting delivery of 6 Lockheed L100-3-

²⁸

SOURCE: Information from SATCC and TAAG. See also African Air Transport Vol. No.1 First Quarter 1986, p.18, Air World News July 1988, World Aviation Directory Vol. No.1, Winter 1988 p.50

Hercules aircraft. TAAG has a total of 6000 employees in 33 cities in Angola and abroad. Its network comprises domestic services, with 19 destinations; regional services with destinations in Ilha do Sal, Bissau, S.Tome, Brazzaville, Kinshasa, Lusaka and Maputo; and international service, with destinations in Lisbon, Paris, Rome, Berlin (East), Moscow, Havana, Rio de Janeiro; and Lisbon, Rio de Janeiro and Dostende for cargo. TAAG's commercial structure is as follows:

TAAG Angola Airlines UEE, for scheduled flights for passengers and cargo, both international and domestic;

TAAG Angola Air Charter UP, for international and domestic non-scheduled cargo flights;

TAAG - General Aviation UP, for air taxi, regional links, and aerial work (agricultural aviation).

b) R E P U B L I C O F B O T S W A N A

Botswana has 4 international airports - Sir Seretse Khama International Airport, Gaborone, Selebi Phikwe, Francistown and Maun.³⁰ For regional flights (SATCC) the airports used are the Gaborone, Sir Seretse Khama International Airport, and Francistown Airport. The Sir Seretse Khama International Airport was constructed under a SATCC project and is capable of accepting wide bodies.

³⁰

SOURCE: AIP Botswana AGA 1-1, and African Air Transport op.cit p.18

Air Botswana is the national airline of the Republic of Botswana. It became a fully parastatal company, no longer being a subsidiary of Botswana Development Corporation, as of April, 1988. It reports directly to the Ministry of Works, Transport, and Communication. Its fleet consists of 2 Fokker F-27s, 1 ATR 42 (the second was expected in October 1988), and 1 Dornier DO8.

The acquisition of new equipment by Air Botswana is simultaneously accompanied by the setting up of a completely new maintenance base, and one of the purposes is to train local staff. The expansion of civil aviation is noteworthy. Recently, many airlines, such as British Airways, Kenya Airways, Air Tanzania Corporation, Lesotho Airways, Air Zimbabwe, Zambia Airways, Air Malawi, and South African Airways, introduced flights to Botswana (Gaborone). ³¹

³¹

SOURCE: Information from SATCC and Air Botswana; World Air News, July 1988, MARUNG - The inflight Magazin Air Botswana, Vol.6 No.30, JUNE/JULY 1988 p.13 et seq., and World Aviation Directory Vol. No.1, Winter, 1988, p.53

c) THE KINGDOM OF LESOTHO

The Kingdom of Lesotho has 1 international airport - the Moshoeshoe International Airport, Maseru. It was built under a SATCC project and was completed in August 1984.³² This airport is of strategic importance for Lesotho. In fact, as both the Kingdom of Lesotho and the Republic of South Africa, the state which completely surrounds the kingdom, are parties to the International Air Services Transit Agreement,³³ this airport offers the only independent means for transport linking the country with the international community. For this purpose, the use of the first freedom of the air - the right to fly over another country without landing - will suffice, in the assumption that Article 5 of the Convention on International Civil Aviation, and Article 1, section 1, of the International Air Services Transit Agreement, both signed at Chicago, on 7 December 1944,³⁴ together form a multilateral

³² SOURCE: Information from SATCC. See also - MOLEPE - the Inflight Magazine of Lesotho Airways, VOL.2 No 6 July/August 1988. p.18

³³ See ICAO DOC 7965 Edition JANUARY 1985 pp. 2 et 3. See also : "Tera o Lesotho o Direito de Sobrevoar o Territorio da Africa do SUL?- Whether or not Lesotho has the right to overfly the Territory of South Africa" - Term Paper by the writer - Universidade Eduardo Mondlane, Maputo, Mozambique, 1982, p.24 et seq.

³⁴ See Annex V - Convention on International Civil Aviation done at Chicago on 7.12.1944, Article 5. See also Annex VI - International Air services Transit Agreement - Article 1, section 1, DOC 7500.

exchange of the first two freedoms of the air for all international air services, scheduled or non-scheduled.³⁵

Lesotho Airways Corporation is the national airline of Lesotho. It is owned by the government. It provides both international and domestic services. It has a fleet consisting of 1 Fokker F-27, 2 Dornier 228s, 3 DHC-Twin Otters, and a recently-acquired Boeing 707, which cannot be used fully loaded as the existing airport runway is only capable of accepting Boeing 727s.³⁶

d) R E P U B L I C O F M A L A W I

The Republic of Malawi has 2 international airports: the Kamuzu International Airport in Lilongwe, and Chileka Airport, in Blantyre.³⁷ The Kamuzu International Airport was officially opened on 31 August 1983. With its modern facilities and great capacity, it offers services to widebodies. Both airports are considered regional for SATCC traffic.

³⁵ See P.P.C Haanappel, Pricing and Capacity Determination in International Air Transport, A legal Analysis, Kluwer, 1984, p.17

³⁶ SOURCE: Information from SATCC. See also World Air News, July, 1988, Molepe, op. cit. p.10 et 24, and World Aviation Directory op. cit. p.72.

³⁷ SOURCE: AIP Malawi AGA 1-1. See also African Air Transport op. cit. p.20

Air Malawi is the national airline of the Republic of Malawi and is wholly owned by the government. Its fleet consists of 2 BAC 1-11s, 2 HS 748s, 3 Short Skyvans and 1 Beech Kingair C9. It provides scheduled air services to destinations such as Nairobi, Lusaka, Gaborone, Harare, Beira, Johannesburg and Mauritius.³⁸ It operates to 4 domestic destinations.

e) PEOPLE'S REPUBLIC OF MOZAMBIQUE

The People's Republic of Mozambique has 3 international airports - Maputo, Beira and Nampula. Maputo and Beira are considered regional for SATCC traffic. All of them have recently been upgraded under SATCC projects. In addition, Maputo offers services by widebodies.³⁹

Linhas Aereas de Mocambique - LAM - (Mozambique Airlines) is the national airline of Mozambique. It is a state-owned enterprise created in 1980 by Decree 8/80 of 19.11.1980. It is the successor of Direccao de Exploracao dos Transportes Aereos - DETA - created on the 26th August 1936 as a Department of "Servicos dos Portos, Caminhos de Ferro Transportes", the Ports, Railways and Transport Services, an

³⁸ SOURCE: Information from Air Malawi and SATCC. See also World Air News, July 1988, and World Aviation Directory op.cit p.73

³⁹ SOURCE: AIP Mozambique AGA 1-1 and information from SATCC.

institution run by the state. LAM provides domestic, regional and intercontinental flight services on a scheduled and/or non-scheduled basis. Its fleet consists of 3 Boeing 737s, 1 DC 10-30, and 1 Ilyushin IL-62. Its domestic flights link the capital with 10 cities. Regionally, it flies to Dar-es-Salaam, Lilongwe, Harare, Manzini, Johannesburg and Maseru. Long-haul services include East Berlin, Copenhagen, Lisbon and Paris.⁴⁰

f) KINGDOM OF SWAZILAND

The Kingdom of Swaziland has one principal airport, located at Matsapha, approximately 8 km. from Manzini⁴¹ It has been improved and developed under a SATCC project with the aim of enabling it to handle medium-sized aircraft (e.g. Boeing 737s) with full payloads. It is regional for SATCC traffic.

⁴⁰ SOURCES: Information from LAM. See also World Air News July 1988; World Aviation Directory op.cit p.75. Decree 8/80 in Boletim da Republica No. 46/80 Mozambique's Government official Gazette. and Paulo Muxanga in "The fair an Equal Opportunity Clause in Bilateral Air Transport Agreements of the Peoples' Republic of Mozambique" - a thesis submitted to McGill University, 1986, p.23 et seq.

⁴¹ SOURCES: AIP Swaziland AGA 1-1. See also "The Southern African Economist" vol. 1 No.2 April/May 1988, pp. 3 to 5, and African Air Transport op.cit. p.21

The Royal Swazi National Airways Corporation is the national airline. With a single Fokker F-28, Royal Swazi is one of the smallest airlines in the world. Its activity, however, is noteworthy. There are scheduled flights to and from Johannesburg (eight times a week), Durban (four times a week), Lusaka, Maseru, Harare, Dar-es-Salaam, and Nairobi (twice a week), and to Gaborone and Maputo. Air Botswana, LAM, Air Zimbabwe, and Zambia Airways, as well as 2 private South African airlines (COMAIR and MAGNUM) who operate on behalf of South African Airways, have scheduled flights to Swaziland.⁴²

g - UNITED REPUBLIC OF TANZANIA

Tanzania has 2 international airports: Dar-es-Salaam and Kilimanjaro. Both of them are equipped with modern facilities and are capable of accepting widebodies. They are considered regional airports for SATCC traffic.

Air Tanzania Corporation is the national airline of the United Republic of Tanzania. Its fleet is made up of 2 Boeing 737s, 3 Fokker F-27s, and 3 DHT Twin Otters. Air Tanzania was set up in February 1977 as a public corporation after the

⁴²

SOURCE: Information from Royal Swazi National Airways Cooperation, and from SATCC. See also World Aviation Directory op.cit p.82

collapse of the East African Airways Corporation. It has a vast domestic network with 18 destinations, as well as an international one - Bujumbura, Djibouti, Dubai, Entebbe, Gaborone, Harare, Kigali, Lilongwe, Lusaka, Mahe Island, Mauritius, Mombasa, Muscat, and Nairobi.⁴³

h) R E P U B L I C O F Z A M B I A

Zambia has 5 international airports, the most important of which is the Lusaka International Airport. Others include Ndola, Livingstone, Southdowns and Chipata.⁴⁴ Lusaka and Livingstone are considered regional for SATCC traffic.

Zambia Airways is the national airline. Its fleet is made up of 1 DC-10, 1 Boeing 737, 2 HS-748s, 4 Boeing 707s, 2 of them in the cargo configuration, and 2 ATR 42s. It provides domestic (with 10 destinations) and international air transport service to 15 destinations, including Athens, Bombay, Dar-es-Salaam, Frankfurt, Gaborone, Harare, Larnaca,

⁴³ SOURCES: Information from Air Tanzania and SATCC. See also "The Southern African Economist, op.cit p.5, World Air News July 1988, World Aviation Directory op.cit P.85, and Gideon A Kaunda in "The Regional Integration of Commercial Air Transport in Africa: Political, Economic and Legal Considerations", a DCL thesis submitted to McGill University, 1983, p.216

⁴⁴ SOURCE: AIP Zambia AGA 1-1 and African Air Transport, op.cit., p.21.

Lilongwe, London, Lubumbashi, Manzini, Mauritius, Nairobi, New York, and Rome.⁴⁵

i) R E P U B L I C O F Z I M B A B W E

Zimbabwe has 8 airports, with Harare, Bulawayo and Victoria Falls classed as international. Harare and Victoria Falls airports handle SATCC regional traffic. Harare is capable of accepting widebodies.

Air Zimbabwe is the national airline of Zimbabwe. Its fleet consists of 5 Boeing 707s, 3 Boeing 737s, 2 Viscount 800s, and 3 Viscount 700s. Air Zimbabwe has already ordered a Boeing 767-200 ER to be delivered in November 1989 and has also taken an option on a second B767-200 for delivery in August 1990. Air Zimbabwe maintains a network of flights to destinations within the country (7 destinations), and to eastern and southern Africa - Dar-es-Salaam, Gaborone, Lilongwe, Lusaka, Manzini, Maputo, Maun, Nairobi; Europe - Athens, Frankfurt, London, and, in collaboration with Qantas Airlines, Australia.⁴⁶

⁴⁵ SOURCE: Information from SATCC. See also the "Southern African Economist", op.cit., p.6, and World Aviation Directory op.cit p.88

⁴⁶ SOURCE: Information from SATCC. See also the "Southern African Economist", op.cit., p.5, World Air News September 1988, p.22, and World Aviation Directory op.cit p.88

Although there are more than 458 identified aerodromes open to public use in the SADCC region, the number of airports which have been designated by the member States to the International Civil Aviation Organization - ICAO - as international airports is limited. There are, in the region, 30 airports in all in use for international air services.⁴⁷

Our attention, however, focused on the international airports classified as regional. They include mainly those serving the capitals of SADCC member states. Luanda, Gaborone, Maseru, Lilongwe, Maputo, Matsapha, Dar-es-Salaam, Lusaka and Harare are the cities where the international airports which handle most of the regional traffic going to the SADCC States capitals are located. In addition, there are other airports, including Beira, Francistown, Livingston, Chileka (Blantyre) and Victoria Falls, which handle regional traffic.

Many of the improvements already experienced by SADCC states relating to infrastructures are the direct result of cooperation. Gaborone and Maseru airports were constructed under SATCC projects; Matsapha is being developed under a

⁴⁷

SOURCE: Information from SATCC. For international airports designated to ICAO see AIPs of the member States, section AGA 1-1.

SATCC project; Maputo and Beira were improved under SATCC projects - to cite only a few examples.

An overview has already been given of the national airlines responsible for the most important part of the traffic: domestic and international, both scheduled and non-scheduled. However, in the overall situation of air traffic within the region, they are complemented by small airlines, mainly for non-scheduled air services, and for cargo services.

Affretair, Zimbabwe's national cargo carrier, has a fleet consisting of 2 DC-8s and flies to London and Amsterdam⁴⁸; Empresa Naciond de Transporte e Trabalho Aereo - TTA⁴⁹ - Mozambique's general aviation state-owned enterprise with a large number of light aircraft and some helicopters; African International Airways, Swaziland's cargo airline established by 1985, which has one DC-8-50F for charter operations in Africa,⁵⁰ are but some examples.

⁴⁸ SOURCE: World Air News, July 1988, and World Aviation Directory op.cit p.200

⁴⁹ See Paulo Muxanga, op.cit p.29 et seq.

⁵⁰ SOURCE: World Air News, July 1988

2 - THE JOINT MEETINGS OF DIRECTORS OF CIVIL AVIATION AND CHIEF EXECUTIVES OF NATIONAL AIRLINES⁵¹

a) The Working Groups and Sub-groups

The need to evaluate and recommend possibilities for civil aviation cooperation has been referred to supra p. 58 et seq. The feasibility study carried out for this purpose reached some conclusions which were presented by the SATCC Technical Unit in two meetings: one in Maputo in 1982, and the other in Mbabane in 1983.

An important and practical achievement of the study was to recommend the establishment of two consultative groups to function as a steering committee and to define current areas of cooperation. The proposed groups are the following: Civil Aviation Authorities Group - to deal with common matters of regulation, policy, safety, standards, and training; - National Airlines Chief Executives Group - to deal with operational matters of regional cooperation.

Both of them were to be filled at the highest executive level. In fact, they consist of the Directors of Civil

⁵¹ SOURCE: Information from SATCC - Documents, Statistics, Reports and Project Files in the Technical Unit.

Aviation and the Chief Executives of National Airlines of SADCC countries. They are also known as the Working Groups.

Furthermore, it was also understood that in order to facilitate further analysis of specific and technical issues, there was a need to create appropriate Sub-Groups. Therefore, the following sub-groups have been established:

- The Air Services Schedules Coordination Sub-Group - established in November 1983.

- The Airworthiness Advisory Committee - AWAC - established in June 1984.

- The Maintenance Sub-Group - established in June 1984

- The Air Traffic Services/Communications - ATS/COM - Sub-Group, established in November 1986.

Between July 1982 and July 1988, ten joint meetings of the Directors of Civil Aviation and Chief Executives of National Airlines of the member States were held, rotating among all the capitals. Since May 1983, the following SATCC projects have been proposed:

- Flight Calibration of Navigational Aids renamed in 1986 as the Expansion of Department of Civil Aviation (DCA) Flight Calibration Unit, Tanzania, due to organizational changes;

- Feasibility Study on Regional Cooperation in Civil Aviation, which has been split up in the following six projects:

- .Study on Coordinated Use of Aircraft Maintenance Facilities;

- .Study on Commonality in Civil Aviation Legislation;

- . Study on General Aviation Activities;
- . Civil Aviation Manpower and Training Requirements survey;
- . Updating the Aeronautical Information Services;
- . Updating of 1980 Year's ICAO Study Aeronautical Telecommunications.
- Assessment of Regional Airworthiness Certification and Surveillance service;
- Study on the Joint Use of Widebody Aircraft and Sub-regional Cooperation;
- Rehabilitation of Aeronautical Telecommunication in the Region.

The listing of the existing working groups and sub-groups, as well as the projects, clearly demonstrates that cooperation in civil aviation tends to cover all its aspects. Some results of cooperation have been mentioned when appropriate in the course of this work. Following are some other examples:

- The Flight Calibration Unit in Tanzania has been reorganised and has performed needed calibration services in Tanzania and Malawi but also to some extent in Zambia and, on request, in other countries. The organisation now has the competency and capacity to perform all calibrations needed in the region with some exceptions:
 - Calibration in Angola cannot be performed due to the limited range of the available aircraft .
 - High altitude calibrations of Radar stations

cannot be performed due to insufficient altitude performance of the aircraft.

- The Airworthiness Advisory Committee was given the task of proposing joint minimum requirements related to the certification legislation. Accordingly, the Committee prepared the following three documents:

- . Minimum requirements for Approval of Aircraft Maintenance Engineers;

- . Minimum requirements for Issuance of Renewal of Certificate of Airworthiness, including Continuous Airworthiness requirements;

- . Minimum requirements for approval of aircraft maintenance organisations.

These proposed requirements are now used together with the ordinary regulations on a trial basis during one year starting 1st March, 1988.

- The Training Task Group discussed the Manpower and Training Requirements survey completed by ICAO Regional Office, Nairobi, and concluded that the majority of the courses needed for DCA and Airlines personnel were available in the SADCC States, or could be made available through the use of visiting instructors.

Particular attention is to be paid to two important results of the work of the joint meetings of SADCC Directors of Civil Aviation and Chief Executives of National Airlines: The Proposed Standard Text for Bilateral Air Transport Agreements between SADCC States, and SADCC Airlines schedules

coordination. In fact, this analysis will give an insight into the way the projects are closely linked with the objectives proclaimed in the Lusaka Declaration. Relating to civil aviation, it said that the "coordination of airline schedules so that movement within the region is practicable" is an area where coordinated action is needed.⁵² To reach the desired stage of coordination of schedules, it is necessary to coordinate action in two distinct sectors of civil aviation activity: regulatory and operational. Furthermore, the coordination of schedules may and does involve the exchange of traffic rights, as well as commercial agreements. The exchange of traffic rights is dealt with in bilateral air transport agreements, and has an impact on commercial agreements and on schedules.

b) The Proposed Standard Text for Bilateral Air Transport Agreements between SADCC States.⁵³

The main vehicle through which international air commerce, both scheduled and non-scheduled, is performed, is through bilateral agreements, most of which apply to scheduled international services only. some to both scheduled and non-scheduled services, and a few to non-scheduled air services

⁵² See Annex 1: The Lusaka Declaration p.134.

⁵³ See Annex II. p.153

needed is because of Articles 1 and 6 of the Chicago Convention on International Civil Aviation. In fact, given the twofold legal regime of airspace - complete and exclusive sovereignty of each state over the airspace above its territory,⁵⁴ and the international status of the high seas⁵⁵, as well as Article 6 of the Chicago Convention which reads:

"No scheduled international air services may be operated over or into the territory of a Contracting State, except with the special permission or other authorization of that state, and in accordance with the terms of such permission or authorization",

the need for a legal instrument such as a bilateral air transport agreement is obvious. A bilateral air transport agreement comprises the following important clauses:

PREAMBLE - Names of the parties involved and their general objectives in desiring to conclude an agreement.

PRINCIPLES AND OBJECTIVES FOR ROUTES - Where the parties express their desire to establish air services which will

⁵⁴ See Annex V - Article 1 and 6 of the Convention on International Civil Aviation.

⁵⁵ On the legal regime of the High Seas, P.P.C Haannapel in "Pricing and Capacity Determination in International Air Transport, A Legal Analysis, op.cit., p.10, says:

"The Convention, however, says nothing about sovereignty over airspace above the high seas. The high seas themselves being 'free', it should also be concluded that the airspace above those high seas is 'free'. This last principle was later incorporated into another Convention, the 1958 Convention on the High Seas and subsequently reiterated in the 1982 Convention on the Law of the Sea".

See also N.M. Matte, Treatise on Air-Aeronautical Law - The Carswell Co. Ltd, Toronto, 1981, p.177

PRINCIPLES AND OBJECTIVES FOR ROUTES - Where the parties express their desire to establish air services which will take care of the traffic demand with an equitable overall exchange of economic benefits for the carriers.

GRANT OF RIGHTS - description of the traffic rights to be exchanged. These are the technical rights (1 and 2), and commercial rights (3,4 and 5)⁵⁸. The agreed-upon services are performed along the specified routes listed in the Route Schedule or Annex.

DESIGNATION OF AIRLINES - gives the parties the right to designate one or more airlines to operate the agreed-upon services.

AUTHORIZATION OF SERVICES - states the conditions imposed upon the airlines.

