

THE AFRICAN CIVIL AVIATION COMMISSION

A F C A C

By



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ABSTRACT

This thesis analyses all aspects of the African Civil Aviation Commission (AFCAC).

Following a survey of the Basic Characteristics of Africa, its peoples and the law which governs the establishment of international organizations, the regionalism and the concept of legal personality are canvassed at some length.

The main portion of the thesis consists of an analysis of the need for establishing such a Commission in Africa, a historical background, its structure, legal personality, membership and its relationship with other organizations.

In conclusion, an attempt is made to evaluate its work in the light of its aims and purposes as laid down by its constitution, and certain ideas are suggested in order that the Commission may function more efficiently.

PREFACE

Cette thèse a pour but d'analyser tous les aspects relatifs à la Commission Africaine de l'Aviation Civile.

Après un aperçu des principales caractéristiques de l'Afrique et de ses peuples ainsi que de la loi qui ordonne la création des organisations internationales, le principe du régionalisme et de la personnalité légale ont été minutieusement analysés avec certains détails.

La partie principale de la thèse analyse le besoin impératif de créer une telle Commission en Afrique avec un aperçu historique sur sa création, sa formation et la structure de sa personnalité légale, ses membres et sa relation vis à vis des autres organisations.

En conclusion, une tentative pour valoriser ses activités a été faite à la lumière de ses objectifs et buts tel que définis par la charte constitutive; enfin quelques idées ont été suggérées afin que la Commission puisse rendre ses fonctions avec plus de compétence et efficacité.

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LIST OF ABBREVIATIONS

ACAC	-	Arab Civil Aviation Council
AFCAC	-	African Civil Aviation Commission
AFRAA	-	Association of African Airlines
ASECNA	-	Agence pour la Sécurité de la Navigation Aérienne
CATE	-	Conference on Coordination of Air Transport in Europe
COCESNA	-	Central American Air Navigation Services Corporation
CRAC	-	Conference Regionale de l'Aviation Civile
EAC	-	East African Community
ECA	-	Economic Commission for Africa
ECAC	-	European Civil Aviation Conference
ECOSOC	-	United Nations Economic and Social Council
IATA	-	International Air Transport Association
ICAO	-	International Civil Aviation Organization
ICJ	-	International Court of Justice
ITA	-	Institut de Transport Aérien
OAU	-	Organization of African Unity
OCAMM	-	Organization Commune Africaine Malgache et Mauricienne
LACAC	-	Latin American Civil Aviation Commission

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CHAPTER I

AFRICA AND ITS PEOPLES

Africa is a part of the world about which Americans and Europeans can no longer afford to be ignorant. To understand Africa, one must understand something of its landscape, its peoples, their values, and its history.

1. AFRICAN LANDSCAPE

Africa is a vast compact continent covering an area of approximately 11,500,000 square miles (about three times the size of Europe).

It is jointed to Asia by a relatively narrow isthmus. Until this isthmus was cut by a canal in 1869, Africa, situated between the Atlantic and Indian Oceans and with great latitudinal extension, constituted the most serious obstacle to the sea-borne trade between Europe and the East which sprang up in the years following Vasco Da Gama's historic voyage to India in 1497. It is an illuminating comment on the general geography of Africa that for more than three centuries after this event, in spite of many trading stations along its coast, little progress was made in the work of opening up the interior of the continent. Africa was, in fact, a backwater of the earth's surface; the interior of which awaited the explorers of the nineteenth century and the

subsequent interest of several Great Powers before its surface could be mapped with reasonable accuracy and its economic potential determined.

That knowlege of the continent should so long have been confined, in the main, to coastal areas, was due to a large extent to its general physical conditions, its structure, drainage, climate, deserts, forests, diseases and difficult communications.¹

Africa is relatively simple in shape, in relief, and in structure. The narrow continental shelf is related to the steep face which the continent generally presents to the sea, and to the faulting that has produced its general shape.² It consists essentially of a great plateau with considerable diversity of relief.³ A broad distinction in altitude can be made, however, between the two limbs of the continent lying one on each side of an irregular line drawn from Benguela north-eastward, round the southern border of the Congo basin and along the western edge of the Lake Plateau, to a point a little south of Suakin on the Red Sea. The northern limb has an average

1. L.S. Suggate, "Africa" George G. Harrap and Company Ltd., London, 10ed. revised, (1971), p. 17.

2. Ibid., p. 18.

3. Only 10 percent of its land area lies at less than five hundred feet above sea level, compared to 54 percent for Europe and 25 percent for North America.

elevation far below 3000 feet, while the southern extension considerably exceeds that height. Basins or depressions characterize the interior of the continent as a whole, and there is "a frequent occurrence of a higher rim near the coast that has prevented, and still prevents, easy communication with the interior".⁴

The rivers and basins of Africa are more prominent than in any other continent. The vast basins of the Niger, the Nile, the Volta, the Zambezi, and the Congo empty into the sea, but those surrounding Lake Chad and the wastes of the Kalahari have no such outlets. The entire basin - dented plateau - falls off, in steep escarpments, to the narrow coastal plain that surrounds the entire continent. The Niger - Benue and Zambezi - Shire, alone among the major rivers of Africa, do not plunge in falls and rapids over the scarps, "which makes effective navigation from the sea impossible".⁵

Generally, Africa can be divided into five major physical and vegetational zones. At each end of the continent there are equable Mediterranean and Mediterranean type climates and vegetation. Coming inland, there are vast desiccated deserts

4. L.S. Suggate, op.cit., p. 20.

5. Paul Bohannon and Phillip Curtin, "Africa and Africans" (revised edition "1971"), The Natural History Press, Garden City, New York, p. 19.

and arid plains. Coming still closer to the equator are the wide savanna regions, covered with grass and widely spaced trees. Then along the equator there are humid and forested lands. Finally there are highland areas throughout the continent which respond to natural forces that override the climatic effects of latitude and of rainfall.

The humid forested lands straddle the equator in the Congo Basin and appear again in the coastal areas of Western Africa that have the highest rainfall. North and South the humid zone lies the savanna. The savanna lands occupy by far the greatest number of square miles of Africa's surface. Their landscape is typically made-up of rolling stretches of tall grasses, with intermittent bush and scattered trees. Going further from the equator in both directions, the dry lands of Africa are encountered. In the south is the Kalahari Desert, and in the north, the Sahara and the deserts along the coasts of the Red Sea and Somalia. They are marked by drought-resistant shrubs and a scanty covering of grass.⁶

6. Ibid., pp. 20-22.

2. THE MYTH AND THE FACT

For a long time, Africa has been called "the dark continent". This may have been due to its dark jungles, which offered a constant challenge to explorers from all over the world; or, to the uncivilized societies which existed and still exist in some parts of its forests; or to the dark skin of its people.

Even now, in the eyes of many people, Africa is that same "dark continent" full of jungles and uncivilized people. But this is far from the truth.

Africa was in contact with the rest of the world while most of Europe slept; it was even in touch with the fringes of Europe, and it was Europe that woke up only in the fifteenth century.

African culture, its history and its social organizations, has more in common with Europe than Asia has, and certainly more than the North American, Indians, and the Australian aborigines share with Europe. Economically, Africa and Europe are a single sphere. African food production is practically the same as it was in Europe a few centuries ago. Market organization is the same, while religions are merely variations on

the same basic themes. Family organization reflects almost the same values, although Africans tend to be polygamous and Europeans, monogamous. But the values are quite the same.⁷

One last point must be made clear; the jungles in Africa cover only about five percent of the African continent. If Africa was, or is, a "dark continent" in the eyes of the Europeans and Americans, it is certainly not so in the eyes of the Africans; they are proud of their continent, and to them it is a paradise.

7. Ibid., p. 8.

3. THE PEOPLE OF AFRICA

The people the explorers met in Africa can be divided into five categories:

- 1) The Arabs: living mostly in Egypt and North Africa;
- 2) The Hamites: occupying Ethiopia and most of the Sahara;
- 3) The true Negroes: who live in West Africa and the Sudan;
- 4) The Bantus Negroes: of Central and Southern Africa;
- 5) The Isolated Aborigines: the Bushmen of Kalahari desert, the Hottentats of South West Africa and the Pygmies of the Congo.

This classification excludes European immigrants who have come to Africa during the last three centuries, and the Asians, mostly from India and Pakistan who followed the Europeans to work in agriculture, railway and commerce.⁸

Africa is, except for Australia (and Antarctica which hardly counts), the least peopled of the world's continents, and in population per square mile it also ranks next lowest to Australia. Even if the population density is measured in people

8. See Paul Hamlyn, "Picture Atlas" (1965); see also Abdel-Fatah Ibrahim, "Africa the land and the People", The Egyptian Anglo Press (in Arabic), p. 17.

per square mile of arable land. Africa is far below the world average. Yet many parts of Africa are already meeting problems of population pressure, and present tendencies suggest that problems will become more severe in the decades ahead.

In the distribution of its people, Africa is a land of contrasts. In scattered regions, people are so few in relation to usable land that land is available for anyone who wants to cultivate it. Elsewhere, population problems were present at the beginning of the colonial period. A few areas had already reached densities comparable to those of the best farming areas in Europe and the population continued to grow. Uneven population distribution is especially marked in East Africa. In mainland Tanzania, an estimated two-thirds of the present population lives on 10 percent of the land, while one-third of the country is uninhabitable. In nearby Kenya, more than one-third of the people live on less than 2 percent of the land. But over most of the continent, tropical soils and rainfall conditions cannot, given present technology, support dense populations. It is only there that tillable land is sometimes free, because the quality of the soil is too poor to justify the labour required to farm it.

Until recently, little attention was paid to the problem of over-population in Africa. One reason for this neglect was

the fact that obvious over-population was limited to a very few areas of high density, like eastern Nigeria, Rwanda, or Burundi. But arid and semi-arid lands can also be over-populated in relation to their productivity. Large parts of the Sahara, the arid horn of Africa in Somalia and northern Kenya, and Botswana are now experiencing population pressures, though the population itself is actually very sparse.

The worldwide population explosion is now affecting the whole of Africa and particular regions are experiencing severe problems.⁹

9. P. Bohannon and P. Curtin, op.cit., p. 55.

4. THE COLONIAL ERA

Colonialism in Africa was characterized by the domination of the white race over the black. Whites lived in different residential quarters, separate clubs and the higher administrative, executive and managerial posts were reserved for whites only; higher income for white people lower for the black.

This situation was a result of adopting certain theories; one of which held that the best possible future for Africa, or any other society was to imitate as much as possible the European way of life. This implied conversion to Christianity, Western education, Western manners, and, in time, Western political system.

Another theory held that Africans were inferior to Europeans and could never successfully assimilate European "Civilization". Proponents of this theory regarded Africans as human beings in need of protection of their "superiors". Therefore, the best policy for a European empire was to treat them as minors incapable of running their own affairs, but entitled to the guidance and discipline of those who were wiser.