REVOCATION AND WITHHOLDING OF AUTHORIZATION - This clause permits the contracting parties to revoke or withhold the authorization to exercise the rights of this agreement from an airline that does not comply with the laws and regulations of the state granting the rights.

MUTUAL RECOGNITION OF EACH COUNTRY'S DOCUMENTATION - such as certificate of airworthiness and crew licenses.

APPLICABLE LAWS AND REGULATIONS - states that airlines are subject to the laws and regulations of the country in which they are operating.

AIRPORT CHARGES AND OTHER FACILITIES - stipulates the uniformity of charges and exemptions and other regulations related to commercial activities.

CAPACITY PROVISIONS - a certain number of clauses refer to the capacity offered by each contracting party.

RATES AND FARES - some clauses deal with the procedure for the establishment of tariffs.

CONSULTATIONS - suggested to be regular and frequent in order to ensure close collaboration in all matters affecting the fulfilment of the agreement.

⁵⁸

See Annex V p.194 - Definition of traffic rights also named "freedoms of the air" and defined in Article 1 section 1 of the International Air Transport Agreement signed at Chicago on 7 December 1944.

ARBITRATION - sets the procedures to be followed in the establishment of an arbitral tribunal if any dispute arises which cannot be settled by negotiations between contracting parties.

TERMINATION - procedure to be followed if one of the parties wishes to terminate the agreement.

REGISTRATION - parties agree to register the agreement or any exchange of notes regarding the agreement with ICAO.

DEFINITIONS - this clause contains terms used in the agreement and their definitions.

ENTRY INTO FORCE - gives the date when the agreement will come into force.

ROUTE SCHEDULE OR ANNEX - the route pattern is described here.

In some agreements, clauses will also be found related to other issues. For example,:

SAFETY AND SECURITY - where each party commits itself to provide safety and security to civil aviation.

CHARTER SERVICES - the relevant clause includes them in the bilateral agreement.⁵⁷

It is possible to add other clauses to deal with a particular situation. The enumeration above is not exhaustive. Furthermore, taking into consideration the fact that the core of a bilateral air transport agreement is the exchange of

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For further information on the format of Air Transport Agreement, see Betsy Gidwitz in "The Politics of International Air Transport". Lexington Books. DC Heath and Company, 1984. p.152 et seq. See also Augustin Vrolijk - Air Transport in the Caribbean - a thesis submitted to the McGill University, November 1986, p.63 et seq., and Paulo Muxanga, op.cit., p.55 et seq.

traffic rights and specification of routes, the clauses can be grouped differently. An example of different groupings is the following:

- Technical and Administrative clauses - which include applicability of the laws and regulations, mutual recognition of documents, authorizations of airlines, revocation, and suspension or termination of agreements, among others;
- The business (commercial) clauses, such as competition, capacity, change of gauge, tariffs, taxation, airline representatives, and statistics, among others;
- Ancillary clauses - such as designation of airlines user charges, registration, substantial ownership and effective control, importation of fuel, lubricating oils, and spare parts.⁵⁸

The proposed standard text for bilateral air transport agreements between SADCC States follows the first format above. In its presentation, however, the clauses reflecting the special situations in SADCC countries are emphasized. It is made up of 22 articles. They are comprised of:

Preamble - where the purpose of intensifying cooperation between SADCC States is underlined.

Article 1 - contains terms used in the agreement and their definitions.

Article 2 - refers to the applicability of the Chicago Convention.

Article 3 - deals with the granting of traffic rights.

⁵⁸

See Joseph Gertler. Lectures on Government Regulation delivered at the Institute of Air and Space Law, 1987/1988. Topic 6 - Bilateral Air Transport Agreements: Combination clauses. See also P.P.C Haannappel - Pricing and Capacity Determination in International Air Transport, op.cit. p.18, and Augustin Vrolijk op.cit. p.130 et seq.

- Article 4 - is related to the designation of airlines.
- Article 5 - deals with revocation or suspension of operating authorization.
- Article 6 - deals with the applicability of national laws and regulations.
- Article 7 - deals with the approval of time-tables, including the type of aircraft to be used.
- Article 8 - sets up principles governing operation of agreed-upon services. Emphasis is laid on fair and equal opportunity between airlines, capacity which has to match current and anticipated transport requirements, technical and commercial cooperation, and mainly the conclusion of relevant commercial agreement(s) between the two designated airlines, as a "conditio sine qua non" for the exploitation of the agreed-upon services.
- Article 9 - deals with user charges for both airports and air navigation facilities.
- Article 10 -deals with mutual recognition of documents, certificates, and licenses.
- Article 11 -refers to exemption from customs duties, inspection fees and other similar charges.
- Article 12 -deals with tariffs. Tariffs are to be reached through the appropriate rate-fixing machinery of an international charter.
- Article 13 -deals with transfer of earnings.
- Article 14 -refers to airline representation.
- Article 15 -deals with statistics.
- Article 16 -establishes the procedure for consultations on the implementation, interpretation, application, or amendment of the agreement, or compliance with its provisions.
- Article 17 -establishes the procedure for settlement of disputes. SATCC is vested with mediator competency, failing which, parties go to arbitral tribunal.

Article 18 -deals with modifications and amendments.

Article 19 -deals with aviation security.

Article 20 -refers to registration. Agreements and any subsequent amendments having to be registered with ICAO and copied to SADCC and SATCC.

Article 21 -deals with termination procedure. Notice of termination has to be simultaneously communicated to ICAO and to SADCC and SATCC.

Article 22 -deals with entry into force and languages of the agreement.

Some articles have to do with the special situation of SADCC countries and deserve particular attention. Article 3, the Grants of Rights, is of paramount importance. It defines and specifies the traffic rights to be exchanged: the technical rights (1 and 2) and the commercial rights (3,4 and 5). ⁵⁹ The reason why emphasis has to be laid on this article is the grant of the fifth freedom - "the privilege to take passengers, mail, and cargo destined for the territory of any other SADCC State and the privilege to put down passengers, mail, and cargo coming from any such territory". The previous "case by case" granting of the fifth freedom has thus been overcome. The only condition needed is the commercial agreement between the airlines involved. Article 8(6) expressly says that "the exploitation of the agreed services shall be subject to the conclusion of relevant commercial

⁵⁹ Ibidem footnote 56 supra

agreement(s) between the two designated airlines. Such commercial agreement(s) shall be submitted for approval by the Aeronautical Authorities prior to its implementation".

Given this background, it seems appropriate to draw the conclusion that the commercial agreement cannot be used to defeat the grant of the fifth freedom, but only to coordinate its practice and make sure that there is no loser; that, on the contrary, there are only winners. Besides, this is the favourite principle of SATCC: to reach a win-win situation which fits in with cooperation rather than with competition. Therefore, the grant of the fifth freedom represents a qualitative step towards closer cooperation in civil aviation among SADCC countries.

Article 4 - Designation of Airlines. In addition to the classical right of each contracting party to designate an airline for the purpose of operating the agreed-upon services on specified routes, Article 4(2) includes the possibility of a Joint Air Transport Operating Organization, established under Articles 77 and 79 of the Chicago Convention, to be designated. In such a case, it shall be accepted by the other contracting party. The "raison d'être" of the importance of the designation of airlines has been the substantial ownership and effective control of the designated airlines; who is the

owner and/or who exercises the effective control. Since the adoption of Article I section 6 of the "International Air Transport Agreement signed at Chicago, on 7 December 1944"⁶⁰, it has been understood that substantial ownership and effective control of the designated airline should be vested in the contracting party designating the airline or in its nationals. There is no question of ownership and effective control of SADCC countries national airlines. All of them, whatever the designation is, are owned and controlled by the respective governments of SADCC States.⁶¹

Article 4(2), however, refers to the possibility of a Joint Air Transport Operating Organization established under Article 77 and 79 of the Chicago Convention being designated by a contracting party for the purpose of operating the agreed-upon services on the specified routes. In such a case, the other contracting party shall accept it. This clause is partly in accordance with the ICAO - Economic Commission recommendation which:

"urges Contracting States to accept the designation of and allow an airline substantially owned and effectively controlled by one or more developing state or states (or its or their nationals) belonging to a regional economic grouping to exercise the route rights and/or air

⁶⁰ Idem footnote 56, supra - Article I, section 6

⁶¹ See supra: Civil Aviation Regional Infrastructures and National Airlines. p.59 et seq.

transport rights of any developing state or states within the same grouping; under mutually acceptable terms and conditions including air transport agreements negotiated or to be negotiated by the parties concerned..."⁸²

SATCC's Standard Text for Bilateral Air Transport Agreements between SADCC States deals with Joint Air Transport Operating Organization. That is to say, the designated operating organisation has to be owned and effectively controlled by at least two SADCC member states. Therefore, the possibility of designating an airline of another country, although belonging to the same grouping, seems to be excluded.

Article 9 - User Charges. (Airport and air navigation facilities charges).

In this article, the principle of uniformity, through which discrimination against foreign carriers in user charges is overruled, is coupled with the principle that user charges reflect the full cost to the competent charging authorities of providing appropriate airport and air navigation facilities and services and provide for a reasonable rate of return on assets after depreciation. Furthermore, this article (9.3) encourages consultations

⁸²

See: Resolution A24-12. ASSEMBLY 24th session. Economic Commission. Report and minutes. ICAO Doc. 9411 A24-EC.

between the competent charging authorities and the designated airlines using the services and facilities in order to enable them to express their views in case of and before changes are made. In light of the SATCC efforts in the civil aviation sector, a large number of projects have been undertaken, including construction and improvement of infrastructures, among others.⁶³ Therefore, the policy of return on investment sought and reflected in this article, is likely to enhance the type of cooperation among SADCC countries.

c) Air Services Schedules Coordination

It has been credited to SATCC as a notable success the rationalisation of the schedules of the SADCC carriers, somehow reflected in the joint timetable. However, criticisms have also been made regarding the continual refusal by governments in the region to grant each other fifth freedom rights.⁶⁴ In light of all that has been said above on the

⁶³ Idem footnote (61) supra.

⁶⁴ See: "The Southern African Economist, op.cit p.5. For instance in the Aeronautical Information Circular - Malawi A6/87 of 27 Aug. 1987 it is stated:

"Applications for carriage of Passengers on fifth freedom basis - It is noted with concern that it is now becoming routine for airlines to request for authority from this administration to embark and/or disembark passengers between Lilongwe and points on which fifth freedom traffic rights have not been
(continued...)

conten. of Article 3 of the proposed standard text for bilateral air transport agreements between SADCC States, these criticisms will surely come to an end. Consequently, the grant of the fifth freedom rights also has to be credited to SATCC as a success with far-reaching consequences. Thus, the objective of coordinating airline schedules so that movement within the region is practicable is being accomplished. Simultaneously, the links between SADCC countries via Johannesburg (South Africa) are being progressively reduced. The figures infra clearly show an irreversible trend to reduce these links. In fact, from 1985 to 1988 the connections, including direct flights per week between SADCC capital airports, were 133, 136, 138, and 205 respectively in 1985, 1986, 1987, and 1988.⁸⁵ Over the period 1984-1987, the number of connections via Johannesburg dropped from 169 to 122 per

⁸⁴(...continued)

granted. This administration is averse to such requests. For those cases which may merit consideration the following procedure is to apply with immediate effect.

1...

2. In the event that the application receives approval the carrier will pay Air Malawi 30% of the full normal economy class fare applicable on the sector in question regardless whether the passenger is on rebate ticket or not unless travel is completely free...."

⁸⁵ SOURCE: Information from SATCC.

week.⁶⁶ The average number of passengers transported weekly by SADCC National Carriers during the period 01 April 1987 - 31 October 1987 (regional plus Johannesburg) has grown by 9%, i.e. from 5825 to 6375 passengers per week. Traffic to and from Johannesburg has declined by 4.5% i.e. from 3260 passengers per week to 3115 and the pure SADCC regional traffic has increased by 27% from 2565 to 3260 passengers per week.⁶⁷ Therefore, it can be assumed that the more direct flights existing between SADCC States, the lesser is the need to travel via South Africa.

On the other hand, it is important to analyze what the impact of the exchange of fifth freedom rights will be. Even confining the analysis to one variable - load factor - it is possible to identify the trend which is likely to follow. Load factor is one of the indices of air transport activity. It is defined as a percentage of seat kilometres available. In other words, it is the occupancy related to the seats available in given flown distances, or, simply, the percentage of capacity utilised.⁶⁸ The importance of the load factor is

⁶⁶ See: The Southern African Economist op.cit. p.5

⁶⁷ SOURCE: Information from SATCC.

⁶⁸ See: Oliver James Lissitzyn in International Air Transport and National Policy. Studies in American Foreign Relations 1942, Council of Foreign Relations Inc. p.240

that it gives an approximate idea of the profitability of air transport operations. It is assumed that a load factor of 60% - 75% represents an economically sound operation;⁶⁹ therefore, the load factor needed for break-even, that is to say, to reach a situation where revenues equal operation expenses, will be situated below these figures.

Given this criterion and the tables infra, a glance into the SADCC National Airlines services behaviour, both international and domestic together, and international alone, shows that load factors situated at the economically sound operational level and related to international traffic, which includes SADCC regional traffic, are rare; and furthermore, that the general trend in load factors is towards a decline. This trend could be partially reversed by improving load factors on the basis of the exchange of fifth freedom rights.

C - C O N C L U S I O N

The role of civil aviation in SADCC integrated development is unquestionable. Considering the construction, development, and improvement of aeronautical infrastructures,

⁶⁹

See: Augustin Vrolijk op.cit. p.73. See also - Bin Cheng in the LAW OF INTERNATIONAL AIR TRANSPORT, Oceana Publications, 1962, P.412 et seq. where it is stated that a load factor of 60% - 70% is economically more advisable.

including airports, communications, navigational aids on the one hand, and the coordination of schedules as well as the exchange of fifth freedom rights on the other hand; furthermore, considering the areas covered by the work of the sub-groups, that is to say, considering the development of civil aviation as a whole, one can foresee solid foundations for an "aer nostrum" status in the SADCC region as a contributory step towards the coordinated development sought by SADCC states. The consolidation of the "aer nostrum" however, requires further decisions by the respective decision-making bodies. In fact, the level of cooperation to be reached through the exchange of fifth freedom rights needs to be complemented by further definition of cooperation among SADCC carriers in intercontinental air transport services. Otherwise, some SADCC carriers risk being transformed into feeders, or, worse still, the intercontinental traffic would become a competition arena. The recently-approved SATCC project - "Studies on Joint Use of Wide-body Aircraft and Sub-regional Airline Cooperation" - gives an indication that SATCC is aware of this possibility, and it gives the hope that further steps will be taken in order to avoid this possibility.

TABLE 1

A I R L I N E T R A F F I C

TOTAL SCHEDULED INTERNATIONAL AND DOMESTIC								TOTAL	INT'L & DOMESTIC NON-SCHEDULED		
		AIRCRAFT KILOMETRES	AIRCRAFT DEPARTURES	PASSENGERS CARRIED	KILOMETRES PERFORMED	PASSENGER LOAD FACTOR	FREIGHT ONLY	TOTAL	TONNE KILOMETRES AVAILABLE	PASSENGER KILOMETRES PERFORMED	TONNE KILOMETRES PERFORMED
STATE	YEAR	MILLIONS	THOUSANDS	THOUSANDS	MILLIONS	%	MILLIONS	MILLIONS	MILLIONS	MILLIONS	MILLIONS
ANGOLA	1987	11.5	11	746	1030	58	25.6	116	170	23.5	33.9
	86	11.5	11	727	1000	56	24.8	113	170	23.5	33.9
	85	13.5	13	849	1032	73	33.2	122	274	34.2	80.0
	84	15.1	11	690	917	56	25.1	106	285	22.8	33.9
	83	15.7	22	952	980	71	46.2	130	282	38.9	22.7
BOTSWANA	1987	1.7	4	60	24	51	0.1	2	5		
	86	1.4	3	54	22	60	0.1	2	4		
	85	1.3	3	59	22	58	0.1	2	4		
	84	1.1	3	55	19	59	0.1	2	3	0.1	0
	83	0.9	3	50	16	56	0.1	2	3	1.8	0.2
LESOTHO	1987	1.4	4	55	13	43	0.3	2	5		
	86	1.1	5	51	13	47	0.2	1	4		
	85	1.0	3	49	17	69	0.1	2	3		
	84	1.0	3	61	20	64	0.1	2	5	0.1	0
	83	1.5	5	55	19	62	0.2	2	3		
MALAWI	1987	1.6	3	114	64	65	0.6	6	9	35.5	2.9
	86	1.6	4	140	68	58	0.6	6	10	47.4	4.3
	85	1.9	6	140	79	58	0.8	8	13	42.4	3.6
	84	2.0	6	127	75	55	1.0	7	13	36.7	3.2
	83	2.0	4	97	60	50	0.7	6	17	42.5	3.5
MOZAMBIQUE	1987	4.0	3	211	426	57	8.6	48	82	24.2	4.8
	86	4.1	3	226	492	63	10.3	56	86	13.6	4.5
	85	3.8	3	208	469	62	9.1	52	84	18.4	5.5
	84	5.3	5	325	593	63	12.4	67	102	30.2	5.8
	83	6.5	6	405	609	57	15.3	72	110	50	5.4
SWAZILAND	1987	0.9	2	46	31	61	0.2	3	6		
	86	1.0	2	45	30	59	0.2	3	7		
	85	0.9	2	39	26	55	0.2	3	6		
	84	0.7	2	34	22	54	0.1	2	5		
	83	0.8	1	29	20	43	0.1	2	4		

TABLE 2

SCHEDULED AIRLINE TRAFFIC

INTERNATIONAL SCHEDULED										INT'L NON-SCHEDULED	
STATE	YEAR	AIRCRAFT KILOMETRES	AIRCRAFT DEPARTURES	PASSENGERS CARRIED	KILOMETRES PERFORMED	PASSENGER LOAD FACTOR	FREIGHT ONLY	TOTAL	TONNE KILOMETRES AVAILABLE	PASSENGER KILOMETRES PERFORMED	TONNE KILOMETRES PERFORMED
		MILLIONS	THOUSANDS	THOUSANDS	MILLIONS	%	MILLIONS	MILLIONS	MILLIONS	MILLIONS	MILLIONS
ANGOLA	1987	8.0	2	126	720	62	24.2	90	140	3.5	32.3
	86	8.0	2	123	700	60	23.5	87	140	3.5	32.3
	85	9.2	2	126	660	68	31.9	91	236	2.1	58.9
	84	11.7	2	114	633	59	23.8	81	256	3.2	32.3
	83	11.2	2	109	586	62	44.5	97	240	33.1	19.1
BOTSWANA	1987	1.0	2	37	14	52	0.1	1	3		
	86	0.8	2	34	13	59	0.1	1	2		
	85	0.7	2	43	14	64	0.1	1	2		
	84	0.6	2	41	13	64	0.1	1	2	0.1	0.0
	83	0.4	1	32	11	60	0.1	1	2	1.2	0.1
LESOTHO	1987	0.7	1	25	10	49	0.2	1	3		
	86	0.5	1	21	8	52	0.2	1	2		
	85	0.4	1	20	8	63	0.1	1	2	0.1	0.1
	84	0.4	1	20	7	57	0.1	1	2		
	83	0.6	2	17	6	46	0.0	1	2		
MALAWI	1987	0.9	1	51	49	69	0.5	5	7	34.4	2.8
	86	0.9	1	66	51	60	0.4	5	8	46.9	4.3
	85	1.3	2	69	63	60	0.6	6	10	42.1	3.6
	84	1.7	2	60	58	55	0.7	6	10	36.5	3.1
	83	1.6	2	47	47	50	0.6	5	15	41.9	3.4
MOZAMBIQUE	1987	2.2	1	55	279	50	6.7	33	61	16.8	1.6
	86	2.4	1	54	315	54	8.8	38	65	10.6	1.0
	85	2.3	1	57	321	54	7.8	37	66	10.5	1.6
	84	2.2	1	55	332	55	7.6	39	65	28.1	2.6
	83	2.0	1	48	296	44	8.4	36	71	25.0	2.4
SWAZILAND	1987	0.9	2	46	31	61	0.2	3	6		
	86	1.0	2	45	30	59	0.2	3	7		
	85	0.9	2	39	26	55	0.2	3	6		
	84	0.7	2	34	22	54	0.1	2	5		
	83	0.8	1	29	20	43	0.1	2	4		

TABLE 3

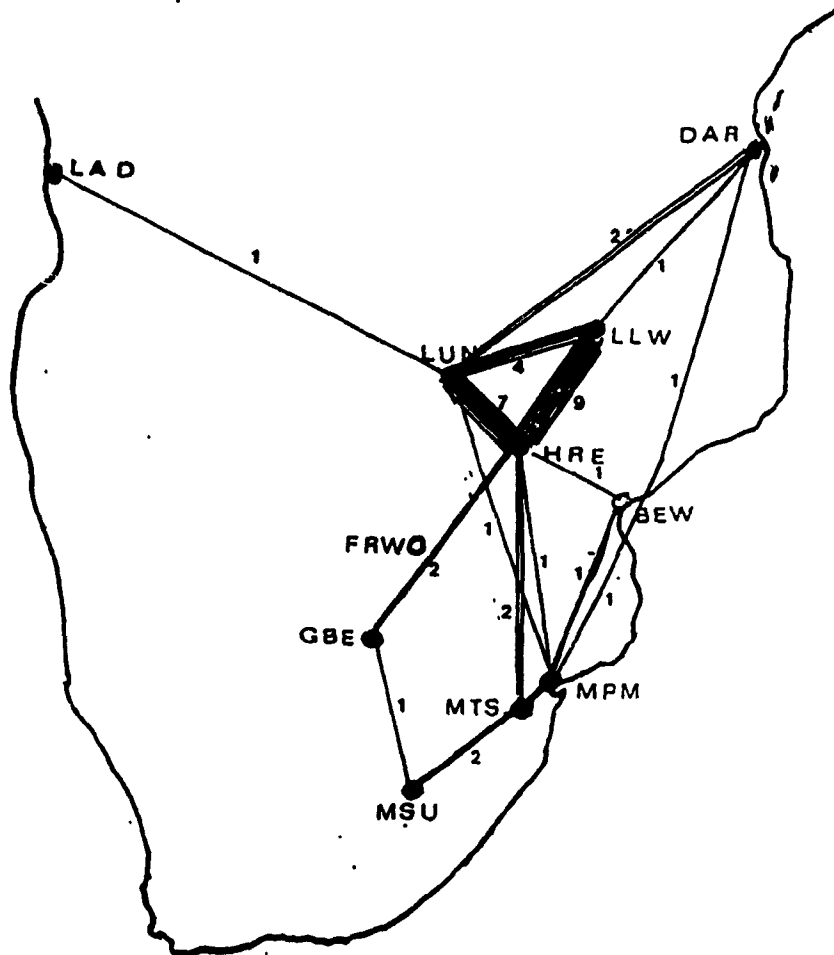
AIRLINE TRAFFIC

TOTAL SCHEDULED INTERNATIONAL AND DOMESTIC								TOTAL NON-SCHEDULED INT'L AND DOMESTIC			
STATE	YEAR	AIRCRAFT KILOMETRES	AIRCRAFT DEPARTURES	PASSENGERS CARRIED	KILOMETRES PERFORMED	PASSENGER LOAD FACTOR	FREIGHT ONLY	TOTAL	TONNE KILOMETRES AVAILABLE	PASSENGER KILOMETRES PERFORMED	TONNE KILOMETRES PERFORMED
		MILLIONS	THOUSANDS	THOUSANDS	MILLIONS	%	MILLIONS	MILLIONS	MILLIONS	MILLIONS	MILLIONS
U.R.TANZANIA	1987	5.3	12	456	249	69	2.5	25	42	5.7	0.5
	86	4.5	11	441	239	74	2.0	24	39	5.8	0.5
	85	5.2	14	451	257	70	3.3	27	43	4.5	0.5
	84	3.8	10	498	262	71	2.4	26	44	6.0	0.6
	83	4.1	12	407	226	64	1.4	22	42	8.0	0.7
ZAMBIA	1987	6.1	5	258	609	62	25.7	81	135	5.0	0.5
	86	5.7	5	238	631	61	24.5	82	145	7.7	0.7
	85	5.8	5	254	654	61	25.3	85	153	8.1	0.7
	84	7.5	6	246	604	64	25.3	80	142	14.2	1.4
	83	8.0	6	237	554	63	23.4	74	127	11.9	1.1
ZIMBABWE	1987	9.5	9	460	626	65	66.9	123	180	4.5	3.6
	86	8.1	9	451	653	64	12.5	71	126	5.7	0.6
	85	8.3	9	453	661	67	11.1	68	120	2.9	0.3
	84	8.5	11	441	593	62	11.9	63	117	1.7	0.1
	83	8.6	11	449	594	55	10.0	56	119	8.2	0.8
SCHEDULED AIRLINE TRAFFIC - INTERNATIONAL SCHEDULED								INTERNATIONAL NON-SCHEDULED			
U.R.TANZANIA	1987	1.8	2	58	91	52	1.5	10	21	5.4	0.5
	86	1.5	2	62	94	64	1.2	10	19	5.6	0.5
	85	1.6	2	61	88	60	1.4	9	17	4.2	0.4
	84	1.3	1	45	68	57	0.8	7	14	5.7	0.5
	83	1.2	1	59	87	53	0.7	9	19	7.3	0.7
ZAMBIA	1987	5.1	2	138	571	62	25.5	78	130	4.6	0.5
	86	4.8	2	136	600	61	24.3	79	140	7.6	0.7
	85	4.9	2	140	620	61	25.1	82	147	7.9	0.7
	84	6.5	2	128	567	64	25.1	77	136	13.9	1.3
	83	6.7	2	117	516	63	23.2	70	121	11.7	1.1
ZIMBABWE	1987	7.6	3	175	514	65	66.5	114	166	3.9	3.6
	86	6.1	3	183	549	66	12.2	62	104	4.7	0.5
	85	6.2	3	189	559	67	10.8	60	103	1.4	0.2
	84	6.3	3	184	495	61	11.5	55	101	0.6	0.1
	83	6.3	3	183	432	54	9.7	48	103	6.4	0.7

SOURCE: ICAO STATISTICAL YEAR BOOK. CIVIL AVIATION
STATISTICS OF THE WORLD. VOL. 9/80/10, 9/80/12, 9/80/13

SADCC National Airlines
Regional Route Net

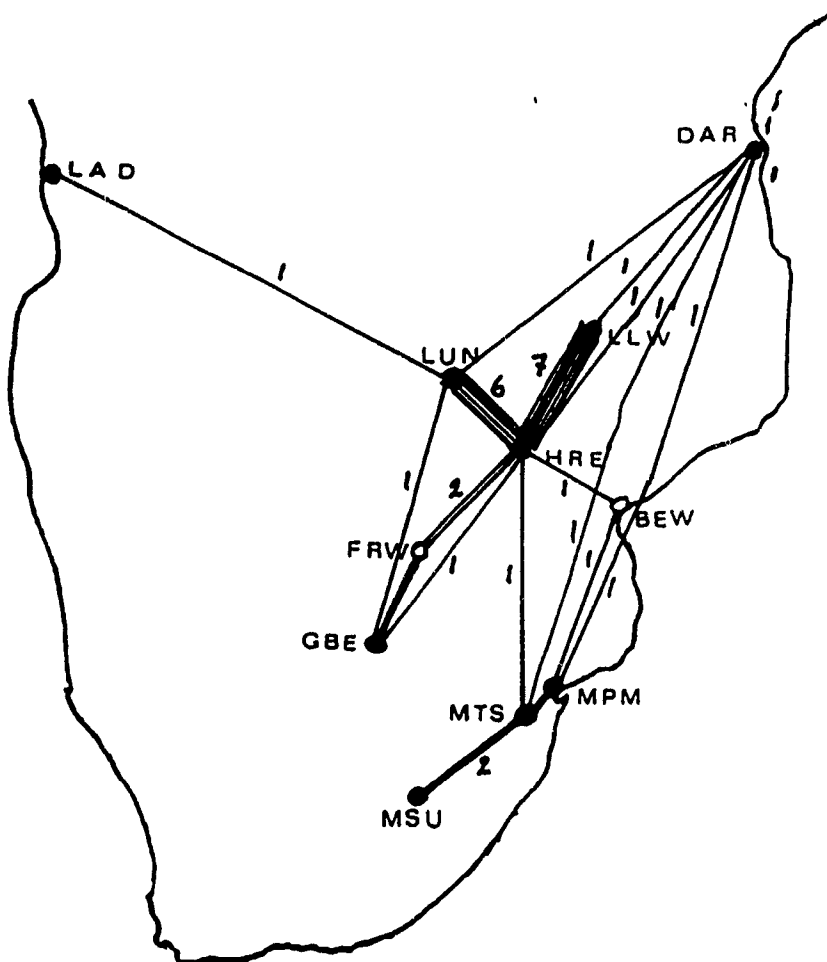
1982



In total there are 88 direct flights between
the capitals within the SADCC region.

SADCC National Airlines
Regional Route Net

1984

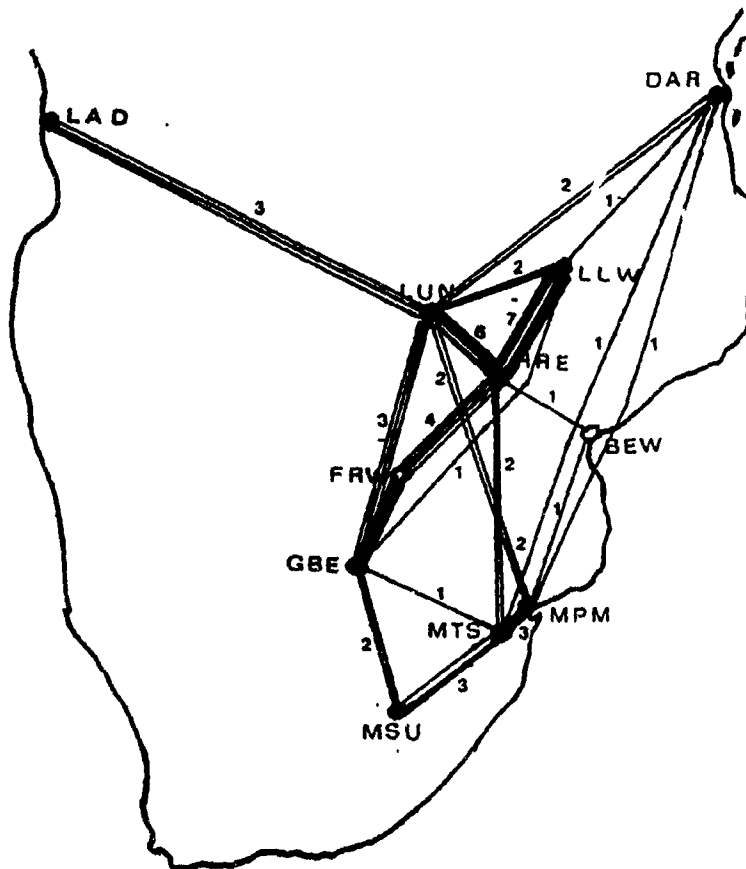


In total there are 73 direct flights between the capitals within the SADCC region.

This means a decrease of 17% compared with 1982.

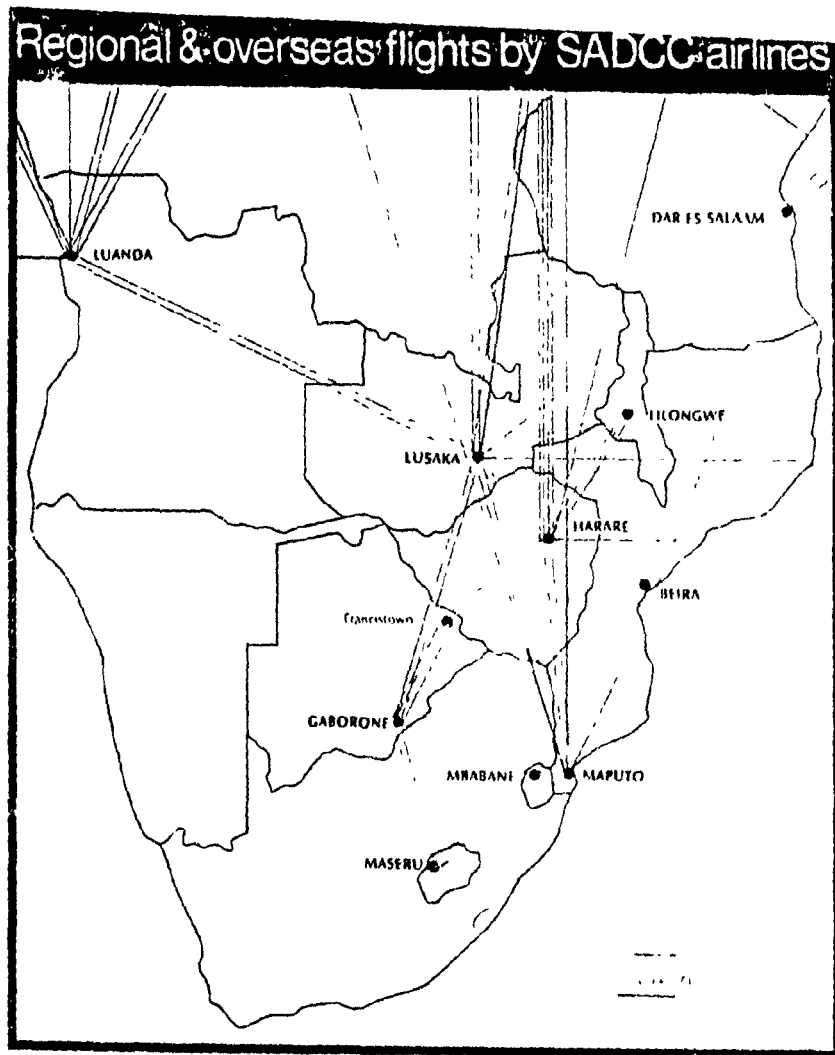
SADCC National Airlines
Regional Route Net

1987



In total there are 110 direct flights between the capitals within the SADCC region.

This means an increase of 34% compared with 1984 and an increase of 11% compared with 1982.



NUMBER OF FLIGHT CONNECTIONS (INCLUDING DIRECT FLIGHTS PER WEEK
BETWEEN SADCC CAPITAL AIRPORTS

FROM	To other SADCC capitals			
	1985	1986	1987	1988
Luanda	4	5	15	8
Gaborone	15	13	20	24
Maseru	5	5	14	17
Lilongwe	18	24	27	29
Maputo	18	16	24	27
Mbabane	11	10	25	23
Dar es Salaam	12	14	13	17
Lusaka	25	26	30	29
Harare	25	23	30	31
TOTAL	133	136	198	205

89(i)

NUMBER OF WEEKLY CONNECTIONS WITHIN 36 HOURS BETWEEN SADCC
CAPITALS

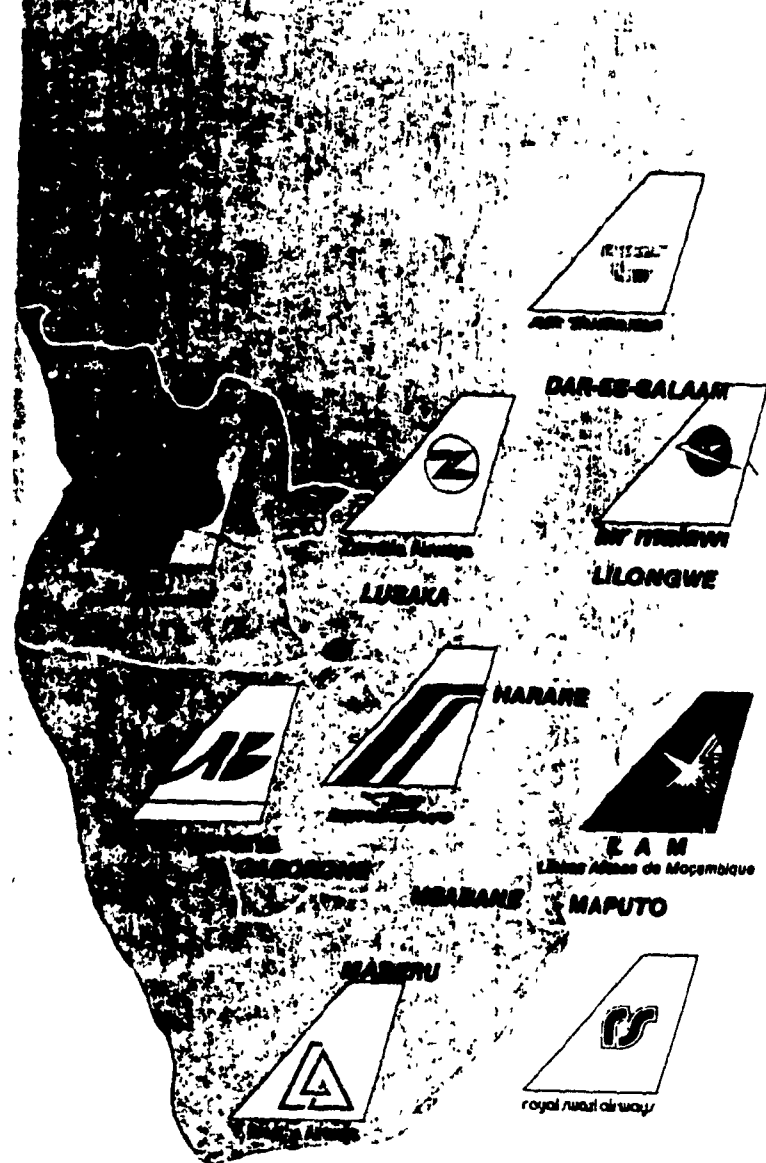
Excluding connections via Johannesburg

1988

FROM	TO									
Luanda	-	1	0	2	2	2	0	1	1	9
Gaborone	2	-	2	7	1	1	4	5	8	30
Maseru	1	2	-	1	2	2	2	2	2	14
Lilongwe	1	5	3	-	2	2	1	5	7	26
Maputo	1	2	2	4	-	7	3	4	2	25
Mbabane	1	2	2	3	7	-	2	4	2	23
Dar es Salaam	0	2	2	1	4	3	-	2	3	17
Lusaka	1	4	3	4	5	3	3	-	6	29
Harare	1	6	3	7	4	3	2	6	-	32
TOTAL	9	24	17	29	27	23	17	29	31	205

TIMETABLE

OF THE SDC CARRIERS



C H A P T E R I I I

SADCC VIS-A-VIS OTHER REGIONAL ORGANIZATIONS:
A COMPARATIVE ANALYSIS.

A - AN INTRODUCTORY APPROACH

As already noted above, cooperation seems to be the motto for international relations towards the end of our century. That understanding is particularly true in Africa. In fact, cooperation has been considered the best way to boost the development of new independent states emerging from colonial rule. The reason lies in the fact that Africa faces multiform difficulties in its development. S.A. Akintan, for instance, analyses the difficulties of the emerging States in relation to the requirements of rapid economic growth and concludes that:

"... the majority of the new States do not provide large enough markets for efficient development of modern industries. Other problems include the absence of managerial and entrepreneurial skills, and high cost of modern technology, which prevent most of the States from undertaking large scale industrial projects. Added to the above problems are the facts that there were very poor means of transport and communication throughout the continent. The political division of the continent between the French and the English -speaking groups also resulted in almost complete ignorance by one language group of what was going on in the countries belonging to the other language group."⁷⁰

In this respect, the analysis of SADCC, at least in relation to the Southern African region, goes further. In fact, to clearly understand the present situation, one cannot lose sight of its roots: deliberate external policies of metropolitan powers, colonial rulers, and large corporations which moulded the economy of the region.⁷¹

Whatever the analysis may be, the conclusion to be drawn is that cooperation within the continent, and according to each particular situation, is the best way to promote regional development. For this purpose, regional organizations such as the "Economic Cooperation among Maghreb countries"; the "Union Douaniere et Economique de l'Afrique Centrale - (UDEAC)"; the East African Community (EAC); the "Economic Community of West Africa - (ECOWAS)"; the Preferential Trade Area of Eastern and Southern African States - (PTA)"; and the five "Portuguese-speaking African States". to cite but some examples, have been formed. Some of these organizations have disappeared, as has the East African Community.⁷² Others, although continuing to exist, have faced many difficulties, which may range from internal and organizational to external.

⁷¹ See Annex I: The Lusaka Declaration, op.cit. pp. 132 et 133.

⁷² On the reasons of E.A.C demise see: G.Kaunda op.cit. pp. 154 - 163.

The objective of the comparative analysis of SADCC vis-a-vis other regional organizations is not only to assess what the differences and peculiarities are, but also to identify the role civil aviation has been given in the overall development sought by the said organizations. Therefore, the presentation of some of the above-mentioned regional organizations will methodologically follow that of SADCC, and emphasis will be placed on transport and communications, particularly on civil aviation.

B - THE PREFERENTIAL TRADE AREA FOR EASTERN AND SOUTHERN AFRICAN STATES - PTA

1 - DEFINITION AND OBJECTIVES

The Treaty for the establishment of the Preferential Trade Area for Eastern and Southern African States, PTA, signed at LUSAKA, on the 21st of December, 1982 defines this organization as "a first step towards the establishment of a Common Market and eventually of an Economic Community for its Member States" (Article 2(1). Article 3(1) specifies the aim of the organization as follows:

It shall be the aim of the Preferential Trade Area to promote cooperation and development in all fields of economic activity, particularly in the fields of trade, customs, industry, transport, communications, agriculture, natural resources, and monetary affairs, with the aim of raising the standard of living of its peoples, of fostering closer relations among its Member-

States, and to contribute to progress and development of the African Continent".