It was also believed that the best possible future for Africans was neither Westernization nor autonomous development but subordination, as servants in a Western Society - and permanently so. It began with the underlying conviction that

anything Africans could develop was not worth having. But as servants to Europeans they would at least enjoy some of the material benefits of industrialization, they would be protected in their weakness, and they would be given the kind of discipline they needed.¹⁰

It was only natural that colonization should come to an end in Africa. The deepest emotional reactions are aroused, not by the material movements which the colonial powers have erected but by the injustices of colonial rule, and the failures of the colonial powers to provide adequate opportunities for the development of human ability.

Despite the fact that the colonial powers failed, perhaps intentionally, to discharge their responsibilities in training their colonial subjects quickly enough, or in sufficient numbers, to enable them to run their State efficiently upon independence, Africans realized that Western education was the gateway to success, not only in colonial society, but also in their efforts to build up an independent continent. But Western-educated Africans felt that the West had not created a perfect society, however useful their technological advances, and began to mix their own combination of traditional culture and Western learning, varying the combination according to opportunity and and personal preference.

10. Ibid., p. 332.

Those who took advanced degrees in European universities frequently retained the hope of modernizing Africa, while at the same time preserving the basic traditional values and African identity.

Finally, it should be mentioned that although Africans are now autonomous, their new governments are apt to make the same mistake as the colonial authorities, concentrating on materialism instead of persons.

CHAPTER II

BASIC AFRICAN INTERNATIONAL REGIONAL INSTITUTIONS

To discuss AFCAC as a regional Civil Aviation Organization in Africa, it is worthwhile to review briefly the basic political, economic and Civil Aviation Institutions in Africa.

1. THE ORGANIZATION OF AFRICAN UNITY (OAU)

The Organization of African Unity was formed in May 1963. Despite the severe differences between its members on a wide range of issues, it was formed because of unanimous agreement that it was not intended as a supra-national body but as an organization based upon the principles of economic, cultural, scientific and technical co-operation among its members.

The purposes of the Organization are stated in Article 2(1) as follows:

- A. To promote the unity and solidarity of the African states;
- B. To co-ordinate and intensify their co-operation and efforts to achieve a better life for the people of Africa;
- C. To defend their sovereignty, their territorial integrity and independence;
- D. To eradicate all forms of colonialism from Africa; and
- E. To promote international co-operation, having due regard to the charter of the United Nations and the Universal Declaration of Human Rights.

Article 2 not merely spells out the purposes of the Organization, but in paragraph 2 also goes on to require the Member States to co-ordinate and harmonize their general policies, in certain fields, including the economic field, transport and communications.

The activities of the OAU are to be carried out primarily by four principal institutions: the Assembly of Heads of State and Government; the Council of Ministers, which is composed of foreign ministers or other ministers designated by the governments of the member states; the General Secretariat; and the Commission of Mediation, Conciliation and Arbitration.

2. THE UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA (ECA)

The legal basis for the establishment of this regional economic commission rests on two provisions of the Charter of the United Nations. These are Article 62(1) which provides, inter alia, that "ECOSOC may make or initiate studies and report with respect to international economic, social, cultural, educational, health and related matters"; and Article 68 which authorizes ECOSOC to "set up commissions in economic and social fields and for the promotion of human rights and such other commissions as may be required for the performance of its functions".

On these bases the U.N. General Assembly passed a resolution on November 26, 1957¹¹ by which it authorized ECOSOC to establish ECA, ECOSOC quickly responded by its resolution 667-A and B (XXV) on April 29, 1958, established the ECA.

The aims and objectives of the ECA are:¹²

- A. To initiate and participate in measures for facilitating concerned action for economic development with a view to raising levels of living and strengthening the economic relations of the countries in the region;
- B. To make or sponsor investigations and studies of economic and technological problems and development within

11. Res. 1155 (XII).

12. Para. 1 of ECA, Terms of Reference.

the region and disseminate the results of such investigations and studies;

- C. To undertake or sponsor the collection, evaluation and dissemination of economic, technological and statistical information;
- D. To perform such advisory services as the countries and territories of the region may desire, subject, however, to the available resources of the secretariat and that such services do not overlap with those rendered by other bodies of the United Nations or by the specialized agencies;
- E. To assist ECOSOC in discharging its functions within the region in respect of any economic problem in the field of technical assistance; and
- F. To assist in the formulation and development of co-ordinated policies as a basis for practical action in promoting economic and technological development in the region.

3. THE ARAB CIVIL AVIATION COUNCIL (ACAC)

Despite the fact that membership of this organization is open to States members of the Arab League, and that a number of them are not African States, it is appropriately mentioned here for two reasons:

- 1) Its permanent seat is located in Africa;¹³ and
- 2) Eight of its members are African States members of AFCAC.¹⁴

The ACAC was established in 1967¹⁵ on the basis of the provision of Article 2(b) of the Arab League Pact relating to close co-operation in the field of aviation by means of fostering the development of air transport services between Arab States, and promoting co-operation in all aspects of that field.

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13. According to Article 1(a) of ACAC Agreement, its seat shall be the permanent seat of the League of Arab States which is Cairo.

N.B. The ACAC seat was transferred in 1979 to the Kingdom of Morocco.

14. Those States are: Algeria, Egypt, Lybia, Muritania, Morocco, Somalia, Sudan and Tunisia.
15. The Arab League Council, at its 43rd ordinary session held on March 21, 1965, approved an agreement establishing ACAC. The Agreement came into force on October 4, 1967, and the Council held its first meeting on November 6, 1967 at the premises of the Arab League in Cairo.

Its aim and objectives are to promote the principles, techniques and economics relating to air transport, and to foster and encourage its development in both Arab and international fields.

The main function of this Council are:

- 1) To study and apply the international standards and recommended practices relating to Civil Aviation, particularly those of interest to the Arab States;
- 2) To examine International Civil Aviation Agreements and recommend to member States the adherence to those which the Council consider of benefit to them;
- 3) To encourage unification of procedures, legislation and terminology in Arab countries;
- 4) To explore the means which will ensure the welfare and progress of civil aviation in Arab countries;
- 5) To conduct research into the various aspects of air transport and air navigation, and facilitate the exchange of such information between the States concerned;
- 6) To investigate, at the request of any Member State, any situation which is likely to impede the progress of air navigation in the Arab countries, and make suitable recommendations;
- 7) To settle the differences and disputes that may arise between Member States in the field of civil aviation when brought to the attention of the Council by the States concerned; and
- 8) To study travel fares on all Arab air routes and issue relevant recommendations.

The ACAC activities are carried out by four main institutions:

- 1) The Council;
- 2) The Permanent Bureau;
- 3) The Executive Committee; and
- 4) The Subsidiary Committees.

4. THE AGENCY FOR THE SAFETY OF AIR NAVIGATION IN AFRICA
AND MADAGASCAR (ASECNA)

This Agency was created by the Convention of St. Louis du Sénégal signed on December 12, 1959.¹⁶ ASECNA's objective is to provide services designed to guarantee the regularity and safety of flights in the designated territories. For this purpose, the Agency manages the en-route and air navigation installations and services pooled by the signatory States.¹⁷

ASECNA is administered by a Board of Directors on which the seats are allocated to the French State and the African States signatories of the multilateral treaty. The personnel and facilities required for forecasting and communicating meteorological information are placed where necessary at the Agency's disposal by each state.¹⁸

16. States signatories of the Convention are: Chad, Cameroon, Central African Republic, Congo, Dahomey, Gabon, Ivory Coast, Malagasy Republic, Mauritania, Niger, Sénégal, Upper Volta. It was later joined by Mali and Togo.

17. See A.V. Saénz, The Central American Air Navigation Services Corporation, Unpublished Thesis, McGill University, (Institute of Air and Space Law) 1978, pp. 77-80.

18. The text of the Convention is published in the Yearbook of Air and Space Law, 1965, pp. 116-130.

5. THE AFRICAN AIRLINES ASSOCIATION (AFRAA)

AFRAA is a private association established between the African Airlines. It was set up in 1969¹⁹ to promote and develop co-operation between African Airlines and harmonize their policies in the economic, commercial, legal and technical fields in order to provide the Africans with a safe, regular and economic air transport system responding to their need.

According to its constitution, only African Airlines' members of IATA are active members, while other African Airlines not members of IATA can be associate members without having the right to vote.

The Association performs its function through:

- 1) The General Assembly: which holds its meeting once every year and is composed of the representative of member airlines;
- 2) The Executive Committee: composed of six members representing the geographical areas of the Continent; and
- 3) The General Secretariat: located at Nairobi (Kenya) and performing the task of preparing the Agenda for the Annual General Meeting, and assisting in preparing the Association's Reports and the Annual Budget.

19. The General Assembly which constituted AFRAA met in Cairo in March 1970.

CHAPTER III

HISTORY OF AND NEED FOR AFCAC

In addition to the general purposes for establishing regional organizations, there is a great need for such organizations in the field of civil aviation.

Africa, after a long period of colonial rule, realized that building an independent civil aviation network would require means not available in its newly independent states and that co-operation was the only way to achieve its goal.

It could be said that the conditions which justified the setting up of AFCAC were mainly political, social and economic, in addition to the particular nature of the continent itself.

The vast distances,²⁰ inadequacy of surface transportation, climatic conditions, vegetation, population distribution and the existence of enormous sparsely populated areas make civil aviation in Africa a necessity.

In the majority of African States, it can rightly be said that since independence, the effort to develop air transportation has made it possible for African leaders to keep in constant touch with all parts of their countries and to help the various

20. The vast distances have long been a fixed barrier between different African societies.

groups to get to know one another better and to feel that they belong to one and the same nation. Air transport was the modern method to bring African people together in greater unity and solidarity. It was also regarded as one of the most practical ways to accelerate the African drive for national unity and greater inter-African cohesion.

In every state, it can be said that internal and external resources invested in the development of air transport have made a genuine contribution to the nation's strength. It was, therefore, only natural that in their search for more effective solidarity among African States, African leaders, who met under the aegis of OAU, had to draw new strength from their diversity and decide that aviation should be secure for the continent as a whole. Keeping in mind the colonization era, and with the aim of building up a new Africa entirely free from foreign domination, they realized that their primary need was to reduce the stranglehold of foreign countries and international monopoly on their economic development. On the other hand, the colonial powers, to serve their own interests, and for obvious economic and political reasons, and knowing that the African states established their own airlines in Africa, made sure that these airlines were geared towards the former metropolitan capitals and that their development served to perpetuate the colonial pact. Since independence, nothing has been more difficult than

to make foreign assistance satisfy the aims of African integration as far as air transport is concerned. The technical intricacies, the high rate of investment, the cost of modernization and maintenance of air services, compelled every African government to seek external aid and thereby to provide foreign powers and organizations, with the means to influence African civil aviation in a more or less subtle manner.