Article 2(1) states clearly the long-term objective of the organization, while Article 3(1) refers to, and specifies its global aim. In addition, Article 3(4) describes the strategy to be followed, and emphasis is placed on the trade area dealt with in chapter four.⁷³

The objectives and strategy of both PTA and SADCC are different. The objectives of SADCC can be summarised as the economic liberation of its members through the reduction of economic dependence, a genuine and equitable regional integration, and international cooperation. SADCC assumes that the process of political liberation is not complete unless it is coupled with economic liberation. Therefore, the rupture of colonial and sub-colonial ties, particularly with the Republic of South Africa, into whose economic structures the economy of its members have been deliberately incorporated by external policies, is of paramount importance. In addition, SADCC's strategy "is one of coordination, harmonisation and selective integration, not of supranationalism, extensive institutions building, or creation

⁷³ See ANNEX III, p.177 et seq. - PTA Treaty (Extracts).

of a standard free trade area."⁷⁴

Although the objectives and strategies of PTA and SADCC are different, the effects of their policies tend to coincide. In fact, the promotion of popular welfare or the raising of standards of living of the peoples in both regions, as well as the contribution to the development of the African Continent, are likely to be the common ultimate goals.

2 - THE TRANSPORT AND COMMUNICATIONS AREA

According to Article 3, paragraph 4, subparagraph a) of the PTA Treaty, the Member States undertake by the way of the Protocols annexed to the Treaty to, among others,:

.....

"IV - Foster such cooperation among themselves in the field of transport and communications as would facilitate trade in goods and services;

VII - Promulgate regulations for facilitating transit trade within the Preferential Trade Area."

.....

The Protocol on Transport and Communications constitutes the Annex VII and deals with all modes of transport. Annex V is related to the Protocol on Transit Trade and Transit Facilities. The Protocol on Transport and Communications was established in accordance with Article 23 of the Treaty. It

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See: SADCC - 2 - MAPUTO - The proceedings of the Second Southern African Development Coordination Conference, edited by Aloysius Kgarebe - SADCC Liaison Committee, 1981 - p.158.

consists of a preamble and 17 articles. By this Protocol "The Member States undertake to evolve coordinated and complementary transport and communications systems and policies to improve and expand their existing transport and communications links and to establish new ones as a means of furthering the physical cohesion of the Member States and the promotion of greater movement of persons, goods, and services within the Preferential Trade Area, and to this end the Member States shall take all necessary steps to give effect to this Protocol." These are the objectives and the commitment of PTA members set forth in Article 2 of the Protocol.

Articles 3,4,6,7, and 8 deal with Road Transport, Railway Transport, Maritime Transport and Ports, Inland Waterway Transport and Pipeline Transport, respectively. Article 9 deals with Freight Booking Centres, Article 10 refers to multi-modal Transport. Articles 11,12,13, and 14 are respectively related to meteorological services, postal services, telecommunications, and radio and television. General provisions such as the harmonisation and maximum use of programmes within the existing institutions for the training of personnel in the fields of transport and communications in the Member States, the exchange of information on new technical developments in all modes of transport and communications, and the adoption of all

necessary measures to prohibit the transportation of those products, mail, and merchandise that are considered illegal in another Member States, are dealt with in Article 15. Article 16 indicates the tasks of the Transport and Communications Committee for Eastern and Southern African States. Article 17 refers to the prerogative of the Council to make regulations in order to better carry out the provisions of the Protocol.

In respect to Air Transport, Article 5 states that the Member States shall:

- a) Standardise their airport facilities and civil aviation rules and regulations by implementing the provisions of the Chicago Convention on International Civil Aviation, with particular reference to Annex 9 thereof;
- b) Coordinate the flight schedules of their designated airlines;
- c) develop, maintain and coordinate their navigational, communications and meteorological facilities for the provision of safe air navigation;
- d) agree to grant preferential treatment to each other in the granting of air traffic rights and other facilities with a view to increasing the efficiency and profitability of their designated airlines;
- e) grant each other preferential treatment in the use of maintenance and overhaul facilities and other services for aircraft, ground equipment and other facilities;
- f) agree to charge the same rates and apply the same rules and regulations relating to scheduled air transport services among themselves;

g) agree to allocate space on board the aircraft of their designated airlines for goods consigned to or from the territories of other Member States;

h) take measures directed towards aircraft standardization including cooperation in the preparation of technical specifications for the type of aircraft to be operated.

The Protocol on Transit Trade and Transit Facilities, established according to Article 19 of the PTA Treaty, deals with the regulations for facilitating transit trade within the Preferential Trade Area. These regulations are based on international conventions or agreements dealing with the modes of transport in question. That is why the preamble refers, in respect to air transport, to the International Air Services Transit Agreement reached at Chicago on 7 December 1944. In addition to the Preamble, the Protocol consists of 12 Articles. Article 2 of the Protocol, General Provisions, states that:

"1- The member States undertake to grant all transitors and transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose when coming from:

- a) or bound for other Member States, or
- b) third countries and bound for other member States; or
- c) other Member States and bound for third countries.

2- Notwithstanding the provisions of paragraph 1 of this Article, any Member State may, if it deems it necessary, prohibit, restrict or otherwise control the entry of certain persons, mail, merchandise or means of transport from any country for the protection of public morality, safety, health or hygiene, or animal or plant health, or in the public interest.

3- The Member States undertake not to levy any import or export duties on the transit traffic referred to in paragraph 1 of this article.

4- For the purpose of this Protocol the Member States undertake to ensure that there shall be no discrimination in the treatment of persons, mail, merchandise and means of transport coming from or bound to the Member States, and that rates and tariffs for the use of their facilities by other Member States shall not be less favourable than those accorded to their own traffic.

Article 3. Under the heading "scope of application", the conditions to be fulfilled for the use of the freedom indicated in Article 1 are established. It is worth mentioning that Article 3(3) states that:

"The provisions of this Protocol shall apply to transit goods carried by whatever means of transport, except that in the case of air transport, the aircraft in transit shall be exempted from operation of these rules but the goods, including baggage, shall be subject to the provisions of this Protocol".

As in the previous Protocol, the PTA Council has the power to make regulations to better carry out the provisions of the Protocol on Transit Trade and Transit facilities.

The objectives set forth in the Protocols above may also be attributable, mutatis mutandis, to SADCC. However, this organisation emphasises, in the civil aviation area, airline schedule coordination so that movement within the region is practicable, and has dedicated enormous efforts to build, develop, and maintain aeronautical infrastructures such as international airports with regional impact, navigational and

communications facilities, inter alia. The exchange of traffic rights, as dealt with in the standard text for bilateral air transport agreements between SADCC States, above P.77 et seq., gives an indication on the way it deals with this question.

Therefore, the difference seems to lie in the perspective. While PTA deals with civil aviation matters, mainly with air transport, aiming at facilitating trade among its members, SADCC's concern in respect to intra-regional movement is based on the implied need to build infrastructures, install equipment, and maintain both, aiming at reducing dependence, particularly on the Republic of South Africa, and fostering integrated regional development.

3 - THE PTA INSTITUTIONS

The PTA institutions as laid down in Article 5 of the Treaty are the following:

- "a) the Authority;
- b) The Council of Ministers;
- c) The Secretariat;
- d) The Tribunal; and
- e) The Commission, the Committees and such other technical and specialised bodies as may⁷⁵ be established or provided for by the Treaty."

⁷⁵ See Annex III, p.176 - PTA Treaty (Extracts)

a) The Authority

The Authority's composition and functions, as well as the way it makes its decisions is similar to the SADCC Summit.

b) The Council of Ministers

The Council of Ministers consists of such ministers as may be designated by each member state. The most important functions of the Council are the supervision of the activities of PTA, making recommendations to the Authority on matters of policy aimed at efficient and harmonious development and functioning of PTA, and giving directions to all other subordinate institutions of the organisation. The Council takes its decisions by consensus, in absence of which the matter is referred to the Authority for its decision. The functions and composition of the PTA Council are similar to those in SADCC. However, the ministers designated for the SADCC Council are those responsible for economic affairs in their own governments.⁷⁸ More peculiar still, is the scope of powers and functions of the SADCC Council. There is an indication of its deeper involvement in running the organisation. In fact, the Council adopts the work programme for SADCC and designates a member state to coordinate activities in specified areas. It convenes annual consultative meetings with cooperating Governments and Agencies and may

⁷⁸ See: Supra footnote 10, Chapter I p.35

appoint, at its discretion, ministerial committees for programmes in functional areas. Particular attention has to be paid to the annual consultative meetings, the preferred tool for cooperation between SADCC and its international partners. Each year, the nine SADCC member states meet with their international cooperating partners to discuss their programme of cooperation for development. These meetings are attended by dozens of governments and agencies and the number of participants easily reaches a minimum of three hundred.⁷⁷

These meetings definitely constitute an opportunity to assess the level of development sought by SADCC states, as they "provide a mechanism for surveying results, evaluating performance, identifying strengths and weaknesses, and agreeing on future plan"⁷⁸

c) The Secretariat

The PTA secretariat is established according to Article 9(1) of the Treaty. It is headed by a Secretary-General,

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As an example the annual consultative meetings of 1986 and 1987 were attended, in addition to the nine SADCC States and the three Southern African Liberation Movements, by 38 cooperating governments and 25 cooperating international agencies totalling 456 participants, and by 31 cooperating governments and 18 cooperating international agencies totalling 442 participants respectively. See SADCC Gaborone and SADCC Harare - Proceedings of the Annual Consultative Conferences: Communiques and Appendices.

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See Annex I, p. 136 - the "Lusaka Declaration"

appointed by the Authority to serve in such office for a term of four years, eligible for reappointment for a further period of four years (Article 9(2)). The Secretary-General is the principal executive of the P.T.A.. The existence of other staff of the Secretariat is determined by the Council. This staff is to be recruited with regard, subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, to the desirability of maintaining an equitable distribution of appointments to such offices among citizens of all the member states (Article 9(5)).

The international character of the Secretary-General and the staff of the Secretariat is dealt with in Article 9(6(1,2)). Article 9(7) specifies the functions of the Secretary-General. It is worth mentioning the power assigned to him in Article 9(7e):

"On his own initiative or as may be assigned to him by the Authority or the Council, [he] may undertake such work and studies and perform such services as relate to the aims of the Preferential Trade Area and to the implementation of the provisions of this Treaty."

This is a clear indication that the PTA Secretary-General is vested with wider powers.

The SADCC Secretariat has an administrative head: the Executive Secretary. The Summit appoints the Executive Secretary as well as his Deputy Secretary. The SADCC

Secretariat is conceived as a small servicing unit and it is not intended to be the nucleus of an elaborate centralised structure, embracing cooperation in all sections. General servicing and liaison with SADCC institutions, coordination of the execution of the tasks of SADCC, and the custodianship of SADCC property are its most important functions. In addition, representation and projection of SADCC is its peculiar role. Therefore, emphasis has to be placed on coordination and general servicing. Be that as it may, the role of SADCC's Secretariat is evolutionary,⁷⁹ as that of the other bodies are.⁸⁰

d) Tribunal of the Preferential Trade Area

Article 10 of the Treaty sets up the PTA Tribunal. Its objective is to ensure the proper application or interpretation of the provisions of the Treaty and adjudicate upon disputes as may be referred to it in the event of failure

⁷⁹ See: SADCC = MASERU, 1983. The Proceedings of the Southern African Development Coordination Conference held in Maseru January 1983, p.44

⁸⁰ As an example, in June 1988 the Final Report of the Study of the Organisation, Management and Staffing of the SATCC was completed. The objective is to reorganise SATCC in order for it to be capable of fulfilling its future role in the operational areas of transport and telecommunications, as the phase of building physical infrastructures is coming to an end. Therefore, the SATCC Convention is expected to be amended accordingly. (Source: information from SATCC).

to settle such disputes by agreement between the parties concerned.⁸¹

SADCC has no such institution. For settlement of any disputes arising from the interpretation or application of the Memorandum of Understanding, which cannot be settled by negotiation, conciliation, or other means, such disputes may be referred to the Summit by any party to the dispute for decision. The decision of the Summit is final and binding.⁸² In the case of disputes related to the Convention on the Establishment of the SATCC, such disputes may be referred to the Council of Ministers by any party to the dispute for decision. The decision of the Council of Ministers is final and binding, unless overruled by the Summit.⁸³

e) The Intergovernmental Commission and Technical Committees

Article 11 of the Treaty refers to the establishment at such times as the Council may decide, as institutions of the Preferential Trade Area, of the following Commission and

⁸¹ See: Article 40 of the PTA Treaty for the procedure for the settlement of disputes.

⁸² See: Article XV of the Memorandum of Understanding, p.144

⁸³ See: Article IX of the Convention on the establishment of SATCC. p.151

Committees:

- the Intergovernmental Commission of Experts;
- the Customs and Trade Committee;
- the Clearing and Payments Committee;
- the Committee on Agricultural Cooperation;
- the Committee on Industrial Cooperation;
- the Transport and Communications Committee;
- the Committee on Botswana, Lesotho and Swaziland.

This enumeration is not exhaustive, as other committees may be established by the Authority on the recommendation of the Council (Article 11(2)). The staffing of the Commission or a committee other than the Clearing and Payment Committees consists of representatives designated by the member states to serve on the Commission or a committee. Such representatives may be assisted by advisers (Article 11(3)). The Commission or a committee may establish sub-committees as it may deem necessary for the purpose of discharging its functions, and it may specify the composition of such sub-committees. (Article 11(4))

The Intergovernmental Commission of Experts seems to concentrate important functions of supervision of the implementation of the provisions of the Treaty: investigation through the Secretary-General, on request by a member-state;

submission of reports and recommendations to the Council either on its own or upon the request of the Council concerning the implementation of the provisions of the Treaty, inter alia, (Article 11(5(a-d))). It is obvious that PTA's main organisational trend is toward centralisation, which implies an elaborate structure embracing all aspects of the organization.

SADCC strategy in this respect can be summarized as follows: it has a standing committee of officials responsible to the Council of Ministers. The Standing Committee meets at least once a year. The Council of Ministers may appoint sub-committees of officials for programmes in functional areas, answerable to the Standing Committee.

SADCC also has two sectoral commissions: the SATCC and SACCAR. As has already been noted above, the Summit may establish other commissions for programmes in functional areas. The main feature of the SADCC sectoral commissions lies in the fact that they are located in the country which has the responsibility for the sector involved. That is the case of SATCC located in Maputo (Mozambique), and SACCAR located in Gaborone (Botswana). In addition, they are established by a convention or other legal instrument and have

their own structures and rules. The decentralising trend of SADCC is thus demonstrated.

4- OTHER PTA FEATURES

a) THE EASTERN AND SOUTHERN AFRICAN TRADE AND DEVELOPMENT BANK

Chapter Nine of the Treaty deals with the establishment, objectives, charter and membership of the Eastern and Southern African Trade and Development Bank. Taking into account the strategy of the organisation-establishment of real and dynamic commercial links - to foster the development of its members⁸⁴, the provision on the creation of PTA Bank is of paramount importance.

b) FINANCIAL PROVISIONS

Chapter Ten deals with financial provisions, namely the budget of the Preferential Trade Area, contributions by member states, Board of Auditors and accounts of PTA, and financial regulations. It is worth mentioning the way the PTA budget is constructed (Article 36). It is based on weights assigned to the criteria of Gross Domestic Product, Per Capita National Income, and Intra-Preferential Trade Area export of the member

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See: ZONE D'Echanges Preferentiels - Brochure Supplement au numero special du Bulletin du commerce Africain consacre a la Zone D'Echanges Preferentiel (ZEP) qui avait ete publie en Fevrier 1982 - p.37

states. To meet extraordinary expenditures of the PTA there shall be special budgets.

c) GENERAL AND TRANSITIONAL PROVISIONS

In this respect it is worth mentioning the relations with other regional organisations (Article 43). PTA member states may be members of other regional or sub-regional associations. There is a need for coordination of activities with those associations. The PTA status - international legal personality represented by the Secretary-General; its legal capacity, including the power to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each member state, are expressly conferred (Article 44-1,2,a-b). Privileges and immunities are also recognised (Article 44(4,5)). The membership or association with other countries (Article 46) is open to any immediate neighbour of a member state. The amendments to the Treaty are to be adopted by the Authority by consensus (Article 47). Finally, any withdrawal has effect one year after written notice, during which period a member state desiring to withdraw shall remain liable for the discharge of its obligations under the Treaty.

SADCC in this respect can be characterised as follows:

According to the Lusaka Declaration, "as economic cooperation develops, a Southern African Fund will be created...its scope would be subsequently broadened and it might prove desirable to create a separate regional development Bank."⁸⁵

SADCC's policy in financial matters is different from that of PTA. First, there are many budgets. The Secretariat has its own budget (Article VII of the Memorandum of Understanding) as the sectoral commissions do (Article V of the SATCC Convention). Secondly, the apportionment in the case of the budget of the Secretariat is according to a proportion to be agreed upon by the Council (Article VII(1) of the Memorandum of Understanding). On the other hand, SADCC Member States contribute on an equal basis to the budget of SATCC (Article V(3) of the Convention). In both cases no exception is considered as in the case of PTA - Article 36 of the Treaty. The international legal personality of SADCC is not expressly affirmed as is the case of legal capacity, immunities and privileges. However, it can be deduced from the "indicia".⁸⁶

⁸⁵ See Annex I-The "Lusaka Declaration" pp. 134 et 135

⁸⁶ See supra Chapter I-D, p.51 et seq.

Membership in SADCC is limited to Southern African majority-ruled states. SADCC is also open to cooperation with other organisations. Its members may belong to other organisations, and should be encouraged to be members of these organisations in all other cases in which the object of cooperation does not involve reduction of dependence on the Republic of South Africa.

The amendments of SADCC instruments - the Memorandum of Understanding and the SATCC Convention are the responsibility of the Summit and the Council respectively. They are amended by consensus.

In case of withdrawal of a member state, its obligations under the Memorandum and the Convention shall, to the extent necessary to fulfil such obligations, survive the termination of membership by such state.

C) THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES - ECOWAS

1 - AN OVERVIEW

The Economic Community of West African States - ECOWAS - was established by a treaty signed at Lagos, Nigeria on March 28, 1975.⁸⁷ Although differences may be found when comparing ECOWAS to PTA, their objectives, organs, and methodology are

⁸⁷ See ECOWAS Treaty. See also S.A. Akintan op.cit p.181

very similar. Therefore, what has been said about PTA in relation to SADCC can, grosso modo, apply to ECOWAS. In fact, this organisation defines itself as an Economic Community, but its objectives are to be achieved in stages.⁸⁸ PTA defines itself as a preferential trade area, but its objectives go far beyond trade: it intends to establish a common market and eventually an economic community.⁸⁹ The nature of ECOWAS embraces all economic activities: trade, industry, agriculture, customs, immigration, monetary and payment, transport and communications, energy, social and cultural affairs. These areas are grouped under the following sub-headings:

- a) Trade, Customs and Immigration
- b) Monetary and Financial Matters
- c) Industrial Development and Harmonisation
- d) Agriculture and Natural Resources
- e) Transport and Communications
- f) Energy and Mineral Resources
- g) Social and Cultural Matters⁹⁰

With the exception of social and cultural affairs, which are not expressly identified, all other economic activities

⁸⁸ Article 2(2), ECOWAS Treaty

⁸⁹ Article 2(1), PTA Treaty.

⁹⁰ Article 9, ECOWAS Treaty.

are matters of cooperation among PTA members by way of the Protocols annexed to the Treaty. Given this background, the comparative analysis in relation to ECOWAS will be confined to the transport and communications area, with emphasis on civil aviation.

2- COOPERATION IN TRANSPORT AND COMMUNICATION

In the transport and communications field, the bases for common policies are the improvement and expansion of the existing transport and communications links, and the establishment of new ones.⁹¹ All modes of transport are contemplated. In the particular case of air transport, Article 44 states that:

"Member States shall use their best endeavour to bring about the merger of their national airlines in order to promote efficiency and profitability in the air transportation of passengers and goods within the Community by aircraft owned by the Governments of the Member States and/or their citizens. To this end, they shall coordinate the training of their nationals and policies in air transport and standardize their equipment."

This article contains the most advanced project in terms of air transport regional policy. At the time the Treaty was signed, even the deregulation phenomenon, which gave rise to, or at least boosted the merger policy in air transport worldwide, was under discussion. For this reason, the sponsors of

⁹¹ Article 40, ECOWAS Treaty.

the merger proposal can be considered as visionaries.

Be that as it may, it is somewhat ironic that ECOWAS has not yet been successful in merging the national airlines of its members thirteen years after its creation. So far it is reported that ECOWAS has begun to sensitize airlines in the subregion to the need for cooperation and coordination of strategies, and that the measures taken in this respect are making good progress and additional measures will soon be embarked upon.⁹² Meanwhile, the merger phenomenon is already a reality in other areas, especially in North America and Europe.

D - CONCLUSION

From the comparison above, SADCC's features become clearer. Its organisation is flexible. Its institutions are decentralised and evolutionary; they are conceived to fit each stage of integrated regional development and cooperation. The allocation of responsibility for the coordination of activities in different sectors to different member states keeps all of them involved in running the organisation. SADCC

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See: Special Conference of African Ministers in charge of Civil Aviation. Yamoussoukro (Cote d'Ivoire) 3-7 October 1988 - (United Nations - Economic and Social Council. Economic Commission for Africa) Doc. 9- Merging of Airlines, p.7

is also characterised by its perspective in relation to economic liberation and its openness in respect to its cooperating partners. Thus it has been successful in achieving many of its objectives.

C H A P T E R I V

THE TRENDS OF CIVIL AVIATION IN SADCC COUNTRIES

A - AN OVERALL ASSESSMENT

SADCC's ultimate goal of promoting popular welfare, justice and peace in Southern Africa is undoubtedly an ambitious and long-term one. That is particularly true when considering that SADCC's understanding of popular welfare is to be the result of "relating the use of resources to the needs of ordinary men and women; to the needs of the people"⁹³ For this purpose, policies aimed at economic liberation and integrated development of the national economies have been conceived. They have also resulted in the definition of the proximate objectives of this organisation⁹⁴, and the correspondent strategy of concrete programmes and projects with duly phased priorities.

The context within which SADCC is evolving is adverse. It is characterized by the previously imposed incorporation into the colonial structures centering in general in the Republic of South Africa.⁹⁵ The transport and communications

⁹³ See SADCC - 2 MAPUTO, 1981, op.cit p.134
(speech by the Senator Bernard Chidzero)

⁹⁴ See supra p. 28 et seq., SADCC objectives

⁹⁵ Ibidem

area is an obvious manifestation of these imposed policies.⁹⁶ That is why this area was given high priority in the SADCC strategy of reducing its dependence on South Africa and of boosting integrated regional development. SADCC is a regional organisation "sui generis". It is characterized by pragmatism which has influenced its conception and "modus operandi." SADCC has thus developed special features. It is a voluntary association of independent states bound together by a perceived common interest in strengthening their own national development. Therefore, the nationalism of, and the diversity among its members do not necessarily constitute obstacles to integrated regional development. Moreover, there is political involvement of the member-states at the highest level. Thus, the SADCC governments are directly involved in achieving practical results. Furthermore, the organisation cultivates decentralisation. That is why its institutional structures are established after small units provided by sectoral coordinating states have created practical programmes. They are therefore operative, and there is no need for delegation of authority, as is the case for supranational structures. Besides these features, SADCC is characterized by its openness in relation to the international community and by its

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See supra: CHAPTER I - The Transport and Communications area - p.31

engagement in presenting a new model for international cooperation. For example, in the NORDIC/SADCC initiative, the parties aim inter alia at developing joint programmes to improve the investment climate in the SADCC region, strengthen the region's financial, industrial and commercial institutions, improve the transfer of technology and management expertise to the region, and to improve inter and intra-regional trade.⁹⁷

Therefore, SADCC is becoming a new model for integrated regional development, inter-regional relationships, and international cooperation. These features and their growing level definitely constitute departures from the classical model of regional international organisations. They have a direct influence on the development of civil aviation, whose trends are the object of this thesis.

B - SPECIAL CONSIDERATION IN RESPECT TO THE REPUBLIC OF SOUTH AFRICA

The reasons why SADCC's economic liberation by necessity involves reducing the dependence of its members on the Republic of South Africa have been sufficiently demonstrated.

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See Annex IV: Joint Declaration on Expanded Economic and Cultural Cooperation Between Nordic Countries and the SADCC Member-States. p.185

It is also obvious that the Southern African peoples' struggle for liberation from an externally-imposed and adverse economic order is complicated by the power and the racism of the regime in that country. Furthermore, the importance of the transport and communications area in this struggle has already been singled out. In fact, it is said that "no serious degree of economic integration can be achieved within the region as a whole until it becomes significantly easier, faster and cheaper to move messages, persons and goods."⁸⁸

In relation to the civil aviation sector, SADCC air links with the Republic of South Africa have to be analysed under two perspectives: individual links and transfer links. In the first case, they reflect the economic connections which exist between them; in the second case, they are the result of the lack of infrastructures, of means of transport and of coordinated systems of scheduling and transfer. SADCC's success in building infrastructures, in acquiring means of transport, and in coordinating the system of scheduling and transfer has reduced the need to travel via South Africa, and has contributed to the development of a new regional route network.⁸⁹ The air links which result from individual

⁸⁸ See Amon J. Nsekela op.cit p.71

⁸⁹ See figures supra p. 89(d) et seq.

economic links will decrease in accordance with the reduction of these economic links inasmuch as they no longer represent economic dependence.

It is noteworthy that this trend is irreversible and goes beyond the present status of the Republic of South Africa under the apartheid regime. As Julius Nyerere, the former President of the United Republic of Tanzania, declared in Harare in 1981,

"our purposes are not simply greater independence from South Africa. If South Africa's apartheid rule ended tomorrow, there would be need for the States of Southern Africa to cooperate, to coordinate their transport systems, to fight foot and mouth disease together, to rationalise their industrial development..."

C - FORGING LINKS TO CREATE A GENUINE AND EQUITABLE REGIONAL INTEGRATION

The "civil aviation" component in "forging links to create a genuine and equitable regional integration" has been sufficiently discussed. It includes the building of a physical aeronautical infrastructure and/or its maintenance and development, the acquisition of equipment both flying and on the ground, and technical and operational coordination and cooperation; it also includes coordination in the regulatory framework.¹⁰⁰ These activities have contributed to the establishment and consolidation of the intra-regional air

¹⁰⁰ See supra CHAPTER II p.59 et seq., and pp.88 et 89

transport policy which is characterized by complementarity and mutual benefit. A judicious balance of interests has created closer links which will determine and facilitate moves outside the region toward relations with non-SADCC countries. Thus, the genuine and equitable regional integration sought by SADCC has to do with inter-regional and international cooperation. SADCC is a regional organisation according to the definition of international regional organisations discussed above, p. 51. However, under certain classifications in which an international organisation embraces the whole world, thus being called global, an international regional organisation may well include an entire continent. In the case of Africa, SADCC will instead be a sub-regional international organisation. This happens under the United Nations System and the International Civil Aviation Organisation classification, according to which the Economic Commission for Africa (ECA) and the AFRICAN CIVIL AVIATION COMMISSION (AFCAC) respectively embrace the whole African continent, which, therefore becomes a region. With this in mind, the analysis of SADCC civil aviation in respect to other states and international regional organisations is presented according to two perspectives: non-SADCC African states or regions, and non-SADCC and non-African states or regions. In the first case, the relations have been influenced by the continental air transport policy under the auspices of AFCAC. In its

essence, this policy urges African states to cultivate inter-state and/or inter-subregional complementarity and cooperation toward continental goals as defined and recommended from time to time by AFCAC and other African organisations.¹⁰¹ In the second case, relations are likely to be influenced by the principles of cooperation and mutual benefit which characterize SADCC's international cooperation. It is worth noting the spirit embodied in SADCC cooperation principles as summarised by the late President of the People's Republic of Mozambique, Marshal Samora Moises Machel:

"The struggle to apply the natural resources in our zone for the benefit of our peoples is not directed against any country or group of countries. It does not conflict with any other existing regional or inter-regional institutions...We count on the participation of all countries and organisations, based on mutually advantageous cooperation and non-interference with regard to each people's right to its independent development."¹⁰²

D - THE CONTOURS OF A SADCC REGIONAL AIRSPACE AND REGIONAL AIRLINE

The premises of a SADCC regional airspace have already been identified. They include the realisation, step by step,

¹⁰¹ See AFCAC 10. Recommendation S10-11: Contribution of African States, 19. See also UNDP/ACAO Project RAF/74/021: Studies to determine the contribution that civil aviation can make to the development of the national economies of African States, Final Report, March 1977, p.112 et seq.

¹⁰² See SADCC 2 - MAPUTO op.cit p.25

of the objectives assigned to SATCC adapted to Civil Aviation. Groups and sub-groups to deal with all aspects of civil aviation have been created.¹⁰³ In addition, concrete programmes and projects, as well as the results achieved,¹⁰⁴ consolidate the idea of a SADCC regional airspace.

On the other hand, technical and operational cooperation, which includes the joint utilisation of maintenance facilities, the standardisation of the SADCC aircraft fleet, and the coordination of the national airlines flight schedules seem to give rise to the expectation of a SADCC regional airline. In both cases we cannot lose sight of the principles of SADCC. A regional airspace may not necessarily be under a regional aeronautical authority to which the member states delegate part or all of their sovereign rights in relation to the airspace over their territories. It may simply represent a high and intense level of coordination of the national aeronautical authorities, so that movement within the region remains as if it were under one single regional aeronautical authority. For the same reason, a regional airline may vary in its materialisation. In the proposed Standard Text for Bilateral Air Transport Agreements between

¹⁰³ See supra p.71 et seq.

¹⁰⁴ See supra p.88 et 89

SADCC states, Article 4(2) refers to the possibility of the existence, in the future, of a Joint Air Transport Organisation, on the one hand, while SATCC itself has already approved the project of Joint Utilization of Widebodies, now undergoing the necessary studies, on the other hand. The achievement of airline integration in one or another of its different forms according to the characterization of the Declaration of Yamoussoukro on a new African Air Transport Policy,¹⁰⁵ is not to be set aside. It has only to be in accordance with the stage of SADCC's overall development, even

¹⁰⁵ In the Declaration of Yamoussoukro on a New African Air Transport Policy, 6-7 October 1988, Cote d'Ivoire, the African ministers responsible for Civil Aviation committed themselves, inter alia, to make all necessary efforts to achieve the integration of African airline, within a period of eight years.

The process towards the total integration is to be carried out in three phases. During Phase III, their governments agree to achieve the complete integration of airlines, especially according to the following schemes:

- a) Consortium - which implies a close collaboration of the members without creating a separate legal personality;
- b) Joint owned airlines - the partners may create a separate legal entity to manage the affairs of the partners. Under this arrangement the partners merge their operations while maintaining their individuality;
- c) Merger - the member airlines combine to form a single entity replacing the separate airline that existed before the merger.

though it may happen that civil aviation is given a pioneering role in that integrated regional development. The development of national airlines is determined by national civil aviation policies whose classical objectives are national prestige, national defense needs, contribution to national unity, communications and development of interior zones, humanitarian, national economy. In a nutshell, its purpose is to serve national interests, and national policy.¹⁰⁶ A regional airline, whatever its form, will be based on the needs and imperatives of integrated regional development with due regard to what is happening in civil aviation worldwide: the changes being wrought by deregulation.

E - CONCLUSION

The Transport and Communications area was considered of primary importance in the process of economic liberation sought by SADCC and has therefore been given high priority. SATCC was created in order to coordinate regional cooperation in this field. The civil aviation sector is an integral part of transport and communications. It embodies the principles governing SADCC and SATCC. Some of these principles are

¹⁰⁶ For further information see:
 Betsy Gidwitz op.cit. p. 19 et seq. O.J. Lissitzyn
op.cit p.56 et seq.; I.VLASIC - lecture on Public
 International Air Law delivered at the Institute of
 Air and Space Law on 14.10.87

absolute equality, respect for individual sovereignty, and mutual benefit. They have been included in the SATCC Convention, and they constitute the basis for the cooperation to be fostered and cultivated in the field of transport and communications. They have strengthened the growth of individual countries in the civil aviation sector. In fact, coordination and cooperation presuppose that each state has something to contribute and coordinate. In reaffirming these principles, the tempting leap into supranational institutions has been minimized, for the creation of supranational institutions has proven to be one of the factors for the sluggish cooperation of other regional organizations.

Summing up, one can conclude that civil aviation in SADCC countries reflects the new type of cooperation pursued by this organization, as identified in the course of this thesis. Under the SATCC framework, it has played a major role as a component of the integrated regional development. In spite of difficulties, it has also had remarkable success. The foundations for further achievements have already been laid. The question is what and when will be the next step. The answer depends on the political decisions to be taken by the MEMBER-STATES. They have to speak.

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A N N E X E S

ANNEX I - SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION:

A Declaration by the Governments of Independent States of Southern African made at LUSAKA on the 1st April 1980.

Memorandum of Understanding on The Institutions of The Southern African Development Coordination Conference.

Convention on the Establishment of The Southern Africa Transport and Communications Commission.

ANNEX II - The Proposed Standard Text for Bilateral Air Transport Agreement between SADCC States.

ANNEX III - PTA Treaty (Extracts)

ANNEX IV - Joint Declaration on Expanded Economic and Cultural cooperation between the Nordic Countries and the SADCC Member States.

ANNEX V - International Civil Aviation Conference. Final Act and appendices. ICAO DOC.2187: Extracts of the Convention on International Civil Aviation and the International Air Transport Agreement.

ANNEX VI - International Air Services Transit Agreement. ICAO DOC.7500. (Extracts)

Annex I

Southern Africa Toward Economic Liberation

A declaration by The Governments
of Independent States of Southern
Africa made at Lusaka on the
1st april 1980

Memorandum of understanding on
The Institutions of The Southern
African Development
Co-ordination Conference

Convention on the establishment
of The Southern Africa Transport
and Communications Commission

SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION

**A DECLARATION BY THE GOVERNMENTS OF INDEPENDENT STATES OF
SOUTHERN AFRICA MADE AT LUSAKA ON THE 1ST OF APRIL, 1980**

We, the undersigned, as the Heads of Government of majority-ruled States in Southern Africa, offer this declaration to our own peoples, to the peoples and Governments of the many countries who are interested in promoting popular welfare, justice and peace in Southern Africa and to the international agencies who share this interest. In it we state our commitment to pursue policies aimed at the economic liberation and integrated development of our national economies and we call on all concerned to assist us in this high endeavour.

Dependence in Context

Southern Africa is dependent on the Republic of South Africa as a focus of transport and communications, an exporter of goods and services and as an importer of goods and cheap labour. This dependence is not a natural phenomenon nor is it simply the result of a free market economy. The nine States and one occupied territory of Southern Africa (Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe) were, in varying degrees, deliberately incorporated -- by metropolitan powers, colonial rulers and large corporations -- into the colonial and sub-colonial structures centring in general on the Republic of South Africa. The development of national economies as balanced units, let alone the welfare of the people of Southern Africa, played no part in the economic integration strategy. Not surprisingly, therefore, Southern Africa is fragmented, grossly exploited and subject to economic manipulation by outsiders. Future development must aim at the reduction of economic dependence not only on the Republic of South Africa, but also on any single external State or group of States.

Liberation: Political and Economic

While the struggle for genuine political independence has advanced and continues to advance, it is not yet complete. We, the majority-ruled States of Southern Africa, recognise our responsibilities, both as separate nation States and as a group of neighbouring majority-ruled African countries, to assist in achieving a successful culmination of our struggle.

Our urgent task now is to include economic liberation in our programmes and priorities.

In the interest of the people of our countries, it is necessary to liberate our economies from their dependence on the Republic of South Africa to overcome the imposed economic fragmentation and to coordinate our efforts toward regional and national economic development. This will be as great for Namibia as it is for all the independent States of the region.

Southern Africa is a focal point of conflict. How can it be otherwise when a racist regime holds Namibia under military occupation, grossly exploits the people and the economies of the independent states and is a major barrier to our national development? It is not the quest for liberation, but the entrenched racism, exploitation and oppression which is the cause of conflict in Southern Africa. The power behind this is in large measure economic. Economic liberation is, therefore, as vital as political freedom.

We, the majority-ruled States of Southern Africa, do not envisage the regional economic coordination as exclusive. The initiative toward economic liberation has flowed from our experience of joint action for political liberation. We envisage regional coordination as open to all genuinely independent Southern African States.

In this spirit we call on Governments, international institutions and voluntary agencies to give priority to increasing financial resources to support Southern African efforts toward economic liberation and independent economic development.

This we believe is the route to genuine interdependence and represents the best hope for a just and cooperative future for the region as a whole.

Development Objectives

The development objectives which we will pursue through coordinated action are:

1. the reduction of economic dependence, particularly, but not only, on the Republic of South Africa;
2. the forging of links to create a genuine and equitable regional integration;
3. the mobilisation of resources to promote the implementation of national, interstate and regional policies;
4. concerted action to secure international cooperation within the framework of our strategy for economic liberation.

Strategies and Priorities.

We will identify areas in which, working in harmony, we can gear national development to provide goods and services presently coming from the Republic of South Africa and weave a fabric of regional cooperation and development.

Key to this strategy is transport and communications.

The dominance of the Republic of South Africa has been reinforced and strengthened by its transport system. Without the establishment of an adequate regional transport and communications system, other areas of cooperation become impractical. The economic liberation of Namibia, following its attainment of genuine political independence, will require the creation and operation of adequate transport and communication links with its natural partners to replace the artificial ones which currently bind it to the Republic of South Africa.

We will therefore create a Southern African Transport and Communications Commission to coordinate the use of existing systems and the planning and financing of additional regional facilities.

The ports of Mozambique serve four States in the region and with the genuine independence of Zimbabwe can be developed to serve two more. Zambia uses transport facilities in five regional States. The development of Mozambican, Tanzanian and Angolan ports and the coordination of facilities more effectively to meet requirements of the land-locked States are necessarily of regional concern. Transport and Communications will be a major focus of regional action. The coordination of transport facilities to meet the needs of the land-locked States is crucial. With the attainment of genuine independence in Zimbabwe it is urgent to restore transport routes linking it to the Indian Ocean through Mozambique. Additional areas in which coordinated action will be needed include major new projects such as a possible railway from Botswana through Namibia to the Atlantic Ocean, thereby creating an alternative route to the sea for Botswana, Zambia and Zimbabwe; the coordination of airline schedules so that movement within the region is practicable; the study of existing and proposed micro-wave and ground satellite facilities to identify how they can be interlinked, possibly through the Rift Valley Station. The Commission will be located in Maputo and serviced by a small technical unit. It will coordinate transport and communication links among participating States. The Commission will seek participations of all genuinely independent States in the Southern African region. In addition, in many fields notably in transport, observer status will be open to Liberation Movements wishing to participate in anticipation of genuine independence. Similarly, in manpower development and research, the involvement of Liberation Movements is essential to amass the knowledge and train the personnel necessary once political liberation is achieved.

Regional coordination must be operational -- it must result in concrete programmes and projects. This will require both domestic and external finance. Present estimates, for example, show that in excess of US \$1.5 billion will be needed to finance urgent transport and communications projects over the next decade.

We emphasize the importance of additional resources being made available to assist efforts to coordinate regional economic development projects. In the first instance, we intend to use the Regional Transport & Communications Commission to mobilise finance for urgent projects in priority sectors by holding ad hoc pledging sessions with existing bilateral and multilateral funding agencies. As economic cooperation develops, a Southern African Development Fund will be created and research to this end is being initiated.

its scope would be subsequently broadened and it might prove desirable to create a separate regional development bank. We therefore urge the friends of Southern Africa to pledge financial support to this Fund.

Concerted Actions

Regional cooperation in the field of transport and communications is seen as crucial to economic liberation and has therefore been given the greatest attention. In other sectors, similar programmes of concerted action are envisaged.

For trade and development we recognise that many of us have existing bilateral and multilateral trade and customs arrangements. But even within these constraints we believe that there is room for substantial increases in trade among ourselves. To this end existing payment systems and customs instruments will be studied in order to build up a regional trade system based on bilaterally negotiated annual trade targets and product lists.

A majority of the people of Southern Africa are dependent on farming and animal husbandry. Their future livelihood is threatened by environmental degradation and in particular by desert encroachment as well as recurrent drought cycles. Even today few of the States of the region are self-sufficient in staple foods. Both environmental protection and food security are major challenges both nationally and regionally. We, therefore, urge that the International Centre for Research on Agriculture in the Semi-Arid Tropics (ICRISAT) set up a Southern African Regional Centre in Botswana.

We further urge the development of the existing facilities in Botswana for production of food and mouth disease vaccine to provide for the needs of all of the majority-ruled countries in Southern Africa. The spread of this disease currently threatens Angola, Botswana, Namibia, Zimbabwe, Swaziland and Mozambique. A coordinated approach to its control and elimination is urgently needed.

Likewise, we will undertake concerted projects in order to exploit natural resources, in particular those of common hydrological basins.

It is a matter of urgency to identify ways in which the coordination of research and training as well as the exchange of information can strengthen programmes to protect our environment and increase food production. In the field of food security the possibility of coordination of national reserve policies and the facilitation of interstate exchanges will receive priority attention.

We have decided to give special attention to the sharing of training and research facilities.

We have further decided to stimulate the exchange of information aimed at achieving a concerted policy in the fields of mining, industry, energy and agriculture. In particular, consultations among those States requiring petroleum products and electricity on the one hand and those with petroleum refining capacity and electricity surpluses on the other must be undertaken to achieve regional solutions.

The effort for economic development is an essential condition to free the Southern African States from the exploitative migrant labour system.

External Cooperation

We are committed to a strategy of economic liberation. It is a strategy which we believe both needs and deserves international support. Southern African regional development must be designed and implemented by Southern Africans. It will, however, be achieved more rapidly and will be more effective if development takes place within the context of global cooperation.

International bodies and States outside Southern Africa are therefore invited to cooperate in implementing programmes towards economic liberation and development in the region.

This preliminary identification of aims, strategies and sectors illustrates both the magnitude of the task facing us and some of the broad areas within which outside assistance will be welcomed.

It is envisaged that Southern African Development Coordination meetings of member Southern African States and other invited participants should be held annually. This will provide a mechanism for surveying results, evaluating performance, identifying strengths and weaknesses and agreeing on future plans. Economic liberation and development in Southern Africa cannot be attained either easily or speedily. What is therefore needed is sustained co-operation.