Economically, it was believed that a careful and partial appropriation of funds in favour of the development of aviation would result in a useful compromise to alleviate, at least to a reasonable extent, some of the acute transportation shortages particularly for the subregional and domestic sectors, and due to the low income per capita of ECA member states, it was fundamental that operating expenses, per passenger km, be maintained at a much lower level than what they were at that time (1969) if aviation was to develop in the African continent. Most, if not all, African national airlines were a heavy burden on the much needed budgetary resources of their countries. The most striking difficulties occur from the combination of high unit costs which characterize modern air transport and the small size of the African economies.

African States were not connected by direct flights, and it was ironic that, in many instances, it was not possible to

travel from one African capital to another without going via Europe.

Technically, the most pressing problem civil aviation faces in Africa was the lack of trained personnel. To this end, the training of the indigenous staff in the various specialized fields of aviation skills required training programmes based either on regional or sub-regional plans. The problem was of such magnitude that no individual African State could hope to cope with it independently. Another problem was that in the air transport industry, technology has advanced so rapidly, that if African countries were to operate viable airlines with modern and competitive equipment, they were to do so conjointly rather than severally. In this respect, constant consultations between African Governments and airlines, under the aegis of an African Civil Aviation Organization, was a necessity.

For all these reasons, and in order to lay the basis of the promotion of inter-African co-operation in civil aviation, AFCAC was established in 1969, after years of serious efforts and successful endeavours, as will be indicated in the following section.

1. HISTORICAL BACKGROUND

African States were always motivated to ensure African identity. In the field of air transport, this motivation was not the sole reason which impelled the African States to co-operate.

The geography of the continent, the lack of adequate surface transport and the need to connect its regions with a rapid means of transportation, made it necessary to give air transport special consideration at all the conferences held among the African States since the beginning of the Sixties.

1.1. Development in the context of the Casablanca Charter Members

A committee of technical experts held a meeting in Conakry (Guinea) in July 1961 to study the problems of transport and communications in Africa and to recommend to the Economic Committee of the Casablanca Charter Members the action to be taken in that respect. The Subcommittee of Aviation and Meteorology discussed the subject of setting up and fostering air transport relations between the States members of the Charter and issued a recommendation urging these states to establish direct national flights between them and to improve the service of these flights in order to achieve a level of competency and safety taking into consideration the strong competition of colonial States.

The Economic Committee, at its first session, adopted a resolution by which it established a Panel of Experts in maritime and air transport to meet in Cairo in September 1961. Its purpose was to prepare multinational maritime and air transport agreements, aiming at the establishment of scheduled services between the member states; and to prepare a draft agreement for setting up joint African maritime and air transport companies with priority to be given to the national companies in transporting passengers and cargo.

The Egyptian Civil Aviation Department prepared a draft agreement for setting up an African Civil Aviation Organization and presented it to the Panel of Experts which met in Cairo in October 1961. The draft provided that the Organization shall be composed of a Council consisting of Directors of Civil Aviation Departments of member States which shall meet twice a year; and of a Secretariat headed by a Secretary General appointed by the Council for a five year period.²¹ The Secretariat would be responsible for carrying out studies on all matters of special importance to the development of Civil Aviation in member States and would submit its recommendations to the Council.²²

21. Articles 1, 5 and 9 of the Draft Agreement .

22. Ibid., article 10.

The draft provided that the aims and objectives of the Organization are:

- 1) To review the development of Inter-African air transport with the object of promoting the co-ordination, better utilization and orderly development of such air transport;
- 2) To consider any special problems that may arise in this field;
- 3) To ensure the safe and orderly growth of civil aviation in the contracting states; and
- 4) To help Member States in the effective implementation of regional plans which are formulated by Regional Air Navigation Meetings of ICAO.²³

It was also stipulated that the functions of the Organization shall be consultative and its conclusions and recommendations shall be subject to the approval of governments.²⁴

The Panel of Experts approved the draft and submitted it to the Economic Committee for adoption. The Committee met in Cairo in March 1962 and unanimously adopted the Agreement setting up an African Civil Aviation Organization and recommended its members to ratify and immediately implement the Agreement. It also recommended the setting up of the provisional headquarters of the Organization in

23. Ibid., article 2.

24. Ibid., article 3.

Cairo. The Director General of the Egyptian Civil Aviation Department was given the responsibility of inviting the Council to hold its first meeting in order to elect the members of the permanent secretariat.

This meeting was never held and the Organization never saw the light. However, one can record these efforts as the first serious attempt to set up a civil aviation organization among African States, which later inspired the creation of the existing AFCAC, with its present constitution, influenced to a very great extent by the draft prepared by the Egyptian Civil Aviation Department and adopted by the Economic Committee of the Casablanca Charter.

1.2. Developments through the Conferences of Heads of African and Malagasy States

During this period, the Heads of Independent African and Malagasy States convened several conferences which later led to the establishment of the Organization of African Unity (OAU).²⁵

The problem of transport and communications in Africa was given special consideration in these conferences.

25. The States members of the Casablanca Charter boycotted these conferences at the outset and joined them at a later stage.

Several resolutions and recommendations were adopted. One of the most important resolutions in that respect was the resolution on Transport and Telecommunications taken by the Conference of Heads of African and Malagasy States held in Lagos on January 25, 1962 which reads as follows:

"The Conference...conscious...

- f) that it is urgently necessary to strengthen and increase between the capitals and main countries of the African and Malagasy States, air connections which are at present insufficient to allow economic and cultural exchanges which are desirable and should prevail between sister nations.

Resolves that....

- 11) All States shall become members of ICAO and accede to the Convention on International Civil Aviation so as to bring about harmonization in the individual national regulations;
- 12) Member States co-ordinate their actions before the next session of the Assembly of ICAO in August 1962 in order to obtain an adequate representation on the ICAO Council;
- 13) The Governments of African and Malagasy States shall convene at the earliest possible date a conference of representatives of Member States with a view to merging existing national airlines serving international routes, which merger does not preclude the establishment of local companies operating international airlines in each State."

In November 1964, an African Air Transport Conference was convened in Addis-Ababa, jointly by ECA and ICAO, pursuant to decisions taken by the two Organizations.

The purpose of the Conference was to consider the action necessary for the development of air transport within Africa and between Africa and the rest of the world as an instrument for economic and social development in Africa. The attention of the Conference was confined to the economic aspects of the problem. It had been recognized that the technical problems related to the provisions of air navigation facilities and services were dealt with by well-established ICAO machinery.²⁶

The Conference adopted several recommendations on the subjects it dealt with, among which was recommendation No. 3 on An African Civil Aviation Organization, which stipulated that....

"the Conference having studied the requirements of the development of African air transport, and

Observing that the OAU has established a transport and communications commission with terms of reference including air transport, and

Noting the actual co-operation which exists between OAU and ECA.

RECOMMENDS:

That ICAO and ECA consult with OAU with the object of submitting to Member States, by mutual

26. Report of the African Air Transport Conference - Addis Ababa, November 1964. ICAO: Doc. 8462 - AT/719, ECA: Doc. E/C N.14 Trans/26.

agreement, a study aimed at the establishment of an African Civil Aviation Organization in order that a conference may be convened to establish such an organ as soon as possible".

The ICAO Council noted the Recommendation, and decided that it was necessary to clarify and agree on the nature of the relationship and arrangements of ICAO with the Organization of African Unity and the Economic Commission for Africa, in the preparation and submission of the study and in convening of the conference called for in the Recommendation. The President was requested to make the necessary contacts to that end and to report back to the Council.²⁷

On November 9, 1966, the Council approved Recommendation No. 3 and, on the basis of the results of contacts by President of the Council with the ECA and OAU, instructed the Secretary General, in consultation with the President:

- a) To circulate to African States members of ICAO covered by Recommendation No. 3, for their comments, draft constitution, terms of reference, and working arrangements of the proposed organ;
- b) On the basis of States' comments, to prepare a new draft for submission to the meeting of the States involved which will establish the proposed organ; and

27. Ibid., Supplement No. 1.

- c) To present to Council, at the appropriate time, recommendations for the convening of that meeting.

The Council also indicated its willingness, in principle, to provide the proposed commission with the same type of assistance as ICAO provides ECAC on the understanding that it would be subject to a further Council decision in the light of its constitution, work programme, and working arrangements finally adopted for the commission.²⁸

In 1967 the Council of Ministers of the OAU, in its 9th session in Kinshasa, adopted a resolution on the establishment of the African Civil Aviation Commission.²⁹ The resolution stated that the ECA/OAU text should be the basis for discussion on the establishment of AFCAC.³⁰ It was then endorsed by the OAU Assembly of Heads of State and Government at its 4th session held in Kinshasa from September 4-11, 1967.

It is worthwhile to note that the draft text presented to the constitutive conference of AFCAC was the subject of heated discussion between OAU and ECA on the one hand,

28. Ibid., Supplement No. 2.

29. OAU Doc. C/M Cttee C/Res.20 IX.

30. ECA Doc. E/CN.14 Trans. 21.

and ICAO on the other. However after discussions between the three Organizations, a formula was found which consisted in examining those paragraphs of the ECA/OAU text, which were not acceptable to ICAO and developing a new wording for them. It was agreed that the revised paragraphs would be presented jointly by OAU, ECA and ICAO to the AFCAC constitutive conference as proposals for changes to the ECA/OAU text. Reaching an agreement between the three Organizations was extremely difficult because of the position taken by the OAU and the ECA that AFCAC should be closely linked to them and their Secretariats, and that the role of ICAO should be simply to assist when so requested.³¹

In addition to the changes agreed upon, the three organs agreed further that the main paper to be presented to the conference should include a short historical summary of developments regarding the creation of AFCAC and three Appendices: the first, containing the ECA/OAU text; the second, indicating the proposed changes to that text and the reasons why ICAO, ECA and OAU favour them; and the third, presenting the resulting new text (i.e. the ECA/OAU text as amended by the agreed changes).

31. President of the Council letter to the Representatives on the Council WB/85 dated May 8, 1968.

The constitutive conference had to decide on the final text of the Constitution and Rules of Procedure of AFCAC; and among other things, elect the Bureau, take all necessary decisions regarding the Secretariat and financial matters and approve the work programme for the period following the Conference. An agenda covering all these points was prepared.

The Conference was jointly convened by the ECA and OAU and the letter of invitation referred to the fact that ICAO (which was not a convener) supported the establishment of AFCAC and had participated in the preparation of documentation.

The reason why ICAO was not associated with the ECA and OAU in convening the Conference was that the invitations were to be sent only to States members of the ECA and OAU. These two organizations did not accept that other States be invited as observers. In view of the worldwide character of ICAO and its usual practice regarding invitations to its meetings, ICAO did not accept to join ECA and OAU in convening the meetings.

The objective of the conference, which met in Africa Hall, Addis Ababa, from January 13-17, 1969, was to establish an African Civil Aviation Organization.