We view this declaration as a statement of commitment and strategy. Under-development, exploitation, crisis and conflict in Southern Africa will be overcome through economic liberation. The welfare of the peoples of Southern Africa and the development of its economies requires coordinated regional action. It is our belief that in the interest of popular welfare, justice and peace, we in Southern Africa have the right to ask and to receive practical international cooperation in our struggle for reconstruction, development and genuine interdependence. However, as with the struggle for political liberation, the fight for economic liberation is neither a mere slogan to prompt external assistance nor a course of action from which we can be deflected by external indifference. The dignity and welfare of the peoples of Southern Africa demand economic liberation and we will struggle toward that goal.

**MEMORANDUM OF UNDERSTANDING ON THE INSTITUTIONS
OF THE SOUTHERN AFRICAN DEVELOPMENT COORDINATION CONFERENCE**

[Memorandum signed in Harare on the 20th July, 1981
as amended (in Article III, para. 2) in Gaborone on the 22nd July, 1982]

The Heads of State or Government of the member States of the Southern African Development Coordination Conference (hereinafter called SADCC), namely,

The People's Republic of Angola;
The Republic of Botswana;
The Kingdom of Lesotho;
The Republic of Malawi;
The People's Republic of Mozambique;
The Kingdom of Swaziland;
The United Republic of Tanzania;
The Republic of Zambia; and
The Republic of Zimbabwe;

In pursuance of their Declaration -- SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION -- signed in Lusaka on 1st April 1980 and, in particular, the following development objectives enunciated in the said Declaration:

- a) Reduction of economic dependence, particularly, but not only, on the Republic of South Africa;
- b) The forging of links to create a genuine and equitable regional integration;
- c) The mobilisation of resources to promote the implementation of national, interstate and regional policies;
- d) Concerted action to secure international co-operation within the framework of a strategy for economic liberation:

HAVE AGREED AS FOLLOWS

ARTICLE I
INSTITUTIONS

The Institutions of SADC shall be:

- a) The Summit of Heads of State or Government (hereinafter called "the Summit")
- b) The Council of Ministers (hereinafter called "the Council")
- c) Sectoral Commissions
- d) The Standing Committee of Officials (hereinafter called "the Standing Committee")
- e) The Secretariat.

ARTICLE II
THE SUMMIT

- 1. The Summit shall consist of the Heads of State or Government of all member States, and shall be of the supreme institution of SADC and be responsible for the general direction and control of the functions of SADC and the achievement of its objectives.
- 2. The Summit shall meet at least once a year.
- 3. The Summit shall decide upon a Chairman, from among its members for an agreed period.
- 4. The decisions of the Summit shall be taken by consensus.

ARTICLE III
THE COUNCIL

- 1. Each member State shall appoint one of its Ministers to the Council which shall be responsible for the overall policy of SADC, its general coordination, the supervision of its institutions and the supervision of the execution of its programmes.
- 2. The Chairman of the Council of Ministers shall be appointed by the member State holding the Chairmanship of the Summit. The Vice-Chairman shall be elected from among members of the Council and his term of office shall be two years.
- 3. The Council shall meet at least once a year.

4. The Council shall adopt a work programme for SADC and designate a member State to coordinate activities in specified areas.
5. The Council shall convene annually consultative meetings with co-operating Governments and Agencies.
6. The Council shall report and be responsible to the Summit.
7. The Council may, at its discretion, appoint Ministerial Committees for programmes in functional areas. The Ministerial Committees shall report to the Council.
8. The decisions of the Council shall be taken by consensus.

ARTICLE IV

SECTORAL COMMISSIONS

1. In addition to the Southern Africa Transport and Communications Commission (SATCC) the Summit may establish other Commissions for programmes in functional areas.
2. Each such Commission shall be governed by a Convention to be adopted by the Council and ratified or acceded to by SADC member States.
3. Commissions shall report to the Council.

ARTICLE V

STANDING COMMITTEE OF OFFICIALS

1. There shall be a Standing Committee of officials which shall be responsible to the Council.
2. The Chairman and Vice-Chairman of the Standing Committee shall be appointed by the member State holding the Chairmanship and the Vice-Chairmanship respectively, of the Council.
3. The Standing Committee shall meet at least once a year.
4. The Standing Committee shall report to the Council.
5. The Council may appoint sub-Committees of officials for programmes in functional areas and may designate SADC Member Governments to convene meetings and coordinate the work of such sub-Committees. Every such sub-committee shall report to the Standing Committee.
6. The decisions of the Standing Committee shall be by consensus.

ARTICLE VITHE SECRETARIAT

1. There shall be established a Secretariat.
2. The administrative head of the Secretariat shall be the Executive Secretary.
3. The Executive Secretary and his Deputy shall be appointed by the Summit on the recommendation of the Council.
4. The Executive Secretary shall be responsible to the Council for the following functions:
 - a) General servicing of and liaison with SADCC institutions.
 - b) Coordination of the execution of the tasks of SADCC.
 - c) Custodianship of SADCC property.
 - d) Such other functions as may from time to time be approved by the Council.
5. The Executive Secretary shall be responsible to, and report to, the Council and shall provide to the Council an Annual Report on the activities of SADCC.
6. The Secretariat shall have such other staff as may from time to time be appointed by the Council. The Council may authorise the Executive Secretary to appoint staff to specific posts.
7. Staff regulations shall be approved by the Council.

ARTICLE VIITHE BUDGET

1. The operational costs of the Secretariat shall be borne by member States in proportions to be agreed upon by the Council.
2. The Executive Secretary shall prepare and submit a budget to the Council not less than three months before the beginning of the financial year. The Council shall consider and approve estimates of revenue and expenditure before the beginning of the financial year.
3. Financial regulations shall be approved by the Council.
4. The financial year of the Secretariat shall be from July 1 to June 30.

ARTICLE VIIIEXTERNAL AUDIT

The Council shall appoint external auditors and shall fix their fees and remuneration at the beginning of each financial year.

ARTICLE IXLEGAL CAPACITY

SAOCC shall have in the territory of each member State, to the extent consistent with its laws, such legal capacity as may be necessary for the exercise of its functions under this Memorandum of Understanding.

ARTICLE XIMMUNITIES AND PRIVILEGES

The Executive Secretary and his Deputy, and such other staff of the Secretariat as may be determined by the Council, shall enjoy in the territories of member States, such privileges and immunities as are necessary for the fulfilment of their functions.

ARTICLE XIINTERNATIONAL CHARACTER OF THE SECRETARIAT

1. In the performance of their duties, the Executive Secretary and staff shall not seek or receive instructions from any member State or from any authority external to SAOCC. They shall refrain from any action incompatible with their position as international officials responsible only to SAOCC.
2. Each member State shall respect the exclusively international character of the responsibilities of the Executive Secretary and staff and shall not seek to influence them in the discharge of their functions.

ARTICLE XIIQUORUM

The quorum for all meetings of SADC Institutions, other than the Secretariat, shall be two-thirds of the member States.

ARTICLE XIIISIGNATURE AND ENTRY INTO FORCE

1. This Memorandum shall enter into force upon signature by all Heads of State or Government.
2. States not listed in the Preamble to this Memorandum may become members of SADC by acceding to this Memorandum. Instruments of accession shall, subject to paragraph 4 of this Article, be deposited with the Secretariat.
3. Membership of SADC shall not be subject to any reservations.
4. Any State intending to become a member of SADC but not listed in the Preamble to this Memorandum may, at any time after entry into force of this Memorandum, notify the Chairman of the Summit of its desire to become a member. Admission of a new state to SADC shall be by consensus of the member States and the accession of the new member shall take effect from the date on which its instrument of accession is received by the Secretariat.

ARTICLE XIVAMENDMENTS

1. The Summit may amend this Memorandum by consensus.
2. Proposals for the amendment of this Memorandum may be made by any member State to the Executive Secretary for preliminary consideration by the Council. Provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all member States have been duly notified of it and a period of three months has elapsed.

ARTICLE XV**SETTLEMENT OF DISPUTES**

Any dispute arising from the interpretation or application of this Memorandum which cannot be settled by negotiation, conciliation or other means, may be referred to the Summit by any party to the dispute for decision. The decision of the Summit shall be final and binding.

ARTICLE XVI**OBLIGATIONS**

The obligations assumed by member States under this Memorandum shall, to the extent necessary to fulfil such obligations, survive the termination of membership by any state.

ARTICLE XVII**PROCEDURE**

The Institutions of SADC shall determine their respective rules of procedure.

**CONVENTION ON THE ESTABLISHMENT OF THE SOUTHERN AFRICA
TRANSPORT AND COMMUNICATIONS COMMISSION**
[Approved by the SADC Summit in Harare in July, 1981]

PREAMBLE

The Governments of Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe -- hereinafter referred to as "member States":

BEARING in mind the aims and spirit of their Declaration -- SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION -- signed in Lusaka on the 1st of April 1980;

RECOGNISING the need to:

- a) reduce economic dependence, particularly, but not only, on the Republic of South Africa;
- b) forge links to create genuine and equitable regional integration;
- c) mobilise resources to promote the implementation of national, inter-state and regional policies;
- d) take concerted actions to secure international cooperation within the framework of member States' strategy for economic liberation;
- e) promote rational and integrated utilisation of the various systems existing in the region;
- f) promote new concrete development programmes and projects and the modernisation of existing systems;
- g) seek participation of the independent states in the region:

DESIROUS of fostering and cultivating cooperation in the field of transport and communications based on absolute equality, respect for individual sovereignty and mutual benefit with the aim of raising the living standards of their people as rapidly as possible; and

DESIROUS of reducing the state of economic dependence in which they have found themselves;

HEREBY agree as follows:

ARTICLE ITHE COMMISSION

1. There is hereby established a Southern Africa Transport and Communications Commission (hereinafter referred to as "the Commission").
2. The Commission shall consist of three organs, namely:
 - a) a Committee of Ministers;
 - b) a Coordinating Committee;
 - c) a Technical Unit.

ARTICLE IIOBJECTIVES OF THE COMMISSION

1. The objectives of the Commission are:
 - a) to provide coordination in overcoming transport and communications problems in the region;
 - b) to provide economic and efficient means of transport and communications in the region;
 - c) to achieve self sufficiency in the maintenance of equipment and plant;
 - d) to achieve self sufficiency in technical manpower, training and development;
 - e) to encourage the efficient utilisation of available resources for the betterment of transport and communications within the region.

ARTICLE IIIORGANISATIONAL STRUCTURE

1. Committee of Ministers
 - (1) The Committee of Ministers shall be the supreme body of the Commission.
 - (2) The Committee of Ministers shall consist of one Minister from each member State, being a Minister responsible for Transport and/or Communications.

- (3) The Committee of Ministers shall meet at least once a year.
- (4) One representative from each of the Liberation Movements of Southern Africa recognised by the OAU shall be accorded observer status at such meetings.
- (5) The quorum shall be two-thirds of the member States.
- (6) The venue of the Committee of Ministers shall rotate annually among member States.
- (7) At every meeting of the Committee of Ministers each member State shall have one vote.
- (8) The Chairman of the Committee of Ministers shall be a Minister of Mozambique, responsible for Transport and/or Communications.

2. Coordinating Committee

- (1) The Coordinating Committee shall consist of one representative from each member State and shall meet at least twice a year.
- (2) One representative from each of the Liberation Movements of Southern Africa recognised by the OAU, shall be accorded observer status at such meetings.
- (3) The quorum shall be two thirds of the member States.
- (4) The Chairman of the Coordinating Committee shall be the representative of Mozambique.

3. Technical Unit

The Technical Unit shall consist of technical experts recruited from any source. This Unit, which shall be located in Maputo, will operate on a permanent basis and be responsible to the Chairman of the Coordinating Committee.

4. Procedure

The organs of the Commission shall determine their own rules of procedure.

ARTICLE IVFUNCTIONS1. Committee of Ministers

The Committee of Ministers shall be responsible for:

- a) overall formulation of the policies of the Commission;
- b) review and approval of the work of the Coordinating Committee;
- c) approval of the budget and the annual accounts;
- d) undertaking any other function assigned to it by member States.

2. Coordinating Committee

The Coordinating Committee shall:

- a) determine priorities and coordinate the work of the Technical Unit;
- b) disseminate information to member States;
- c) be responsible for the recruitment of the technical experts;
- d) monitor the progress of the work of the Technical Unit;
- e) prepare and publicise regional development plans and projects in order to obtain technical and financial assistance for their implementation;
- f) deal with such other transport and communications matters in the region as may be necessary.

3. Technical Unit

3.1 General Functions

The Technical Unit shall:

- a) identify the actual patterns of traffic between countries in the region;
- b) identify the potential suppliers of transport and communications equipment within and outside the region;
- c) prepare and present to the Coordinating Committee recommendations on policy and programmes relating to transport and communications and report on its activities.

3.2 Specific Functions

For each mode of transport and communications the Technical Unit shall:

- a) gather information on the actual transport and communications systems, including bilateral and transit traffic and compile and evaluate such information;
- b) identify national development projects having a regional impact and coordinate such projects;
- c) recommend measures to optimise the utilisation of the existing facilities;
- d) recommend immediate, medium and long term measures necessary to meet traffic demands;
- e) when necessary assist member States with the preparation of documentation in connection with development;
- f) assist working groups formed by member States on a bilateral or multilateral basis.

3.3 Performance of Functions

- (1) In performing its functions the Technical Unit shall liaise, as necessary, with the governmental institutions of each member State.
- (2) The Governments of member States may call the Technical Unit to assist in the appraisal of the work undertaken by consultants and contractors.

ARTICLE V

BUDGET AND ANNUAL ACCOUNTS

- 1. The Commission shall have an annual budget.
- 2. The Coordinating Committee shall prepare an annual budget and submit it to the Committee of Ministers for approval.
- 3. member States shall contribute to the annual budget on an equal basis.
- 4. The Commission may raise from any other source such funds as may be required for its day to day operations.
- 5. The Coordinating Committee shall at the end of each financial year prepare the annual accounts of the Commission and submit them to the Committee of Ministers for consideration and approval.

ARTICLE VILOCATION

The Headquarters of the Commission shall be in Maputo in the People's Republic of Mozambique.

ARTICLE VIIENTRY INTO FORCE

1. This Convention shall be deemed to have come into force on such date as the previous Convention (now superseded) came into force and ratifications thereof by member States shall be deemed to be ratifications of this Convention.
2. States not listed in the Preamble to this Convention which become members of SADC may accede to this Convention. Instruments of accession shall be deposited with the Secretariat of SADC.
3. No reservations shall be made to this Convention.

ARTICLE VIIIAMENDMENTS

1. The Committee of Ministers may amend this Convention by consensus.
2. Proposals for the amendment of this Convention may be made by any member State to the Chairman of the Committee of Ministers for preliminary consideration by the Committee of Ministers. Provided however, that the proposed amendment shall not be submitted to the Committee of Ministers for preliminary consideration until all member States have been duly notified of it and a period of three months has elapsed.

ARTICLE IXSETTLEMENT OF DISPUTES

Any dispute between member States arising from the interpretation or application of this Convention which cannot be settled by negotiation, conciliation or other means, may be referred to the Council of Ministers by any party to the dispute for decision. The decision of the Council of Ministers shall be final and binding, unless varied by the Summit.

ARTICLE X**OBLIGATIONS**

The obligations assumed by member States under this Convention shall, to the extent necessary to fulfil such obligations, survive the termination of membership by any State.

ARTICLE XI**ANCILLARY**

1. This convention supersedes any Convention or other arrangement previously entered into among the member States in regard to the objects of the Commission.
2. member States shall continue to be bound by the obligations assumed under the superseded Convention or under other arrangements previously entered into among themselves.

PROPOSED

STANDARD TEXT FOR BILATERAL
AIR TRANSPORT AGREEMENTS
BETWEEN SADCC STATESPREAMBLE

The undersigned Governments, being members of the Southern African Development Coordination Conference (SADCC), (hereinafter referred to as the Contracting Parties);

Being parties to the Convention on International Civil Aviation opened for signature in Chicago on the 7th day of December 1944;

Desiring to conclude a Bilateral Air Transport Agreement, supplementary to the said Convention, for the purpose of intensifying their co-operation and establishing and developing air transport services between their respective territories in the spirit of the Declaration " Southern Africa: Toward Economic Liberation", made at Lusaka on the 1st day of April 1980 by the Governments of Independent States of Southern Africa;

Have agreed as follows:

Article 1DEFINITIONS

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

- (a) " The Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the 7th day December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes of the Convention under Articles 90 and 94 thereof as far as those Annexes and amendments have been adopted by both Contracting Parties;
- (b) "Aeronautical Authorities" means, for each Contracting Party, The Ministry responsible for Civil Aviation;

- (c) "Agreed Services" means air services on the routes specified in the appropriate section of the Annex;
- (d) "Air Service", "International Air Service", "Airline" and "Stop for Non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (e) "Annex" means the Annex attached to this Agreement or as amended in accordance with the provisions of Article 18. The Annex forms an integral part of this Agreement and all references to the Agreement shall include reference to the Annex except where otherwise provided;
- (f) "Designated Airline" means an airline which has been designated and authorized in accordance with Article 4;
- (g) "Specified Routes" means routes specified in the appropriate section of the Annex;
- (h) "Tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions under which these prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail;
- (i) "Territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention.

Article 2

APPLICABILITY OF CHICAGO CONVENTION

The provisions of this Agreement shall be subject to the provisions of the Convention in so far as those provisions are applicable to international air services.

Article 3

GRANTS OF RIGHTS

- 3.1 Each Contracting Party grants to the other Contracting Party, the rights specified in this Agreement for the purpose of establishing and operating scheduled international air services on the routes specified in the appropriate section of the Annex attached to this Agreement.
- 3.2 The designated airline of each Contracting Party shall enjoy, while operating agreed services on specified routes, the following:

- 1) - the privilege to fly across its territory without landing;
- 2) - the privilege to land for non-traffic purposes;
- 3) - the privilege to put down passengers, mail and cargo taken on in the territory of the State which designated the airline;
- 4) - the privilege to take on passengers, mail and cargo destined for the territory of the State which designated the airline;
- 5) - the privilege to take on passengers, mail and cargo destined for the territory of any other SADCC State and the privilege to put down passengers, mail and cargo coming from any such territory.

3.3 Nothing in paragraph 3.2 shall be deemed to confer on the designated airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail, carried for hire or remuneration and destined for another point in the territory of that other Contracting Party.

Article 4

DESIGNATION OF AIRLINES

- 4.1 Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline for the purpose of operating the agreed services on the specified routes.
- 4.2 Each Contracting Party may designate a joint Air Transport Operating Organization established under Articles 77 and 79 of the Convention and this joint organization shall be accepted by the other Contracting Party.
- 4.3 On receipt of such designation, the Aeronautical Authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs 4.4. and 4.5 grant to the airline designated in accordance with paragraphs 4.1 and 4.2 the appropriate operating authorization.
- 4.4 The Aeronautical Authorities of any Contracting Party may require the airline designated by any other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and the regulations normally and reasonably applied to the operation of international air services by such authorities, in conformity with the provisions of the Convention.

- 4.5 Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph 4.3 or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or its nationals or in case of paragraph 4.2 any members of the joint Air Transport Operating Organization.
- 4.6 When an airline has been designated and authorized it may begin to operate the agreed services for which it is designated provided that the airline complies with the applicable provisions of this Agreement.

Article 5

REVOCATION OR SUSPENSION OF OPERATING AUTHORIZATION

- 5.1 Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights granted under this Agreement by any airline designated by the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of these rights:
- (a) in any case where it is no longer satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party or, in case of paragraph 4.2, any members of the joint Air Transport Operating Organization;
 - (b) in the case of failure by that airline to comply with the laws and regulations in force in the territory of the Contracting Party granting the rights; or
 - (c) in any case where the airline fails to operate in accordance with the conditions prescribed under this Agreement.
- 5.2 Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 5.1 is essential to prevent further infringements of the laws and regulations or the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the Aeronautical Authorities of the Contracting Parties.

Article 6APPLICABILITY OF NATIONAL LAWS AND REGULATIONS

- 6.1 The laws and regulations of one Contracting Party relating to admission into, remaining in, or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the designated airline of the other Contracting Party upon entrance into, departure from and while within the said territory .
- 6.2 The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs, currency, sanitary requirements and quarantine shall be complied with by the designated airline of the other Contracting Party and or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.

Passengers in transit across the territory of either Contracting Party shall be subject to no more than a simplified control in so far as security requirements so permit.

- 6.3 Neither of the Contracting Parties shall give preference to its own or any other airline over an airline engaged in similar international air services of the other Contracting Party the application of its regulations specified in paragraphs 6.1 and 6.2 or in the use of airports, airways, air traffic services and associated facilities under its control.

Article 7APPROVAL OF TIME TABLES

- 7.1 The designated airline of each Contracting Party shall submit for approval to the Aeronautical Authorities of the other Contracting Party not later than sixty (60) days prior to the commencement of services on the specified routes the flight schedules including the types of aircraft to be used. This shall likewise apply to later changes. In special cases, the Aeronautical Authorities may allow a reduction of the time limit.