Thirty-two States members of OAU and ECA were represented by duly authorized delegations.³² The Conference examined the draft constitution and Rules of Procedure for AFCAC presented by OAU, ECA, and ICAO made certain amendments to those texts, and decided to adopt the Constitution and Rules of Procedure for AFCAC that are attached to this study as Annexes 2 and 3 respectively. It elected the President, four Vice Presidents, and agreed that the Secretariat of AFCAC should be located provisionally in the ICAO Regional office in Dakar.

In adopting the Constitution it was understood that item 12, stipulating the performance by ICAO of AFCAC's Secretariat during an initial period, was subject to the acceptance by the Council of ICAO, under ICAO Assembly Resolution A16-23. It was further understood that the reference to "the practice followed by ICAO with similar international organizations" made in item 12, and the reference to "the practice followed by ICAO in the joint-financing field under Chapter XV of the Chicago Convention" made in item 13, both refer to ECAC and to the allocation of direct and indirect costs.

32. A list of the States represented is attached as Annex No. 1.

CHAPTER IV

AFCAC STRUCTURE AND MEMBERSHIP

1. AFCAC Structure

a) AFCAC Plenary Meetings

The African Civil Aviation Commission (AFCAC) meets in ordinary Plenary Session once every two years. It is convened by the President of AFCAC, at a suitable time and place, and in accordance with any directives given by the Commission. Extraordinary Plenary Meetings may be convened by the Bureau, and must be convened if the Bureau receives a request from two-thirds of the AFCAC members.³³

The First AFCAC Plenary Session was held in Dakar (Sénégal) on February 22, 1971 and was attended by delegates from thirty out of the forty-one States eligible for membership in the Commission at that time, in addition to observers from - AFRAA, ICAO, ECAC, IATA, ITA, and OCAMM.³⁴

33. Articles 5 and 7 of AFCAC constitution; Rule 1 and 2 of Rules of Procedure for AFCAC.

34. AFCAC/1 - Report (1971) pp. 35-37.

All AFCAC members have an equal right to be represented at the sessions of the Commission on condition that no person shall represent more than one State.³⁵ The AFCAC Bureau is under the obligation to invite OAU, ICA and ICAO to attend each session of the Commission as observers; the Bureau may invite, at its discretion, other observers to attend a session of the Commission.³⁶ Plenary meetings of the Commission are held in public unless the Commission decided that any of its meetings be held in private; meetings of the Committees and working groups are held in private unless the body concerned decides otherwise.³⁷

b) The Bureau

Article 6 of the AFCAC's Constitution provides that "at each ordinary Plenary session, AFCAC shall elect a President and four Vice-Presidents, one for each sub-region, who will constitute the Bureau of AFCAC".

35. Rule 3 of Rules of Procedure for AFCAC.

36. Ibid., Rule 5.

37. Ibid., Rule 12.

Article 8 provides that "at each plenary session, AFCAC shall establish its work programme for the period until the following ordinary plenary session". The direction, co-ordination and steering of this work programme between the ordinary plenary sessions is the responsibility of the Bureau,³⁸ which is also responsible for convening extraordinary plenary meetings. The Bureau is under obligation to convene an extraordinary plenary meeting if it receives a request from two-thirds of the AFCAC members, the agenda of such a meeting is confined to the items specified in their request. The Bureau has the right to convene an extraordinary meeting by itself and the agenda of such a meeting shall be confined to the items specified by it.³⁹

It is the responsibility of the Bureau to invite OAU, ECA and ICAO to attend each session of the Commission as observers. Other observers may also be invited to attend a session of the Commission at its discretion.⁴⁰

38. Ibid., Rule 9.

39. Article 7 of AFCAC Constitution; Rule 9 of Rules of Procedure for AFCAC.

40. Rule 5 of Rules of Procedure for AFCAC.

It is also the Bureau's responsibility to determine the Provisional Agenda before each ordinary plenary session of the Commission in consultation with the member states and with ECA, OAU and ICAO.⁴¹

c) The Secretariat

Article 12 of the Constitution provides that: "there shall be established by AFCAC a Secretariat for organizing studies, meetings, maintenance of records and the like." The rules governing the recruitment of service of the staff shall be determined by AFCAC. "ICAO", during the initial period to be determined by AFCAC, shall have the following responsibilities:

- i) To provide staff to carry out studies, organize meetings and undertake related activities;
- ii) to handle minutes, correspondance,....etc.

AFCAC shall make full use of the experience and assistance of ICAO in conformity with the practice followed by the latter with similar international organizations.

41. Ibid., Rule 8.

The Secretary of AFCAC acts as the Secretary of the plenary sessions and he arranges for the provision of secretariat services for the committees. Representatives of ECA, OAU or ICAO shall assist him if required.⁴²

Providing secretariat service to AFCAC by ICAO was not new. ICAO provided this service to ECAC when it was established, and the relationship between ICAO and ECAC was taken by the ICAO council as falling under the provision of Article 55(a) of the Chicago Convention, which gives the Council the right to create subordinate air transport commissions on a regional or other basis and to define groups of states or airlines with or through which it may deal, to facilitate the carrying out of the aims of the Chicago Convention.⁴³ On this relationship, the ICAO Assembly issued a resolution by which ICAO declared its readiness to maintain close liaison with ECAC and directed the Council to provide the Secretariat and other services requested by ECAC to the extent

42. Ibid., Rule 11.

43. ICAO Doc. 8900/2 - Repertory Guide to the Convention on International Civil Aviation, 2nd Ed., 1977, Part II Chapter IX, Article 55(1).

necessary for its proper functioning.⁴⁴ This precedent became a constant policy of ICAO in its relationship with other regional civil aviation organizations.

Thus, the Assembly, at its 18th session held in Buenos-Aires in September 1968, passed a resolution by which it invited the Council to give sympathetic consideration to requests for assistance in air transport matters of regional interest presented by Contracting States or regional organizations and, when required, to support the creation, on the request of states, or regional civil aviation bodies likely to establish with ICAO relations comparable to those which ICAO maintains with the European Civil Aviation Conference pursuant to resolution A10-5.⁴⁵ Accordingly, the Council at its 66th session held on February 28, 1969, after it had considered its President's report⁴⁶ on the establishment of AFCAC, authorized the Secretary General to provide Secretariat services for AFCAC on a basis similar to that on which they are provided for the European Civil Aviation Conference, including

44. Resolution A10-5/19.

45. Resolution A18-21/1968.

46. ICAO Council, WP/4956.

advancing funds for direct costs subject to reimbursement by AFCAC member states.⁴⁷

A similar authorization was given up to the Secretary General of the Council in respect of the Latin American Civil Aviation Commission (LACAC).⁴⁸

47. ICAO Doc. 8827-C/987, Action of the Council, 66th Session, p. 23.

48. Doc. 9105-C/1018, Action of the Council, 81st Session, p. 26.

2. AFCAC MEMBERSHIP

2.1. Eligibility for Membership

Membership of AFCAC is open to African States Members of ECA or OAU.⁴⁹

Due to the fact that Membership of AFCAC is connected with the membership of ECA and OAU, it is appropriate to discuss, in the first place, membership in the two organizations in order to define the States eligible for membership.

a) ECA Membership

There are now two categories of members in ECA: Full members and Associate members. Paragraph 5 of the Terms of Reference makes membership in ECA open to certain named States which are within the geographical scope of ECA's work, "and to any state in the area which may hereafter become a member of the U.N., provided that States which shall cease to have any territorial responsibilities in Africa shall cease to be members of the commission". To qualify for full membership, therefore, two conditions must be satisfied; the

49. Article 1 of AFCAC constitution.

country must be a member of the U.N. and come within the geographical scope of the Commission as defined in paragraph 4 of the Terms of Reference. ECOSOC has, by the first condition left the job of determining whether the applicant country has satisfied the conditions for membership in the U.N. as set out in Article 4 of the Charter to the General Assembly and the Security Council. It accepts the decisions of these two organs in each case and acts upon them.

In respect of the second condition, however, which is whether the country comes within the geographical scope of the commission, this is a question of fact which has to be determined entirely by ECOSOC.⁵⁰

Under the original test of paragraph 5, membership in ECA was open to six European States, having responsibilities for territories in Africa along with the few African States which were then members of the U.N. of which South Africa was one. The paragraph, however, contained a provision that "States which

50. S.A. Akintan, "The Law of International Economic Institution in Africa", A.W. Sijthoff Netherland, 1977, p. 30.

shall cease to have any territorial responsibilities in Africa shall cease to be members of the Commission". Hence Italy ceased to be a member of ECA in 1960 upon the independence of Somalia, and Belguim in 1962 when Rwanda and Burundi became independent.

African member states of ECA were not satisfied with the equal status granted to the European States in ECA and were also unwilling to work with South Africa because of that country's "apartheid" policy. Thus, during its fourth session held in Addis-Ababa from March to April 1962, ECA adopted Resolution 42(IV) by which it recommended to ECOSOC that:

- a) South Africa be deprived of ECA membership until it sets a term to its policy of racial discrimination;
- b) Portugal should be deprived of its membership in ECA; and
- c) Moved that the membership status of the remaining European States in ECA be reduced to associate status. ECOSOC, however, rejected the first two requests and referred the third back to ECA for further study.⁶⁰

The matter was again taken up by ECA at its fifth session held at Leopoldville (now Kinshasa) from

60. ECOSOC resolution 927 (XXXIV) of Dec. 19, 1962, and Year Book of U.N. (Y.U.N.) 1962, p. 288.

February 18 to March 2, 1963. The session decided to ask ECOSOC to reconsider its decisions on the issues and also to modify the commission's Terms of Reference to change the status of France and the United Kingdom to that of associate members.⁶¹

In response to this request, ECOSOC reconsidered the matter at its 36th session also in 1963. During the debates, representatives of France and the United Kingdom stated that they would accept associate membership in ECA and the President of the Council also announced that he had received communications from the representative of Spain stating that his government would accept associate-member status under the same conditions as those accorded to France and the United Kingdom.⁶² Thus, on July 5, 1963 ECOSOC adopted Resolution 974 D1 (XXVI) by which it approved the decision of ECA relating to membership status in ECA of the non-self governing territories in Africa and the membership status of France, Spain and the United Kingdom.

The non-self governing territories situated within ECA's geographical area, France, Spain and the United

61. Y.U.N., 1963, p. 268.

62. Ibid., p. 271.

Kingdom were from that moment to be associate members of ECA.