Article 8PRINCIPLES GOVERNING OPERATION OF AGREED SERVICES

- 8.1 There shall be fair and equal opportunity for the designated airlines of each Contracting Party to operate the agreed services on the specified routes between and beyond their respective territories.
- 8.2 In operating of the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same routes.
- 8.3 The agreed services provided by the designated airlines of the Contracting Parties shall take into account the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate for the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail, originating from or destined for the territory of the Contracting Party which has designated the airline.
- 8.4 Provision may also be made by the Contracting Parties for the carriage of passengers and cargo including mail, taken on board or discharged at points on the specified routes in the territories of States other than those of the Contracting parties. In doing so, the following factors shall be taken into account:
- (a) traffic requirements between such points and the territory of the Contracting Party whose designated airline desires to operate a service on that route;
 - (b) traffic requirements of the area through which the agreed services passes, after taking into account other transport services established by airlines of the State comprising the area;
 - (c) the requirement of through airline operation, if any.
- 8.5 Operation of the agreed services shall be carried out in an atmosphere of technical and commercial co-operation between the designated airlines so as to foster the progressive development of economical air transport services, at reasonable load factors, rates and fares. And to this effect, the Contracting Parties shall use their best efforts to prevent the provision of excessive capacity, discrimination, unjust measures, or destructive competition practices.

- 8.6 The exploitation of the agreed services shall be subject to the conclusion of a relevant commercial agreement(s) between the two designated airlines. Such commercial agreement(s) shall be submitted for the approval of the Aeronautical Authorities prior to its implementation.

Article 9

USER CHARGES (AIRPORT AND AIR NAVIGATION FACILITIES CHARGES)

- 9.1. Neither Contracting Party shall impose or permit to be imposed on the designated airline of the other Contracting party user charges higher than those imposed on its own designated airline operating similar international air services.
- 9.2 User charges may reflect, but shall not exceed, the full cost to the competent charging authorities of providing appropriate airport and air navigation facilities and services, and may provide for a reasonable rate of return on assets after depreciation. In the provision of facilities and services, the competent authorities shall have regard to such factors as efficiency, economy, environmental impact and safety of operation.
- 9.3 Each Contracting Party shall encourage consultations between its competent charging authorities and the designated airlines using the services and facilities where practicable through the designated airlines' representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made.
- 9.4 For the purpose paragraph 9.3 each Contracting Party shall use its best effort to encourage the competent charging authorities and the designated airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles set out in this Article.

Article 10

RECOGNITION OF CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services provided for in this agreement, provided that the requirements under which such certificates or licences were issued or

rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention.

Article 11

EXEMPTION FROM CUSTOMS DUTIES, INSPECTION FEES AND OTHER SIMILAR CHARGES

- 11.1 Each Contracting Party shall exempt the designated airline of the other Contracting Party from import restrictions, customs duties, excise taxes, inspection fees and other national, regional or local duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, ground equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services, as well as printed ticket stock, airway bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by that designated airline.
- 11.2 The exemptions granted by this Article shall apply to the items referred to in paragraph 11.1, whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are:
- (a) introduced into the territory of one Contracting Party by or on behalf of the designated airline of the other Contracting Party, but not alienated in the territory of the said Contracting Party;
 - (b) retained on board the aircraft of the designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
 - (c) taken on board the aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use while operating the agreed services.
- 11.3 The regular airborne equipment, the ground equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the custom authorities of that territory. In such a case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of

in accordance with customs regulations.

- 11.4 Baggage and cargo in direct transit shall be exempt from customs duties and other taxes.
- 11.5 The exemptions provided for by this Article shall also be available where designated airline of one Contracting Party has contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph 11.1.

Article 12

TARIFFS

- 12.1 The tariffs to be charged by the airline of one Contracting Party for carriage of passengers and cargo to or from the territory of the other Contracting Party shall be established at reasonable levels, taking into account all relevant factors, particularly the operational costs, types of services, reasonable profit as well as the tariffs of other airlines operating on similar routes.
- 12.2 The tariffs referred to in paragraph 12.1 shall be agreed by the designated airlines of both Contracting Parties, after discussion with their respective Aeronautical Authorities and consultation with other airlines shall, wherever possible, be reached through the appropriate international rate fixing machinery.
- 12.3 The tariffs so agreed shall be submitted for approval by the Aeronautical Authorities together with such justification as the Aeronautical Authorities may require at least sixty (60) days before the proposed date of their introduction.

In special cases, this period may be reduced, subject to the agreement of the said Aeronautical Authorities.

- 12.4 The approval referred to in paragraph 12.3 may be given expressly. If neither of the aeronautical authorities has expressed disapproval within sixty (60) days from the date of submission in accordance with paragraph 12.3 these tariffs shall be considered as approved.
- 12.5 If a tariff cannot be agreed in accordance with paragraph 12.2 or if, during the period applicable in accordance with paragraph 12.4, one Aeronautical Authority gives to the other Aeronautical Authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph 12.2, the Aeronautical Authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual

agreement.

- 12.6 If the Aeronautical Authorities cannot agree on any tariff submitted to them under paragraph 12.4 the dispute shall be settled in accordance with the provisions of Article 17.
- 12.7 A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date of which it would otherwise have expired.
- 12.8 Each Contracting Party shall ensure that all carriers operating to and from its territory comply strictly with the tariffs agreed upon and approved in accordance with the provisions of this Article.

Article 13

TRANSFER OF EARNINGS

- 13.1 Each Contracting Party grants to the designated airline of the other Contracting Party the right to transfer freely, at the exchange rate fixed by the competent authorities of the Contracting Party concerned, the excess of receipts over expenditure earned in its territory by that designated airline in connection with the carriage of passengers, baggage, cargo and mail.

The transfers referred to in this Article shall be effected in accordance with existing exchange control regulations.

- 13.2 Whenever payments between the Contracting Parties are governed by a special agreement, such agreement shall apply.

Article 14

AIRLINE REPRESENTATION

The designated airline of each Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party their own managerial, technical, operational and other specialist staff who are required for the provisions of air services.

Article 15EXCHANGE OF STATISTICS AND INFORMATION

15.1 The Aeronautical Authorities of both Contracting Parties shall, as promptly as possible, exchange the following statistics and information:

- (a) adequate information relevant to the operation of the agreed services by their designated airline, particularly the applicable tariffs, schedules and the capacity provided on each of the specified routes, as well as any information pertaining to the requirements of this Agreement;
- (b) statistics relating to the traffic carried by their designated airlines, on the agreed services and the origin and the destination of such traffic;
- (c) information concerning operating authorizations issued to their respective designated airline.

Article 16CONSULTATIONS

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with its provisions. Such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request, unless otherwise agreed by the Contracting Parties.

Article 17SETTLEMENT OF DISPUTES

- 17.1 If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Party shall in the first place endeavour to settle it by negotiations.
- 17.2 If the Contracting Parties fail to reach settlement by negotiations, they may request the Southern Africa Transport and Communications Commission (SATCC) to examine the situation. SATCC shall thereupon inquire into the matter, and shall call the Parties concerned into consultations. Should such a consultation fail to resolve the dispute, SATCC may make appropriate findings and recommendations to

the Contracting Parties concerned.

- 17.3 If either of the Contracting Parties is dissatisfied with the recommendations of SATCC then the dispute shall, at the request of either of the two disputing Contracting Parties, be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated.
- 17.4 The arbitral tribunal shall be constituted as follows:
- (a) each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by one Contracting Party through diplomatic channels, of a request for arbitration from the other Contracting Party. These two arbitrators shall by agreement appoint a third arbitrator within a further period of sixty (60) days;
 - (b) the third arbitrator shall be a national of a third State; shall act as President of the Tribunal and shall determine the place where arbitration will be held;
 - (c) if either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be.
- 17.5 Each Contracting Party shall be responsible for the cost of its nominated arbitrator and both Contracting Parties shall share equally all further expenses involved in the activities of the tribunal including expenses of the President.
- 17.6 The arbitral tribunal shall determine its own procedure.

Article 18

MODIFICATIONS AND AMENDMENTS

- 18.1 If either Contracting Party considers it desirable to modify any provision of this Agreement, it may request consultations with the other Contracting Party in accordance with Article 16.
- 18.2 Any modifications agreed between the Contracting Parties shall enter in force on the date when the Contracting Parties have notified each other through diplomatic channels that their constitutional requirements have been completed.

Article 19AVIATION SECURITY

- 19.1 The Contracting Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.
- 19.2 The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threats to aviation security.
- 19.3 The Contracting parties shall act in conformity with the provisions of 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 December 1970 and the Convention for the Suppression of Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
- 19.4 The Contracting parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
- 19.5 Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of that other Contracting Party and to take adequate measures to inspect passengers, crew, their carry-on items as well as cargo prior to boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special security measures for its aircraft or passengers to meet a particular threat.

Article 20REGISTRATION OF AGREEMENT AND AMENDMENTS

This Agreement and any subsequent amendments thereto shall be registered with the International Civil Aviation Organization (ICAO) and be copied to, the Southern African Development Coordination Conference (SADCC) and the Southern Africa Transport and Communications Commission (SATCC).

Article 21TERMINATION

- 21.1 Any Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization (ICAO) and notified to the Southern African Development Coordination Conference (SADCC) and the Southern Africa Transport and Communications Commission (SATCC).
- 21.2 If such notice is given, this Agreement shall terminate twelve (12) month after the date when the notice has been received by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 22ENTRY INTO FORCE

This Agreement shall enter into force from the date of signature.

IN WITNESS WHEREOF, the undersigned duly authorized by their respective Governments have signed this Agreement.

Done at.....on the day.... of.....19....
in the English and/or Portuguese, languages both texts being
equally authentic.

For the Government of

.....

For the Government of

.....

PREAMBLE

The President of the People's Republic of Angola;

The President of the Republic of Botswana;

The President of the Federal Islamic Republic of the Comoros;

The President of the Republic of Djibouti;

The Chairman of the Provisional Military Administrative Council and of the Commission for Organizing the Party of the Working People of Ethiopia and Commander in Chief of the Revolutionary Army of Socialist Ethiopia;

The President of the Republic of Kenya;

His Majesty the King of the Kingdom of Lesotho;

The President of the Democratic Republic of Madagascar;

The Life President of the Republic of Malawi;

The Prime Minister of Mauritius;

The President of the People's Republic of Mozambique;

The President of the Republic of Seychelles;

The President of the Somali Democratic Republic and Secretary General of the Somali Revolutionary Socialist Party;

His Majesty the King of the Kingdom of Swaziland;

The President of the United Republic of Tanzania;

The President of the Republic of Uganda;

The President of the Republic of Zambia;

The President of the Republic of Zimbabwe;

Conscious of the overriding need to foster, accelerate and encourage the economic and social development of their States in order to improve the living standards of their peoples;

Convinced that the promotion of harmonious economic development of their States calls for effective economic co-operation largely through a determined and concerted policy of self-reliance;

Recalling the African Declaration on Co-operation, Development and Economic Independence adopted by the Tenth Assembly of Heads of State and Government of the Organization of African Unity, in May 1973 at Addis Ababa in Ethiopia;

Bearing in mind the Declaration of Intent and Commitment on the establishment of a Preferential Trade Area for Eastern and Southern African States adopted by the First Extraordinary Conference of Ministers of Trade, Finance and Planning held in Lusaka, Republic of Zambia, from the 30th to the 31st March, 1978;

Inspired by the decision contained in the Final Act of the Second Extraordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity held at Lagos from 28 to 29 April 1980 that there should be established an African Common Market by the year 2000;

Determined to foster closer economic and other relationships among their States and to contribute to the progress and development of the African continent and the achievement of an African Common Market;

Resolved to act in concert for the establishment of a Preferential Trade Area for Eastern and Southern African States as a first step towards the establishment of a Common Market and eventually of an Economic Community for Eastern and Southern African States; and

Having in mind the principles of international law governing relations between nations, such as the principles of sovereignty, equality and independence of all States and non-interference in the domestic affairs of States;

HEREBY AGREE AS FOLLOWS:

CHAPTER ONE

ARTICLE 1

Interpretation

In this Treaty:

"Authority" means the authority of the Preferential Trade Area established by Article 6 of this Treaty;

"Bank" means the Eastern and Southern African Trade and Development Bank established by Article 32 of this Treaty;

"Commission" means the Intergovernmental Commission of Experts established by Article 11 of this Treaty;

"Committee" means a Committee established by or under Article 11 of this Treaty;

"Common List" has the meaning assigned to it in Article 1 of Annex I of this Treaty;

"common customs tariff" means an identical rate of tariff imposed in the same manner;

"co-operation" includes the undertaking by the Member States in common, jointly or in concert of activities undertaken in furtherance of the objectives of the Preferential Trade Area as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Preferential Trade Area;

"Council" means the Council of Ministers established by Article 7 of this Treaty;

"customs duties" means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation and includes suspended duties and fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but

does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods;

"goods in transit" means goods being conveyed between two Member States or between a Member State and a third country and passing through another Member State or Member States and, "transit" shall be construed accordingly;

"Member State" means a Member State of the Preferential Trade Area;

"person" means a natural or legal person;

"Preferential Trade Area" means the Preferential Trade Area for Eastern and Southern African States established by Article 2 of this Treaty;

"Secretariat" means the secretariat of the Preferential Trade Area established by Article 9 of this Treaty;

"Secretary-General" means the Secretary-General of the Preferential Trade Area provided for by Article 9 of this Treaty;

"third country" means any country other than a Member State;

"Treaty" means the Treaty for the establishment of the Preferential Trade Area;

"Tribunal" means the Tribunal of the Preferential Trade Area established by Article 10 of this Treaty;

"unique situation" when used in respect of Botswana, Lesotho and Swaziland includes economic, geographic, monetary, migratory labour and transport and communications problems faced by these countries.

CHAPTER TWO
ESTABLISHMENT AND PURPOSES

ARTICLE 2

Establishment and membership

1. THE HIGH CONTRACTING PARTIES hereby establish among their respective States a Preferential Trade Area for Eastern and Southern African States, referred to in this Treaty as "the Preferential Trade Area", as a first step towards the establishment of a Common Market and eventually of an Economic Community for Eastern and Southern African States.

2. Membership of the Preferential Trade Area shall be open to the following Eastern and Southern African States:

The People's Republic of Angola;

The Republic of Botswana;

The Federal Islamic Republic of the Comoros;

The Republic of Djibouti;

Socialist Ethiopia;

The Republic of Kenya;

The Kingdom of Lesotho;

The Democratic Republic of Madagascar;

The Republic of Malawi;

Mauritius;

The People's Republic of Mozambique;

The Republic of Seychelles;

The Somali Democratic Republic;

The Kingdom of Swaziland;

The United Republic of Tanzania;

The Republic of Uganda;

The Republic of Zambia;

The Republic of Zimbabwe.

3. The Member States of the Preferential Trade Area shall be the Eastern and Southern African States set out in paragraph 2 of this Article that sign, ratify or accede to this Treaty and such other immediately neighbouring African States that become Member States of the Preferential Trade Area under the provisions of Article 46 of this Treaty.

ARTICLE 3

Aims and specific undertakings of the Preferential Trade Area

1. It shall be the aim of the Preferential Trade Area to promote co-operation and development in all fields of economic activity particularly in the fields of trade, customs, industry, transport, communications, agriculture, natural resources and monetary affairs with the aim of raising the standard of living of its peoples, of fostering closer relations among its Member States, and to contribute to the progress and development of the African continent.

2. The functioning and development of the Preferential Trade Area shall be reviewed in accordance with the provisions of this Treaty with a view to the establishment of a Common Market and eventually of an Economic Community for Eastern and Southern African States.

3. For the purposes set out in paragraphs 1 and 2 of this Article the Member States agree to implement the undertakings set out in paragraph 4 of this Article and as provided for elsewhere in particular provisions of this Treaty.

4. (a) The Member States undertake by way of the Protocols annexed to this Treaty to:

- (i) gradually reduce and eventually eliminate as between themselves customs duties in respect of imports of selected commodities produced within the Preferential Trade Area;**
- (ii) establish common rules of origin with respect to products that shall be eligible for preferential treatment;**

- (iii) establish appropriate payments and clearing arrangements among themselves that would facilitate trade in goods and services;
 - (iv) foster such co-operation among themselves in the fields of transport and communications as would facilitate trade in goods and services;
 - (v) co-operate in the field of industrial development;
 - (vi) co-operate in the field of agricultural development;
 - (vii) establish conditions regulating the re-export of products within the Preferential Trade Area;
 - (viii) promulgate regulations for facilitating transit trade within the Preferential Trade Area;
 - (ix) simplify and harmonize their trade documents and procedures;
 - (x) co-operate in customs matters;
 - (xi) standardize the manufacture and quality of goods produced and traded within the Preferential Trade Area;
 - (xii) recognize the unique situation of Botswana, Lesotho and Swaziland and their membership of the Southern African Customs Union within the context of the Preferential Trade Area and to grant temporary exemptions to Botswana, Lesotho and Swaziland from the full application of certain provisions of this Treaty; and
 - (xiii) govern such other matters as may be necessary to further the aims of the Preferential Trade Area.
- (b) The Member States further undertake to:
- (i) relax or abolish quantitative and administrative restrictions on trade among themselves;
 - (ii) promote the establishment of appropriate machinery for the exchange of agricultural products, minerals, metals, manufactures and semi-manufactures within the Preferential Trade Area;
 - (iii) promote the establishment of direct contacts between, and regulate the exchange of information among their commercial organizations such as State trading corporations, export promotion and marketing organiza-

tions, chambers of commerce, associations of businessmen and trade information and publicity centres;

- (iv) ensure the application of the most favoured nation clause to each other;
- (v) adapt progressively their commercial policy in accordance with the provisions of this Treaty; and
- (vi) take in common such other steps as are calculated to further the aims of the Preferential Trade Area.

ARTICLE 4

General undertaking

The Member States shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the aims of the Preferential Trade Area and the implementation of the provisions of this Treaty and shall abstain from any measures likely to jeopardize the achievement of the aims of the Preferential Trade Area or the implementation of the provisions of this Treaty.

CHAPTER THREE**INSTITUTIONS OF THE PREFERENTIAL TRADE AREA****ARTICLE 5****Institutions**

1. The institutions of the Preferential Trade Area shall be:
 - (a) the Authority;
 - (b) the Council of Ministers;
 - (c) the Secretariat;
 - (d) the Tribunal; and
 - (e) the Commission, the Committees and such other technical and specialized bodies as may be established or provided for by this Treaty.
2. The institutions of the Preferential Trade Area shall perform the functions and act within the limits of the powers conferred upon them by or under this Treaty.

ARTICLE 6**The Authority of the Preferential Trade Area- establishment,
composition and functions**

1. There is hereby established an Authority which shall be known as the Authority of the Preferential Trade Area and which shall consist of the Heads of State and Government of the Member States.
2. The Authority, which shall be the supreme organ of the Preferential Trade Area, shall be responsible for considering matters of general policy and for the general direction and control of the performance of the executive functions of the Preferential Trade Area and the achievement of its aims.
3. The decisions and directions of the Authority taken or given in pursuance of the provisions of this Treaty shall be binding on all other institutions of the Preferential Trade

Area and on those to whom they are addressed other than the Tribunal within its jurisdiction.

4. The Authority shall normally meet once every year and may hold extraordinary meetings at the request of any member of the Authority provided that such a request is supported by one-third of the members of the Authority or upon the proposal of the Council of Ministers addressed to the Secretary-General. Subject to the provisions of this Treaty, the Authority shall determine its own rules of procedure.

The decisions of the Authority shall be taken by consensus.

ARTICLE 7

Council of Ministers – establishment, composition and functions

1. There is hereby established a Council which shall be known as the Council of Ministers and which shall consist of such Ministers as may be designated by each Member State.

2. It shall be the responsibility of the Council:

(a) to keep under constant review and ensure the proper functioning and development of the Preferential Trade Area in accordance with the provisions of this Treaty;

(b) to make recommendations to the Authority on matters of policy aimed at the efficient and harmonious functioning and development of the Preferential Trade Area;

(c) to give directions to all other subordinate institutions of the Preferential Trade Area; and

(d) to exercise such other powers and perform such other duties as are conferred or imposed on it by this Treaty or as may be determined from time to time by the Authority.

3. The decisions and directions of the Council taken or given in pursuance of the provisions of this Treaty, shall be binding on all other subordinate institutions of the Preferential Trade Area and on those to whom they are addressed other than the Tribunal within its jurisdiction.

4. The Council shall meet at least twice a year and one of such meetings shall be held immediately preceding an ordinary meeting of the Authority. Extraordinary meetings of the Council may be held at the request of a Member State provided that such a request is supported by one-third of the Member States.

5. Subject to any directions that the Authority may give and to the provisions of this Treaty, the Council shall determine its own procedure including that for convening its meetings, for the conduct of business thereat and at other times and for the rotation of the office of Chairman among the members of the Council.

~~6. The decisions of the Council shall be taken by consensus.~~

7. Where an objection is recorded on behalf of a Member State to a proposal submitted for the decision of the Council, the proposal shall, unless such objection is withdrawn, be referred to the Authority for its decision.