With regard to membership of South Africa and Portugal, the Council was informed by its President that he had received notification from the South African government in which the latter had decided not to attend any ECA conference in the future, nor to participate in the other activities of the Commission, while the hostile attitude of the African States towards South Africa persists. Accordingly, on July 30, 1963 ECOSOC adopted a resolution by which it decided to reconsider its earlier decision in respect of the membership of South Africa in ECA and decided that South Africa "should not take part in the work of the ECA until the Council, on the recommendation of the ECA, shall find that conditions for constructive co-operation have been restored by a change of its racial policy".⁶³

Early during the session, ECOSOC had, on July 1963, approved a resolution⁶⁴ by which it took note, inter-

63. Resolution 974 D-IV (XXXVI) of July 30, 1963; see also S.A. Akintan, op.cit., p. 33.

64. Resolution 974 D-III (XXXVI) of July 24, 1963.

alia, of the fact that non-African members of ECA, with the exception of Portugal, had accepted the status of associate membership. It decided to reconsider its earlier decision relating to Portugal's membership in ECA, and to expel Portugal. Paragraphs 5 and 6 of the Terms of Reference were to be amended accordingly.

Paragraph 5, as amended, makes membership in ECA open to a list containing the names of independent states within the geographical scope of ECA, except South Africa and any state in the area which might thereafter become a member of the U.N., "provided that states shall cease to have any territorial responsibilities in Africa shall cease to be members of the Commission". This provision is no longer relevant as States outside the region are by the new amendment no longer full members but merely associate members.⁶⁵ The amended paragraph 6 provides, inter-alia, that associate membership in ECA shall be the non-self governing territories situated within the geographical area defined in paragraph 4, and Powers, other than Portugal, responsible for the international relations of those territories.

65. S.A. Akinton, op.cit., p. 33.

Paragraph 7 which conferred associate membership on some named territories in Africa, which had gained independence, was deleted, but the names of states which emerged from the territories are now included in the list of states entitled to membership under paragraph 5.

Under these amendments, both the dependent territories and the metropolitan powers have equal status of associate membership in ECA. The question of who should designate representatives of the non-self governing territories, particularly Namibia (formerly South-West Africa), which is still under the illicit occupation of South Africa, remains unsolved.

With the attainment of independence by most of the non-self governing territories within the geographical area, all the metropolitan powers, with the exception of the U.K., have ceased to be associate members; while the new states emerging from those territories, following independence, have become full members. The continued associate membership of the United Kingdom is based on her responsibility for Rhodesia. The illegal declaration of independence by the rebel regime of Ian Smith is not recognized by any state of the world community, except perhaps South Africa.

Associate members, like full members, have the right to representation in all the meetings of ECA whether sitting as Commission or as Committee of the Whole, but they are not entitled to vote.⁶⁶

It should be mentioned here that all matters concerning the admission, suspension or expulsion of members in ECA are exclusively controlled by ECOSOC.

b) OAU Membership

Only independent African States are eligible for membership in the Organization. Article 4 of the OAU Charter provides that "each independent sovereign African State shall be entitled to become a Member of the Organization". This clearly excludes all liberation movements as well as territories still under colonial rule. A much debated question, both during the drafting of this Article and later during the debates leading to the adoption of the Charter, was whether an independent state not under African rule, like the Republic of South Africa, should be eligible for membership in the Organization. The

66. Ibid., p. 34.

Federation of British Central Africa, now defunct, was also a likely candidate at that time, and the possibility was not excluded that, even if the Federation should break up, the self-governing colony of Southern Rhodesia would still be in the same category as the Republic of South Africa, especially if it was finally granted its independence by Great Britain. A related but even trickier problem was posed by Tanganyika, which had a multi-racial society and government, of which the Prime Minister could well be a non-African. Some members contended that there would be nothing wrong in an independent State in Africa, with a non-African, possibly European Prime Minister, becoming a member of the Organization. Most members, however, preferred an independent state under an African Prime Minister as a candidate for membership. After much debate, the particular wording of the Article emphasizing that only an "independent" sovereign African State should be eligible for membership was finally adopted.⁶⁷

67. T.O. Elias, Africa and the Development of International Law, Oceana Publications Inc., Dobbs Ferry, N.Y. 1972, p. 129.

Under Article 24 "all independent sovereign African States" that signed and duly ratified the Charter are original members. Membership of the Organization may also be obtained by adhesion or accession to the Charter under Article 28 by any independent sovereign African State at any time notifying the Administrative Secretary General of its intention to do so.

After discussing membership in both ECA and OAU, it can be said that membership in AFCAC is subject to the following conditions:

- 1) The State must be African. Geographically, African States are defined in the Charter of the OAU to include: The Continental African States, Madagascar and other Islands surrounding Africa⁶⁸ and with regard to the ECA, as stated above, it is a question of fact to be determined entirely by ECOSOC.
- 2) The State must be independent. Although the word "independent" does not appear in Article 1 of the AFCAC Constitution, it does not mean that African States under Colonization are eligible for membership due to the following reasons:
 - a) The State seeking membership in AFCAC must be a member of either the OAU or ECA and membership in these two Organiza-

68. Article 1.2 of the Charter of the OAU.

tions are open only to independent states.⁶⁹

- b) According to Article 14, the AFCAC Constitution is opened to signature by all states attending the constitutive conference;⁷⁰ and all other independent states members of the OAU or ECA. If the word "all" is interpreted to include states under colonization, then the word "other" before the word "independent" would be of no significance and discrimination would exist between those states that attended the conference and other States that did not attend and are eligible for membership.
- 3) African state seeking AFCAC membership should adhere to the principles of the U.N. Charter.⁷¹
- 4) Membership of ICAO is not a prerequisite for membership of AFCAC. However, according to Article 13 of the AFCAC Constitution, ICAO is responsible for the indirect costs of AFCAC. This means that states members of AFCAC and not members of ICAO benefit indirectly from the ICAO budget, although they are not members.

69. According to para. 6 of the terms of reference of ECA, non-self governing territories are qualified only to associated membership.

70. Only independent States were invited.

71. Article 2(1) of the OAU Charter; see, Z. Cervenka, The Organization of African Unity and its Charter, C. Hurst and Company, London 1968/69, p. 102.

2.2. Acquisition of Membership

All states which attended the constitutive conference of AFCAC, and all other independent African states members of the OAU or ECA, may sign and ratify the constitution which was opened for signature on January 17, 1969 at the OAU Headquarters in Addis Ababa.

The Constitution came into force provisionally on the day of its signature⁷² and definitively on January 11, 1972 after the deposit of 20 States of their instruments of ratification in accordance with Article 14 of the Constitution.

2.3. Termination of Membership

Membership can be terminated by withdrawal. A State desiring to withdraw has to notify the Secretariat of the OAU to that effect, which shall immediately notify AFCAC and all other members. Withdrawal shall take effect one year from receipt of the notification.⁷³

If this notification is not withdrawn during that period, the renouncing state automatically ceases to be a member of the commission.

72. The Constitution was signed on January 17, 1969.

73. Article 15 of AFCAC Constitution.

The wisdom behind giving the renouncing state this lapse of one year between notification of withdrawal and the cessation of membership is to enable that state to reconsider its decision, and to continue to be a member if the conditions which compelled it to withdraw change.

It should be observed here that membership in AFCAC is connected with membership in the ECA and the OAU. What if a member state withdraws from these organizations? Does that mean it automatically loses its membership in AFCAC?

Before giving any answer, it should be noted that there is no provision in the ECA Terms of Reference concerning withdrawal. However, U.N. practice has established that this right can now be assumed to exist, although it was argued that a member cannot withdraw from the ECA unless it effectively withdraws from the U.N.⁷⁴

Withdrawal from the OAU is permitted under Article 32 of its Charter, by a written notification to the Administrative Secretary General and the state shall cease to belong to the Organization at the end of one year from the date of notification.

74. S.A. Akintan, op.cit., p. 36.

The question may now be answered. Since there is no provision in this respect, it could be said that the condition of membership in either ECA or OAU is confined to the eligibility of acquiring membership. Once a member, withdrawal from either of them shall not entail withdrawal from AFCAC. The only way to terminate membership in AFCAC is to follow the procedures stipulated in Article 15 of the Constitution and to withdraw voluntarily.

It is important to observe that under the present AFCAC Constitution, no automatic termination of membership is envisaged. In this, the Constitution is different from the Chicago Convention which permits such automatic termination of membership in the ICAO when the member State is expelled from membership of the U.N.⁷⁵

A word should be said here about the proposed amendment of the Constitution which grants AFCAC the status of a specialized agency of the OAU. If this amendment comes into force, then Article 15 of the Constitution should also be considered to decide whether or not it is suitable to permit automatic termination of membership in AFCAC when

75. Article 93 bis of the Convention on International Civil Aviation, Chicago 1944.

a member state ceases to be member of the mother Organization, that is the OAU.

Another point is that since the agreement signed between the AFCAC and the OAU on May 11, 1978 establishing AFCAC as a specialized agency of the OAU permits the OAU Assembly of Heads of State and Government to exclude any member state from AFCAC by a decision of that Assembly, a provision to that effect must be included in the AFCAC Constitution.⁷⁶

76. No such provision appears in the draft protocol amending the AFCAC constitution which was submitted to the sixth plenary session of the commission.

CHAPTER V

AFCAC: AN INTERNATIONAL ORGANIZATION

The most striking feature of the international scene today, as contrasted with a century or even a generation ago, is the tremendous growth of international organization of all types.⁷⁷ Internationalism is, of course, the only type of world organization that is suited to powerful nation states; anything stronger in the way of union would put an end to the sovereign status which the modern states claim to have, and would take from the state rights and powers which for centuries have been cherished.⁷⁸

1. Definition of International Organization

In the briefest form possible it can be defined as "any co-operative arrangement instituted among states, by a basic agreement, to perform some mutually advantageous functions implemented through periodic meetings and staff activities."⁷⁹

77. W. Bishop, International Law, Cases and Materials, 3rd Ed., little, Brown and Company (1971), p. 224.

78. N. Hill, International Organization, Harper and Brothers Publishers, New York 1952, p. 4.

79. D.S. Cheever, Organizing for Peace, International Organization in World Affairs, Steven and Sons Limited, London 1956, p. 6.

1.1. Analysis of the Definition

a) It is a co-operative entity among states:

Such institutions operate by organizing co-operation between the national governments and not by superseding or dictating to them. It is neither a state nor a superstate.

b) It is a continuous body:

The primary objective of such organization is to maintain and promote the common interest of member states. The organization continues to exist in as much as such common interests exist or remain.

c) It is an independent legal personality:

It has its own legal personality and legal status which is completely separate from those of the member states. It enjoys such personality towards the states that establish it and any other state or body that admits to it the legal personality expressly or in a tacit manner.

d) It is an inter-government arrangement:

It comes as a result of agreement between states or governments and not as a result of an agreement between private enterprises. Hence came the distinction between governmental and non-governmental.

e) It is an arrangement between states or a group of states:

That denotes respectively the global and regional Organizations. The former is open to membership of any state whatsoever, whereas the latter is instituted among a certain number of states gathered together by a certain bond or policy.

An international organization by its very nature is the token and reflection of a commitment on the part of its member states to act differently from the way they would if it did not exist. Such an agency is not buildings or murals, but a process - an agreed way of working together toward certain ends. It should be added that an International Organization depends on the member states in determining the extent of the authority to be exercised by the former or the resources to be provided by the latter. This makes these organizations influenced by and dependent upon the more powerful states.

2. The Factors Governing the Establishment of International Organizations

The factors governing the establishment of international organizations may be summed up in the following:

a) Prevention of War:

The dominant desire of most nations today is to avoid war. Because of the technological revolution and the introduction of atomic and hydrogen weapons, war has become an instrument of universal destruction, an instrument which destroys the victor with the vanquished.⁸⁰

Another aspect of this evolution is that the economic base required for superiority in modern warfare has grown far beyond the capabilities of all but a handful of nations.⁸¹

The charter of the United Nations manifested such factor in a clear manner by providing in its preamble that "we the people of the United Nations, determined to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind..."

It was again made clear in Article 1 of the Charter, which asserts that the purposes of the organization are "to take collective measures for the prevention and removal of threats to peace..., and to develop friendly relations among nations..."

Similarly, the charter of the Organization of American States asserts that the purposes of the Organization are "to provide for common action on the part of those states in the event of aggression". The

80. Hans J. Morgenthau, The Foreign Policy of the United States, The Political Quarterly, Vol. 22, No. 1 (January-March 1951), p. 47.

81. Cheever, op.cit., p. 9.

charter of the OAU provides in its preamble that "...in order to translate this determination into a dynamic force in the cause of human progress, conditions for peace and security must be established and maintained".

b) Need for More Co-ordination:

Most of the states in our world cannot attain full self satisfaction especially in the economical and commercial fields. It is a fact that isolated economies are not efficient for coping with the needs of every state. Moreover technical developments in every country, even that of the greatest and most nearly self-sufficing, ever more sensitive to what happens in other countries. Thus the international organization is meant to make the modern state system function more satisfactorily by carrying out a sort of co-ordination of activities of sovereign states.⁸²

c) Technical Developments:

Technical developments result from the combined efforts of many nations. Some nations are more capable than other in this area. Furthermore, modern technology is cumulative in nature. Results of a certain discovery are later used in the development of many products and processes, and not necessarily by the original inventor. International organizations have an important role to play in these areas.

They can help in the spread of modern technology, the standardization of its specifications in order to help with the aforementioned cumulative effort. For example, postal services, meteorology, air and sea navigation are directed by rules made through international organizations and valid all over the world.⁸³

82. M.G. Schermes, International Institutional Law, Vol: I, A.A. Sythoff Leiden, 1972, p. 2.

83. Ibid., p. 3; see also S. Goodspeed, The Nature and Function of International Organization, New York, Oxford University Press, 1959, pp. 3-5.

d) Idealism:

Idealism is the moral factor of the question. Those who believe in the ideal of the brotherhood of all mankind, believe that the more integrated the community the more it achieves its goals. Certainly international organizations can contribute in the building of a sense of community between all mankind.

In general it was rightly stated that:

"An organization provided a framework for social action. It integrates the unit into the whole and orders the functions of human interrelations. It provides consistent and dependable methods of interaction and a scheme of routine. It assigns to each unit its place and thereby creates an atmosphere of stability. It does more than this. It permits specialization and co-operation. Through organized effort, the end product of united action grows quantitatively and qualitatively for beyond the sum total of independent, individual action by each unit, quite apart from the fact that some problems could not be solved except by organized endeavor."⁸⁴

84. W. Levi, Fundamentals of World Organization, The University of Minnesota Press, Minneapolis, second printing 1951, pp. 3-5.

3. Classification of International Organizations

International Organization may be classified in many different ways depending on either their structure or their functions:

- a) "Public" versus "Private" organizations: Public or Governmental Organizations are those instituted by international agreement between states, while Private organizations are those developed through the efforts of private groups in different countries. Certainly the functioning and the structure of the Organization will differ in each case.
- b) "Global" versus "Regional" organizations: Global organizations are those whose membership is open to all states from different regions, whereas Regional organizations are formed by states from the same region.
- c) "Functional or Technical Organizations" versus "General or Political Organizations": the former is based on specialized knowledge and limited purpose, while the latter may discuss any subject it deem fit or any subject not belonging to some specifically categorized field.⁸⁵

3.1. Regionalism Within the Universal System

Since AFCAC is a regional intergovernmental organization, it is necessary to elaborate on the concept of "Regionalism" and its application in the field of Civil Aviation. "Regionalism" in the sense of a grouping of

85. D.S. Cheever, op.cit.

States by a common bond of policy, existed even prior to the League of Nations. Article 21 of the League Covenant recognized that the new global organization must co-exist with such regional groupings by providing that "nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings".

When the same problem of reconciling the new global organization with regional understandings arose at San Francisco there already existed a fairly comprehensive Inter-American system "Pan American Union" which in 1948 was to become the "Organization of American States"; and also the League of Arab States inaugurated by the Pact of March 22, 1945.

In order to counter the fears of the American States, in particular, provisions were expressly made to ensure that new arrangements for collective security in the Charter operating under the Security Council (U.N.) should not stultify or make useless arrangements which already existed on a regional basis. Article 52 paragraph I of the U.N. Charter, therefore, provides that "nothing in the present charter precludes the existence of regional arrangements of agencies for dealing with such matters relating to the maintenance of international peace and security as

are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the purpose and principles of the U.N.

Clearly the concern here is to avoid a conflict between the respective security systems of the U.N. and regional arrangements and to bring some co-ordination between the two systems. It is obvious that no definition of regional arrangement is given in the charter. Various attempts to insert one at the San Francisco Conference were rejected on the grounds of incompleteness.

In the early 1960's numerous African States obtained their independence. Such states constituted among themselves the "Organization of African Unity" in 1960 in order to foster their identity as a regional grouping. This organization proved to be rather successful if we evaluate its achievements with regard to political as well as non-political issues.

3.2. Regionalism and the Chicago Convention 1944

Apart from the League Covenant and the U.N. Charter, nothing in the Chicago Convention of 1944 prevents the establishment of regional civil aviation arrangements between the contracting states thereto. It would probably not be incorrect to say that, in a way, the Convention encourages

the establishment of such regional arrangements. Nevertheless, the Convention provides that "the Contracting States accept this Convention as abrogating all obligations and undertakings between them, which are inconsistent with its terms, and undertake not to enter into any such obligations and undertakings".⁸⁶ The Convention also provides that "subject to the provisions of the preceding articles, any Contracting State may make arrangements not inconsistent with the provisions of the Convention".⁸⁷ In addition, the Convention expressly referred to regionalism when specifying the functions of the ICAO Council by stating that the latter may "where appropriate and as experience may show to be desirable, create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention".⁸⁸

Article 77 of the Convention mentioned, inter-alia, the "International Operating Agencies" as intergovernmental arrangements between Contracting States parties to the Convention thereby, admitting the possibility of instituting regional arrangements between them. Furthermore, ICAO itself, the main accomplishment of the Chicago Convention established, on a regional basis, six Regional offices of the Air

86. Article 82 of the Convention.

87. Article 83 of the Convention.

88. Article 55(a) of the Convention.

Navigation Bureau distributed among the different regions of the world. These offices co-operate with the appropriate aids to achieve more safety in aerial operations. They conduct studies concerning the efficiency of the traffic facilities in certain areas and recommend appropriate action.

3.3. The Extent of Regional Organization of Civil Aviation Worldwide

One cannot deny the important role that Civil Aviation plays in the economic and social integration and development of different countries all over the world. One of the essential prerequisites for the growth and well-being of any region in the world is an efficient transportation system which can be realized through the establishment of regional organization.

In Africa, where vigorous efforts are being made to stimulate economic and social development, modern surface transportation which should carry by far the greater part of all traffic is generally inadequate and in many areas totally lacking and thus air transport is of special importance in this case. The frequently great underpopulated distances between centres of production and consumption and the conditions of climate and terrain impede the development of the surface modes due to the geographical position and vast distances as Africa is almost one-quarter of the world's land area.

In addition to the foregoing fact, the development of African Air Transport has been greatly affected by the political situation prevailing in the continent. Several groups of neighbouring states have arranged for the co-operative provision of such services as aircraft airworthiness certification, personal licensing and accident investigation, as well as in the operation of airports and air navigation facilities. Most of these groups came as a result of the political groupings that prevail in the continent. Mention is made here to the "Agence pour la Sécurité de la Navigation Aérienne" (ASECNA) which was established between fifteen french speaking countries for the provision of services to ensure regularity and safety of flying and also training.⁸⁹ There used to exist as well as the East African Community (EAC) comprising the East African countries of Kenya, Uganda, and Tanzania for the regulation and co-ordination of all forms of transport including aviation.

This community has dissolved lately due to the political split between East African countries. It is obvious that such co-operation tends to follow the lines of political association, both between groups of African States and between African and non-African States have attained only limited success.

It is a fact that the sensible development of African Air Transport needs major and concentrated efforts on the

part of all the African governments and not on the basis of political association. This mission was carried out by the African Air Transport Conference of November 1964 between all African States which led to the establishment of the African Civil Aviation Commission (AFCAC).

In the American Continents there exists two regional organizations; one is the "Conference Regionale de l'Aviation Civile" (CRAC),⁹⁰ its members are Argentina, Brazil, Chile, Colombia, Ecuador, Peru, Uruguay, and U.S.A.⁹¹

The Central American Air Navigation Services Corporation (COCESNA) is established by the Convention signed on February 26, 1960 by five Central American Republics which are Costa-Rica, Guatemala, El-Salvador, Honduras and Nicaragua. Its main objective is to ameliorate air traffic control services in the member states.

In Europe, the European Civil Aviation Conference (ECAC) was established as a result of the conference on Co-ordination of Air Transportation in Europe (CATE) held between seventeen European states in Strasbourg in April 1954.⁹²

90. Conferencia Regional del Aviacio Civil.

91. Bin Cheng, The Law of International Air Transport, London, Stevens, 1962, p. 12.

92. G. Fitzgerald, Lectures on the Organization of International Civil Aviation, Institute of Air and Space Law, McGill University, 1977.

There exists in the Arab World the Arab Civil Aviation Council (ACAC), which was established under the auspices of the Arab League by an agreement between the Arab States members thereof which came into force on October 4, 1967.