ARTICLE 8

Decisions of the Authority and the Council

The Authority shall determine the procedure for the dissemination of its decisions and directions and those of the Council and for matters relating to the coming into effect of such decisions and directions.

ARTICLE 9

The Secretariat

1. There is hereby established a Secretariat of the Preferential Trade Area.
2. The Secretariat shall be headed by a Secretary-General who shall be appointed by the Authority to serve in such office for a term of four years and shall be eligible for re-appointment for a further period of four years.
3. The Secretary-General shall be the principal executive officer of the Preferential Trade Area. In addition to the Secretary-General, there shall be such other staff of the Secretariat as the Council may determine.
4. The terms and conditions of service of the Secretary-General and the other staff of the Secretariat shall be governed by regulations that may from time to time be made by the Council:

Provided that the Secretary-General shall only be removed from office by the Authority upon the recommendation of the Council.

5. In appointing staff to offices in the Secretariat, regard shall be had, subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, to the desirability of maintaining an equitable distribution of appointments to such offices among citizens of all the Member States.

6. (1) In the performance of their duties the Secretary-General and the staff of the Secretariat shall not seek or receive instructions from any Member State or from any other authority external to the Preferential Trade Area. They shall refrain from any actions which might reflect on their position as international officials responsible only to the Preferential Trade Area.

(2) Each Member State undertakes to respect the international character of the responsibilities of the Secretary-General and the staff of the Secretariat and shall not seek to influence them in the discharge of their responsibilities.

7. The Secretary-General shall:

(a) as appropriate, service and assist the institutions of the Preferential Trade Area in the performance of their functions;

(b) submit a report on the activities of the Preferential Trade Area to all meetings of the Authority and the Council;

(c) be responsible for the administration and finances of the Preferential Trade Area and all its institutions and act as secretary to the Authority and the Council;

(d) keep the functioning of the Preferential Trade Area under continuous examination and may act in relation to any particular matter which appears to merit examination either on his own initiative or upon the request of a Member State made through the Commission and the Secretary-General shall, where appropriate, report the results of his examination to the Commission;

(e) on his own initiative or as may be assigned to him by the Authority or the Council undertake such work and studies and perform such services as relate to the aims of the Preferential Trade Area and to the implementation of the provisions of this Treaty; and

(f) for the performance of the functions imposed upon him by this Article, collect information and verify matters of fact relating to the functioning of the Preferential Trade Area and for that purpose may request a Member States to provide information relating thereto.

8. The Member States agree to co-operate with and assist the Secretary-General in the performance of the functions imposed upon him by paragraph 7 of this Article and agree in particular to provide any information which may be requested under subparagraph (f) of paragraph 7 of this Article.

ARTICLE 10**Tribunal of the Preferential Trade Area**

1. There is hereby established a judicial organ to be known as the Tribunal of the Preferential Trade Area which shall ensure the proper application or interpretation of the provisions of this Treaty and adjudicate upon such disputes as may be referred to it in accordance with Article 40 of this Treaty.
2. The Statute and other matters relating to the Tribunal shall be prescribed by the Authority.

ARTICLE 11**The Intergovernmental Commission and Technical Committees –
establishment, composition and functions**

1. There shall be established at such times as the Council may decide, as institutions of the Preferential Trade Area, the following Commission and Committees:
 - (a) the Intergovernmental Commission of Experts;
 - (b) the Customs and Trade Committee;
 - (c) the Clearing and Payments Committee;
 - (d) the Committee on Agricultural Co-operation;
 - (e) the Committee on Industrial Co-operation;
 - (f) the Transport and Communications Committee;
 - (g) the Committee on Botswana, Lesotho and Swaziland.
2. There may be such other Committees as the Authority, on the recommendation of the Council, may from time to time establish or as may be established under this Treaty at such times as the Council may determine.
3. The Commission or a Committee other than the Clearing and Payments Committee, shall consist of representatives designated by the Member States to serve on the Commission or on a Committee. Such representatives may be assisted by advisers.

4. The Commission or a Committee may establish such subcommittees as it may deem necessary for the purpose of discharging its functions and specify the composition of such subcommittees.
5. The Commission shall:
 - (a) oversee the implementation of the provisions of this Treaty and for this purpose a Member State may request the Commission to investigate any particular matter;
 - (b) for the purposes of subparagraph (a) of this paragraph, request as necessary the Secretary-General to undertake specific investigations and to report his findings to the Commission;
 - (c) submit from time to time reports and recommendations to the Council either on its own initiative or upon the request of the Council concerning the implementation of the provisions of this Treaty; and
 - (d) have such other functions as are imposed on it under this Treaty.
6. Each Committee shall submit from time to time reports and recommendations to the Commission either on its own initiative or upon the request of the Commission or the Council concerning the implementation of related provisions of this Treaty, and have such other functions as are imposed on it under this Treaty.
7. Subject to any directives which may be given by the Council, the Commission or a Committee shall meet as often as necessary for the proper discharge of its functions and shall determine its own rules of procedure.

PREAMBLE

THE HIGH CONTRACTING PARTIES,

RECOGNISING the International Air Services Transit Agreement done at Chicago on 7 December 1944; the Convention on the Territorial Sea and the Contiguous Zone done at Geneva on 29 April 1958; the Convention on Transit Trade of land-locked States done at New York on 8 July 1965, and the Organization of African Unity Declaration on the issues on the Law of the Sea dated 24 May 1973; and

RECALLING the provisions of item (viii) of subparagraph (a) of paragraph 4 of Article 3 of the Treaty to the effect that the terms and conditions for facilitating transit trade among the Member States shall be set out in a Protocol annexed to the Treaty,

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Interpretation

In this Protocol:

"carrier" means the person actually transporting transit goods or in charge of or responsible for the operation of the respective means of transport;

"container" means an article of transport equipment:

- (a) fully or partially enclosed to constitute a compartment intended for containing goods and capable of being sealed;
- (b) of a durable nature intended for repeated use,
- (c) specifically designed for the carriage of goods by one or more modes of transport without intermediate unloading and reloading of its contents,
- (d) fitted with devices for easy handling, particularly for its transfer from one mode of transport to another;
- (e) so designed as to be easy to fill and empty, and
- (f) having an internal volume of at least one cubic metre.

"customs office of commencement" means any port, inland or frontier customs office of a Member State where the provisions of this Protocol begin to apply;

ARTICLE 2**General Provisions**

1. The Member States undertake to grant all transitors and transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose when coming from:
 - (a) or bound for other Member States, or
 - (b) third countries and bound for other Member States, or
 - (c) other Member States and bound for third countries.
2. Notwithstanding the provisions of paragraph 1 of this Article, any Member State may, if it deems it necessary, prohibit, restrict or otherwise control the entry of certain persons, mail, merchandise or means of transport from any country for the protection of public mortality, safety, health or hygiene, or animal or plant health, or in the public interest.
3. The Member States undertake not to levy any import or export duties on the transit traffic referred to in paragraph 1 of this Article.
4. For the purposes of this Protocol, the Member States undertake to ensure that there shall be no discrimination in the treatment of persons, mail, merchandise and means of transport coming from or bound to the Member States, and that rates and tariffs for the use of their facilities by other Member States shall not be less favourable than those accorded to their own traffic.

ARTICLE 3**Scope of application**

1. The provisions of this Protocol shall apply to any transitor, mail, means of transport or any shipment of bonded goods in transit between two points either in two different Member States or between a Member State and a third country.
2. The provisions of this Protocol shall only apply to transit transport if it is:
 - (a) operated by a carrier licensed under the provisions of Article 4 of this Protocol;
 - (b) performed under the conditions set out in Article 5 of this Protocol by means of transport approved by the customs office of commencement and issued with certificates which shall be in the form set out in Appendix IV of this Protocol;
 - (c) guaranteed by a surety in accordance with the provisions of Article 6 of this Protocol; and
 - (d) undertaken under cover of TIA (PTA) Carnet, the standard form of which is set out in Appendix II of this Protocol.
3. The provisions of this Protocol shall apply to transit goods carried by whatever means of transport, except that in the case of air transport, the aircraft in transit shall be exempted from the operation of these rules but the goods, including baggage, shall be subject to the provisions of this Protocol.

PREAMBLE

THE HIGH CONTRACTING PARTIES

RECALLING the provisions of items (iv) of sub-paragraph (a) of paragraph 4 of Article 3 of the Treaty to the effect that co-operation among the Member States in the fields of transport and communications shall be set out in a Protocol to be annexed to the Treaty; and

BEING AWARE of Resolution 298 (XIII) of the Conference of Ministers concerning the Trans-African Highways; General Assembly Resolution 32/160 concerning the Transport and Communications Decade for Africa, 1978-1988 and Resolution 278 (XII) of the Conference of Ministers of the United Nations Economic Commission for Africa concerning the Pan-African Telecommunications Network;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Interpretation

In this Protocol:

"Committee" means the Transport and Communications Committee established by Article 11 of the Treaty;

"common carrier" includes a person or an undertaking engaged in the business of providing services for the carriage of goods and passengers for hire or reward and operating as such under the laws of a Member State,

"multimodal transport" means the transport of goods from one point to another by two or more modes of transport on the basis of a single contract issued by the person or enterprise organising such services and while such person or enterprise assumes responsibility for the execution of the whole operation,

"multimodal transport facilities" include items such as heavy lift swinging devices, twin deck cranes, gantry crane, elevators, large carriers, mechanized storage, low loaders, access facilities, low-profile straddle carriers, mobile cranes, container gantry cranes, side loaders, heavy duty forklifts, heavy duty tractors, heavy duty trailers, portable ramps, flat wagons (flats) for containers, low tare special user wagons and trucks for containers, pallets and web-slings for pre-slung cargoes for different commodities,

"telecommunications" means the process of transmitting information or data from one point to another point or to several points by means of telephones, telegraphs, telexes, data facsimiles, and radio and television broadcasting, by means of telephone lines coaxial cables, submarine cables, radio links and artificial satellite;

"transport operations" means the provision of services for the carriage of goods and passengers for hire or reward and all matters incidental or connected therewith.

ARTICLE 2

Objectives

The Member States undertake to evolve co-ordinated and complementary transport and communications systems and policies to improve and expand their existing transport and communications links and to establish new ones as a means of furthering the physical cohesion of the Member States and the promotion of greater movement of persons, goods and services within the Preferential Trade Area, and to this end the Member States shall take all necessary steps to give effect to this Protocol.

ARTICLE 3

Road transport

The Member States shall:

- (a) ratify or accede to the United Nations Conventions on Road Traffic and on Road Signs and Signals, 1968, and take such steps as may be necessary to implement their provisions;
- (b) harmonize the provisions of their laws concerning the equipment for and markings of vehicles used for inter-State transport within the Preferential Trade Area,
- (c) adopt common standards and regulations for the issuance of driving licences;
- (d) harmonize and simplify formalities and documents required for the vehicles and cargo used in inter-State transport within the Preferential Trade Area;
- (e) adopt minimum requirements for the insurance of goods and vehicles,
- (f) adopt common regulations governing speed limits on the urban roads and highways of the Member States;
- (g) adopt common regulations prescribing minimum safety requirements for the transport of dangerous substances;
- (h) harmonize rules and regulations concerning special transport requiring escort;
- (i) adopt common rules and regulations governing the dimensions, technical requirements, gross weight and load per axle of vehicles used in inter-State trunk roads within the Preferential Trade Area;
- (j) construct inter-State trunk roads linking the Member States to common standards of design and maintain existing road networks to such standards as will enable the carriers of other Member States to operate to and from their territories in a reasonably efficient manner;

(h) agree to allocate adequate space for the storage of goods from each other within their goods sheds;

(i) take measures to facilitate the transfer of railway wagons used for inter-State railway transport within the Preferential Trade Area from one railway network to another;

(j) agree to facilitate the deployment of railway rolling stock for the conveyance of goods to and from the territories of each other without discrimination particularly in times of emergency; and

(k) endeavour to maintain the existing physical facilities of their railways to such standards as will enable other Member States to operate their own systems within the Preferential Trade Area in a reasonably efficient manner.

ARTICLE 5

Air Transport

The Member States shall:

(a) standardize their airport facilities and civil aviation rules and regulations by implementing the provisions of the Chicago Convention on International Civil Aviation, with particular reference to Annex 9 thereof;

(b) co-ordinate the flight schedules of their designated airlines;

(c) develop, maintain and co-ordinate their navigational, communications and meteorological facilities for the provision of safe air navigation,

(d) agree to grant preferential treatment to each other in the granting of air traffic rights and other facilities with a view to increasing the efficiency and profitability of their designated airlines;

(e) grant each other preferential treatment in the use of maintenance and overhaul facilities and other services for aircraft, ground equipment and other facilities;

(f) agree to charge the same rates and apply the same rules and regulations relating to scheduled air transport services among themselves;

(g) agree to allocate space on board the aircraft of their designated airlines for goods consigned to or from the territories of other Member States,

(h) take measures directed towards aircraft standardization including co-operation in the preparation of technical specifications for the type of aircraft to be operated.

Annex IV

APPENDIX I

JOINT DECLARATION ON EXPANDED ECONOMIC AND CULTURAL COOPERATION BETWEEN THE NORDIC COUNTRIES AND THE SADCC MEMBER STATES

1. This Joint Declaration signifies a commitment by the Governments of the Nordic countries, namely, the Kingdom of Denmark, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway and the Kingdom of Sweden and governments of the member States of the Southern African Development Co-ordination Conference (SADCC), namely, the People's Republic of Angola, the Republic of Botswana, the Kingdom of Lesotho, the Republic of Malawi, the People's Republic of Mozambique, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Zambia and the Republic of Zimbabwe to strive for closer collaboration and enhanced co-operation with each other on a region to region basis.

2. The Declaration seeks to deepen and broaden the established tradition of friendship, solidarity and co-operation between the two regions, which was initiated during the struggle for political independence of the SADCC member States. In this context, therefore, and

- having noted SADCC's founding Declaration "Southern Africa: Toward Economic Liberation", which was adopted by the Heads of State and Government of the SADCC States
 - having noted SADCC's founding Declaration "Southern Africa: Toward Economic Liberation," which was adopted by the Heads of State and Government of the SADCC States in Lusaka on April 1, 1980,
 - having also noted the Reykjavik Communiqué of the Nordic Prime Ministers of December 13, 1984 on co-operation between the Nordic countries and a group of developing countries
 - recognising the need to promote social progress and economic liberation in Southern Africa,
 - recognising the need for enhanced economic co-operation both between the two regions and among the SADCC member States,
 - emphasising the urgency for the SADCC member States to achieve increased economic self-reliance and to reduce their external dependence,
 - recognising also the vulnerability of the SADCC member States to South African aggression and destabilisation and the negative impact of the continued and growing instability in South Africa,
 - emphasising the need to implement the principles and objectives embodied in the Declaration and Programme of Action for a New International Economic Order as adopted by the UN General Assembly (G.A. Res. 3201 and G.A. Res. 3202, S-VI, May 1, 1974),
 - wishing to promote greater interaction between the peoples of the two regions
 - taking into account the international obligations and arrangements which the governments have adhered to,
 - desiring to enhance the utilization of the existing channels of co-operation and to create new opportunities for expanded economic co-operation
- the government of the Nordic countries and the SADCC member States have adopted this Joint Declaration as a basis for enhanced co-operation.

The Objectives

3. The Nordic and SADCC governments aim at enhanced economic and cultural co-operation which will take place in a region to region context between Nordic countries and SADCC member States.

4. This initiative also aims at promoting regional co-operation among the SADCC member States according to the objectives laid down in the Declaration, "Southern Africa: Toward Economic Liberation".

5. Both regions see this initiative as a contribution to North/South co-operation covering a broad spectrum of the economies of the two, characterised by an open dialogue based on inter-dependence and mutuality of interests.

6. Central to this co-operation is efficiency of resource utilization by both groups through enhanced consultation on needs and constraints in sectoral programmes and by providing a firmer basis and time frame for forward planning.

7. This Joint Declaration identifies the following initial areas from which concrete measures will be further developed for inclusion in a Programme of Co-operation:

- (a) Increased Nordic support for intraregional co-operation in priority areas established by SADCC
- (b) Increased technical assistance from the Nordic countries to support regional co-operation, in particular for the purpose of
 - enhancing the capacity of SADCC member States in economic planning
 - enhancing the capacity of SADCC member States in project identification and preparation
 - assisting SADCC in the preparation and implementation of major development projects suitable for co-operation between the two regions, and
 - strengthening specific areas, for instance, in the banking and commercial sectors.
- (c) Support to the SADCC member States to build up, maintain and rehabilitate their productive capacity through
 - joint venture investments and other forms of transfer of technology
 - beneficiation and utilization of local raw materials, in particular mineral and agricultural, in the SADCC region, and
 - strengthening existing institutions in both regions engaged in the promotion of the productive sectors, e.g. development banks and investment institutions, in order to enhance their involvement in the co-operation between the Nordic and the SADCC regions.
- (d) Promotion of the trade between the Nordic and the SADCC regions as well as within the SADCC region, through such activities as
 - identification of products from the SADCC countries with export potential
 - improved utilization by the SADCC member States of the Generalized System of Preference (GSP) as applied by the Nordic countries
 - intensified co-operation between the authorities and institutions in the two regions as well as with the appropriate international institutions in order to increase exports from the SADCC member States
 - improvements in the structures for transport, communication and handling with regard to trade
- (e) Promotion of contacts between the commercial, industrial and financial sectors in the two regions with a view to increasing economic co-operation
- (f) Promotion of cultural co-operation both between the two regions and among the SADCC member States by facilitating a better flow of information, communications and personal contacts, including tourism

Annex V

APPENDIX II

CONVENTION ON INTERNATIONAL
CIVIL AVIATION

PREAMBLE

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention to that end.

PART I—AIR NAVIGATION

CHAPTER I

GENERAL PRINCIPLES AND APPLICATION
OF THE CONVENTION*Article 1*

The contracting States recognize that every State ^{Sovereignty} has complete and exclusive sovereignty over the air-space above its territory.

Article 2

For the purposes of this Convention the territory of a ^{Territory} State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Article 3

(a) This Convention shall be applicable only to civil ^{Civil and state aircraft} aircraft, and shall not be applicable to state aircraft.

(b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

(c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon with-

out authorization by special agreement or otherwise, and in accordance with the terms thereof.

(d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

Article 4

Misuse of civil aviation

Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention.

CHAPTER II

FLIGHT OVER TERRITORY OF CONTRACTING STATES

Article 5

Right of non-scheduled flight

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

Article 6

Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

Article 7

Cabotage

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically

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FINAL ACT: APPENDIX II

Article 74

Technical assistance and utilisation of revenues

When the Council, at the request of a contracting State, advances funds or provides airports or other facilities in whole or in part, the arrangement may provide, with the consent of that State, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and amortization charges.

Article 75

Taking over of facilities from Council

A contracting State may at any time discharge any obligation into which it has entered under Article 70, and take over airports and other facilities which the Council has provided in its territory pursuant to the provisions of Articles 71 and 72, by paying to the Council an amount which in the opinion of the Council is reasonable in the circumstances. If the State considers that the amount fixed by the Council is unreasonable it may appeal to the Assembly against the decision of the Council and the Assembly may confirm or amend the decision of the Council.

Article 76

Return of funds

Funds obtained by the Council through reimbursement under Article 75 and from receipts of interest and amortization payments under Article 74 shall, in the case of advances originally financed by States under Article 73, be returned to the States which were originally assessed in the proportion of their assessments, as determined by the Council.

CHAPTER XVI

JOINT OPERATING ORGANIZATION AND POOLED SERVICES

Article 77

Joint operating organisations permitted

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

CONVENTION

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Article 78

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

Function of Council

Article 79

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

Participation in operating organizations

PART IV—FINAL PROVISIONS**CHAPTER XVII****OTHER AERONAUTICAL AGREEMENTS AND ARRANGEMENTS***Article 80*

Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919 or the Convention on Commercial Aviation signed at Habana on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to.

Paris and Habana Conventions

Article 81

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State and any other State or the airline of any other State, shall be forthwith registered with the Council.

Registration of existing agreements

Article 82

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which, before becoming a member of the Organization has undertaken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations.

Abrogation of inconsistent arrangements

APPENDIX IV

INTERNATIONAL AIR TRANSPORT AGREEMENT

The States which sign and accept this International Air Transport Agreement being members of the International Civil Aviation Organization declare as follows:

ARTICLE I

Section 1

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes;
- (3) The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
- (4) The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
- (5) The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

With respect to the privilege specified under paragraphs (3), (4) and (5) of this section, the undertaking of each contracting State relates only to through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

Section 3

A contracting State granting to the airlines of another contracting State the privilege to stop for nontraffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of any contracting State.

Section 4

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Section 5

Each contracting State may, subject to the provisions of this Agreement,

(1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;

(2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 6

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

ARTICLE II

Section 1

The contracting States accept this Agreement as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which has undertaken any other obligations inconsistent with this Agreement shall take immediate steps to procure its release from the obligations. If an air-

Annex VI

INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT

Signed at Chicago, on 7 December 1944

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organization, declare as follows:

ARTICLE I

Section 1

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

Section 3

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a contracting State.