CHAPTER VI

AFCAC AND INTERNATIONAL LEGAL PERSONALITY

1. The Concept of Legal Personality

1.1. Nature of the Concept

International law in the broadest sense is defined as the group of rules and principles governing interstate relations including international organization between States, which by its nature falls under interstate relations. The emergence of the political organizations, the specialized agencies and, most recently, the commercial governmental organizations and the multiplicity of their legal transactions, have destroyed forever the dogma that States alone are the subjects of international law. The relations of such entities either with States or with each other clearly fall within the province of International Law of which they must accordingly be regarded as subjects entitled, as such to possess certain rights and to assume certain obligations. It is an established fact that the legal subjects differ from one legal system to another. Moreover, they also differ within a given legal system. The International Court of Justice (ICJ) expressed this fact plainly in saying that "The subjects of law in any legal system are not necessarily identical in nature or in the

extent of their rights and their nature depends upon the needs of the Community."⁹³ A logical consequence may be derived that a subject of internal law may not be a subject of International Law, as for example, individuals, who are subjects of internal law but not of International Law. Other legal persons may have the legal personality according to internal law or laws as well as International Law like the UN and ICAO. While it is true that the individual, in his capacity as member or organ of the State, is governed by International Law and so is a possessor of rights, responsibilities and obligations derived from International Law, these rights and obligations in the absence of special provisions do not confer an iota of personality. The individual possesses rights, obligations and responsibilities only mediately as a member of a State or, if stateless, by virtue of a treaty between states to regulate state conduct in regard to his affairs. What this means is that usually as individuals' rights and duties under International Law stem from his being one of the components of an international person. If the whole is bound, the parts are bound. By International Law, the individual in exceptional cases may be obliged to do or to refrain from doing certain things without regard for his

93. Reparation Case 1949, ICJ Reports, p. 178.

membership in a community. He may liable to the imposition of a sanction for a breach of his obligations simply because certain actions are punishable when committed. For example, piracy is often referred to as an offence against International Law that is punishable by the appropriate court of the capturing State.⁹⁴

The municipal legal personality is distinct from the international legal personality because they are based on different legal systems. In this regard, Adam pointed out that "La personnalité de droit interne ne doit pas être confondue avec celle de droit international. La personnalité internationale marque l'appartenance à l'ordre juridique internationale. Un établissement public peut recevoir une telle personnalité, pour avoir été muni des droits et obligations ressortissant au Droit des Gens, des droits qui seraient opposable aux États et justiciables des juridictions internationales sur un recours direct et immédiat ouvert à l'établissement public."⁹⁵

94. Wesley L. Gould, An Introduction to International Law, 1957, Harper and Brothers Publishers, New York, p. 206.

D.P. O'Connell, International Law, Vol. I, 1970, Stevens and Sons, London, pp. 106 et seq.

95. H.T. Adam, Les Etablissements Publics Internationaux, 1957, Librairie Générale de Droit et de Jurisprudence, Paris, pp. 4-5.

1.2. Persons other than States as Subjects of International Law

States are the principal subjects of International Law.⁹⁶ Professor Amos S. Hershey pointed out that "the International persons or subjects of International law are mainly States - the only entities which can become real members of the international community."⁹⁷

Fauchille called them subjects "par excellence", when stating that "Les Etats, considérés comme membres de la communauté internationale sont, par excellence, les personnes internationales, capable d'être ou de devenir les sujets actifs ou passifs de droits primordiaux et naturels, de droits contingents et positifs stipulés dans les traités ou consacrés par la coutume, de posséder un domaine, un patrimoine et d'exercer sur ce patrimoine puissance et domination."⁹⁸ Without delving into the problems of recognition, one result of this is that a new state emerges as a subject of International Law when a community acquires, not monetarily, but with a reasonable probability of permanence, the essential characteristics of a state; namely, an

96. Oppenheim, International Law, Lauterpacht, Longmans, London, 1955, Vol: I, p. 19.

97. Amos S. Hershey, The Essentials of International Law and Organization, p. 157.

98. P. Fauchille, Traité de Droit International Public, 8ième Ed., 1922, Vol: I - Part I, p. 207.

organized government, a defined territory, and such a degree of independence of control by any other state as to be capable of conducting its own international relations.⁹⁹

The Second result is pointed out by the ICJ when saying "whereas a state possesses the totality of international rights and duties recognized by International Law, the rights and the duties such as the Organization¹⁰⁰ must depend upon its purpose and functions as specified or implied in its constituent documents and developed in practice".¹⁰¹

Wesley Gould confirmed this fact by stating that "International personality is not a capacity that must be granted every claimant without restriction. Ordinarily the State possesses it in unrestricted form."¹⁰²

In addition, the needs for international co-operation and the requirements and exigencies of international life necessitate the creation of international persons other than States. States, as principal subjects of International Law, are capable of establishing among themselves upon their volition and common consent, international organization, whether global or regional, endowed with an international

99. J.L. Birerly, The Law of Nations, Oxford at the Clarendon Press, 1955, Part I, p. 129.

100. The United Nations Organization.

101. Supra, note 93, p. 180.

102. Gould, op.cit., part II, p. 183.

legal personality. "The only premise which it is safe to state is that the existing subjects of International Law are free to extend the application of International Law to any entity whom they see fit to admit to the realm of the International legal system."¹⁰³

Starke clarified the difference between the two types of subjects of International Law by stating that "as international institutions are defined and limited by their constitutional powers, they differ basically from States as subjects of International Law. In their case, problems such as those raised the sovereignty or jurisdiction of States cannot arise or at least cannot arise in the same way. Almost every activity is prima facie within the competence of a State under International Law, whereas practically the opposite principle applies to an international organ, namely that any function, not within the express terms of its constitution, is prima facie outside its powers".¹⁰⁴

103. G. Schwarzenberger, International Law, as applied by International Courts and Tribunals, 1957, Stevens and Sons, London, p. 62.

104. J. Starke, An Introduction to International Law, 1967 Butterworth, London, (1967), pp. 489-490.

1.3. Criteria of International Personality

Under International Law three criteria determine whether a certain arrangement between States amounts to an international entity endowed with an international legal personality. They are as follows:

- a) A permanent co-operative arrangement between states, with lawful objectives, equipped with organs. This factor distinguishes an organization from a conference which convenes for some special purpose and then dissolves after accomplishing it;
- b) A distinction, in terms of legal powers and purposes, between the organization and its member states;
- c) The performance of legal powers at the international as well as national level of one or more member states.¹⁰⁵

Accordingly, when states agree among themselves to establish an entity on a global or a regional basis and couple this with an instrument focusing their intention on establishing such a body with the above-mentioned characteristics, a new international entity emerges having an international personality of each of the constituting States. Such entity, or rather organization, enjoys its personality towards member states and any other state or entity that admits to it the legal personality expressly or tacitly.

105. O'Connell, op.cit., p. 98; Ian Brownlie, Principles of Public International Law, 1966 Clarendon Press, Oxford, London, p. 520.

However these criteria are too delicate and not easy to apply as they relate to issues of law and fact. The most difficult problem pertains to determination of the exact legal capacities of a given organization as a legal person, and its relations towards the members, third states and other organizations. Furthermore, it may be noted that the state's practice is normally to establish an organization by a basic agreement between the states concerned; nevertheless, the source could equally be, for example, the conference resolution of states or uniform practice. When a treaty is sought for the establishment of an organization, such treaty rarely provides expressly for the international legal personality of the organization. This undoubtedly leaves the door wide open for process of interpretation which may involve, in some cases, inferences, complications and differences.

1.4. Evidence of International Legal Personality

The preceding data raises the question of how an international legal personality can be proved as attaching to a given organization. It goes without saying that an express provision in a constitutive treaty, providing for international legal personality (though its inclusion is undeed rare) is, per se, conclusive of the organization's status and does not require any proof. The difficulty

arises when an express provision is lacking in the constitutive treaty, in which case, in order to assess the status of the organization, established criteria mentioned above would have to be employed. In testing the application of these criteria to the particular cases of the League of Nations, UN and ICAO, as explained below, we will adopt a case by case approach, a true law in action. Undoubtedly, this will clearly illustrate how international personality, in respect of a given organization, can be proved. Furthermore, it will also assist in proving the international legal personality of the "AFCAC", an inter-governmental organization of a purely regional character. Before discussing particular cases, however, we should like to elaborate on two aspects of evidence which are: states's conduct and the organization concerned; and treaty-making power as evidence of international personality.

As previously mentioned with regard to international organizations, the primary source of their international personality is the consent of the contracting parties concerned, whether express or tacit. Fitzmaurice, in expressing the opinion of the United Kingdom in the Reparation Case, mentioned that "the constituting instrument setting up an organization and containing its constitution

must be the primary source of any conclusions, as to the status, capacities and powers of the organization concerned."¹⁰⁶ In this concern, the practice followed by the states interested and even the conduct of the organization in consideration, subsequent to the conclusion of the constitutive treaty, helps in determining the international legal personality of the organization in question.

The second element is the treaty-making power.¹⁰⁷ Treaties to which international organizations are parties, whether agreements between different international organizations, between states and international organizations, bilateral or multilateral, are now common-place; that is to say, a common form of establishing a law. However, whilst treaty-making power is clearly an evidence of international personality, the reverse may not be true, since not every international person has the capacity to conclude treaties. In other words, not every international person has the capacity to conclude treaties or make agreements, whereas the performance of such capacity by a given organization entails the recognition of international personality to such organization. Accordingly, an international person without treaty-making power may exist, but the reverse is not true. Whether or not any given governmental organization

106. ICJ, supra, note 93, Part II, p. 116.

107. Brownlie, op.cit., Part I, p. 52.

has treaty-making power can only be determined by reference to what is specified or implied in its basic agreement and other constituent documents.¹⁰⁸

a) The League of Nations

In the case of the League of Nations, although the Covenant did not expressly confer juridical personality, the general view was that the League had both an international and municipal legal personality. This was based partly on the principle that such personality was implicitly necessary for the efficient performance by the League of its functions, and partly on its practice in repeatedly acting as a corporate person, for example, concluding agreements with the Swiss Government; taking over property and funds, etc.¹⁰⁹

b) The United Nations¹¹⁰

In drafting the United Nations Charter, and apparently, due to the desire to avoid any implication that the UN is a "super-state", a compromise was reached by recognizing in Article 104 thereof that

108. D.W. Bowett, The Law of International Institutions, 1963 Stevens and Sons, London, Part I, p. 277.

109. Starke, op.cit., Part II, p. 491.

110. Brownlie, op.cit., Part I, pp. 523-527.

"the Organization shall enjoy in the territory of each of its members such capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes." The idea behind such article is to make it clear that the Organization has the legal capacity. The Subcommittee of Committee IV/2 of the San Francisco Conference, in reporting this text, stated that:

"As regards the question of international juridical personality, the Sub-committee has considered it superfluous to make this the subject of a text. In effect, it will be determined implicitly from the provisions of the Charter as a whole."¹¹¹

Also, the provision on privileges and immunities in Article 105 of the United Nations Charter is restricted in the form of a grant in the territory of each of its members. This Article provides, in paragraph 1, that "the Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes." Similarly, Article 1 - Section 1 of the General Convention on Privileges and Immunities of the United Nations of 1946 seems to be concerned mainly with the position of the UN under national rather than international law.

¹¹¹. P.C. Jessup, A Modern Law of Nations, 1958, Mcmillan Co. N.Y., pp. 23-24.

Hence the problem of determining whether the UN only had legal personality as a subject of national law or also under International Law. The answer to this question, as far as the UN is concerned, was formally given in the Reparation Case of 1949 by the ICJ which broke the deadlock by declaring that the UN is an international person.¹¹² After the murder of Count Folk Bernadotte, while serving on a UN commission in Palestine in 1948, the UN General Assembly asked the Court to advise whether, in the event of an agent of the UN suffering injury in circumstances involving a state's responsibilities, the UN, as an organization, had the capacity to bring an international claim against the state responsible with a view to obtaining reparation. The Court found it necessary to affirm the international legal personality of the UN before going on to consider an international claim. It stated that such personality was "indispensable" to achieve the purposes and principles of the Charter, and that the functions and rights of the Organization could only be explained on the basis of the possession of a large measure that the UN, like any other international organization, is neither a state nor a super-state, it is simply a subject of International Law

112. ICJ, supra, note 93, Part II, p. 174.

endowed with the capacities adequate to perform its functions by being capable of possessing international rights, performing duties and by bringing international claims to defend its rights.

c) International Personality of ICAO

Like the UN Charter of 1945, no express mention is made of the international legal personality of the Organization in the Chicago Convention of 1944. Only Article 47 provides that "The Organization shall enjoy in the territory of each contracting state such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and law of the State concerned". It is obvious that this Article is concerned with the legal personality of the Organization under the municipal law of the state or states concerned. But, apart from the Headquarters Agreement with Canada and the Affiliation Agreement with the UN, the Convention authorises the Organization to enter agreements "with respect to air matters within its competence directly affecting world security with the UN",¹¹³ "agreements with other international bodies

113. See Article 64 of the Chicago Convention of 1944.

for the maintenance of common services and for common arrangements concerning personnel",¹¹⁴ "such other arrangements as may facilitate the work of the Organization",¹¹⁵ and through the ICAO Council, "agreements with Contracting States for the provision of technical or financial assistance regarding airports and air navigation facilities".¹¹⁶ It is quite evident that the Convention entitles the Organization to make treaties either with States or other Organizations. This treaty-making power exercised by the Organization reveals, apparently, the intention of the drafters of the Convention to endow the Organization with international legal personality. Only international organizations, can conclude international treaties.

Consequently, the advisory opinion of the ICJ on the international legal personality of the UN and its capacity to bring international claims is also applicable to ICAO.

114. See Article 65 of the Chicago Convention of 1944.

115. Ibid.

116. See Article 70 of the Chicago Convention of 1944.

2. AFCAC International Legal Personality

It is to be noted that there is no express provision in the present AFCAC Constitution conferring AFCAC with internal or international legal personality. Nevertheless, international personality can be implied from the different provisions giving AFCAC the performance of certain international activities, and in the practice carried out by AFCAC under such provisions in the international sphere.

Article 1 of the Constitution refers to AFCAC as an autonomous body, thus emphasizing its separate and distinct entity, a condition which is essential as a requirement for legal personality.

Article 4.2. thereof assumes the power of AFCAC to conclude bilateral and multilateral arrangements with other governmental organizations like OAU and ICAO, a matter which proves its capacity to enter into international arrangements with other international persons.

In practice, AFCAC has acted as if it enjoys international legal personality. On September 10, 1974 it signed a Headquarter Agreement with the Government of Sénégal.¹¹⁷ During its fifth

117. AFCAC 3 Report, Dakar 1975, p. 25.

plenary session held in Lomé in 1977, it approved a draft co-operation agreement with ICAO;¹¹⁸ and during the same session, it considered a draft co-operation agreement with ACAC.¹¹⁹

AFCAC also signed an Agreement with the OAU on May 11, 1978 in Addis Ababa, whereby AFCAC became a specialized agency of the OAU.¹²⁰

It is appropriate to note here that the proposed new AFCAC Constitution¹²¹ refers expressly to its internal legal personality within the territory of member states. Article 1, paragraph 2 stipulates "On the territory of each Member State it shall enjoy such legal capacity as may be necessary for the performance of its functions."

As to the International Legal Personality, there is no express provision in the said draft, but it can be implied through Article VIII relating to the treaty-making power of AFCAC, by which it is entitled to conclude agreements with governmental and non-governmental organizations after consultation with the OAU.

118. AFCAC 5 Report, Dakar 1977, p. 51.

119. Ibid., pp. 52-53.

120. AFCAC 6-WP/23, 5/3/1979; this was conditioned by the approval of the Commission at its sixth plenary session.

121. For the text of the revised Constitution and financial and staff regulation see working papers 24 and 25 of the sixth plenary session.

CHAPTER VII

AFCAC RELATIONSHIP WITH OTHER ORGANIZATIONS

The AFCAC Consitution provides that "AFCAC shall, in the exercise of its functions, work in close consultation and co-operation with OAU, ECA, ICAO and any other governmental or non-governmental international organization concerned with civil aviation."¹²² However, it is worthy to note that the constitution in its first item was careful to emphasize that AFCAC is an "autonomus body".

In the light of these two items, the relationship between AFCAC and the three basic organizations will be discussed, in addition to its relationship with other African Civil Aviation Organization.

1. The AFCAC Relationship with the OAU

A close relationship exists between AFCAC and the OAU. The creation of AFCAC was, to a great extent, due to the studies and efforts made by the OAU in co-operation with ECA and ICAO.

It should always be recalled that one of the purposes of the OAU is to co-ordinate and harmonize the general policies of its member states in the economic field, which includes transport and communications.¹²³

122. Article 4.2. of AFCAC Constitution.

123. Article 2 - 2(b) of the Charter of the OAU.

According to the AFCAC constitution,¹²⁴ the OAU performs the task of receiving the instruments of ratification of the States willing to adhere to the commission, in addition to the withdrawal notifications, and in both cases it shall notify AFCAC and all its member states.

As a general practice, AFCAC kept the OAU informed of the various Bureau meetings and invited it to attend. In response, the OAU was represented at several of those meetings.

On the other hand, the OAU took the necessary steps to associate AFCAC with the work of the Conference of Heads of States and Governments of East and Central Africa,¹²⁵ during which questions of air transport in the sub-regions were discussed. AFCAC accepted the OAU invitation to participate as an observer in the 19th Session of the Council of Ministers of Foreign Affairs of the Organization and in the Summit Conference which was held in Rabat from June 5-15, 1972. In its report to the 19th Session of this Council, the OAU expressed the following opinion about AFCAC:

"In the field of air transport, the Secretary General is developing its contacts with the African Civil Aviation Commission. Over twenty countries have ratified its Constitution and it can undoubtedly play an important role as a purely African Organization by contributing effectively to the rational development of

124. Articles 14 and 15 of AFCAC Constitution.

125. Mogadiscio, October 6-20, 1971.

civil aviation in Africa. It devolves upon the Organization of African Unity to do its utmost for the African Civil Aviation Commission to obtain every possible assistance required by the latter. To this end, the Secretary General spares no effort to obtain up-to-date information on the activities of the Commission and to seek the ways and means of using its influence to ensure appropriate implementation of all its decisions."

At the AFCAC third plenary session, the observer from the Organization of African Unity suggested action which the Commission might take in the light of the Resolution CM/Res.357 (XXIII) adopted by the OAU Council of Ministers at its 23rd Session, which decided that AFCAC should be an organ of the Economic, Social, Transport and Communications Commission of the OAU and responsible to it.

The executive Committee noted that this Resolution had been endorsed by the Assembly of Heads of State and Government of the OAU and agreed that it should be accepted.

Questions were raised concerning the interpretation of the OAU Resolution, and particularly, the status of AFCAC vis-à-vis the OAU as a whole, the OAU Secretary General and General Secretariat and the OAU Economic, Social, Transport and Communications Commission. This Commission was not, in fact, in permanent session with its own Executive Secretariat Clarification was also deemed necessary concerning the status of the Secretariat of AFCAC vis-à-vis the OAU.

It was recognized that the status of the AFCAC Constitution would have to be considered in the light of this Resolution. The Legal, Financial, Administrative and Technical aspects would need to be clarified, particularly on such questions as whether AFCAC recommendations would be transmitted directly to AFCAC Member States as they were at present, or would be required to pass through the various bodies of the OAU; and whether the AFCAC budget would continue to be financed by direct contributions by AFCAC Member States or by an allocation from the OAU budget.

In the light of these discussions, the Executive Committee considered that there were many complex questions which needed to be considered very carefully with the Administrative Secretary General of the OAU.

Consequently, the Commission approved a recommendation by which it welcomed the OAU Resolution C/M/Res 357 (XXXIII),¹²⁶ and instructed the Bureau to undertake discussions with the Administrative Secretary General of the Organization of African Unity to resolve the following questions:

- the status which AFCAC would have vis-à-vis the OAU, its Administrative Secretary General and the General Secretariat and the OAU Economic, Social, Transport Communications Commission;
- the status of the AFCAC Secretariat vis-à-vis the OAU;

126. Rec. S3-19.

- the status of the Constitution of AFCAC;
- the legal, financial, administrative and technical aspects which had to be taken into consideration;
- any other related questions which might emerge during the course of these discussions.

Pursuant to this Recommendation, discussions took place between the AFCAC Bureau and the Secretary General of the OAU. As a follow-up, a draft co-operation agreement between the two organizations was prepared by a drafting group established by the Bureau and was submitted to the Administrative Secretary General of the OAU for comments.

At the 25th Ordinary Session of the OAU Council of Ministers,¹²⁷ another resolution was adopted by which the Council of Ministers decided to grant the commission the status of a specialized agency of the OAU, as determined in an agreement to be concluded between the two organizations.¹²⁸

In August 1975 AFCAC held an extra ordinary plenary session,¹²⁹ during which the subject was considered, in order to make arrangements for rapid implementation of the OAU Resolutions. The Commission welcomed these Resolutions and decided to take the necessary measures for their implementation. In its Recommendation

127. Kampala, July 1975.

128. OAU CM/Res.439 (XXV).

129. The Fourth Plenary Session, Liberville, August 19-23, 1975.

S4-1, a draft OAU/AFCAC co-operation agreement, to be used as a basis for negotiation of a co-operation agreement was submitted to the 26th Ordinary Session of the OAU Council of Ministers for approval. It was also decided that the AFCAC Consitution should be amended so as to provide for the establishment of AFCAC as a specialized agency of the OAU.

A meeting between the Administrative Secretary General of the OAU and the AFCAC Bureau was held in Addis Ababa in January 1976, to negotiate a draft co-operation agreement between the two Organizations on the basis of the draft text adopted at the fourth (Extraordinary) Session.¹³⁰ The Joint meeting adopted a draft agreement which was approved by the OAU Council of Ministers at its 26th session.¹³¹

The draft agreement establishes AFCAC as the competent specialized agency of the OAU in the aviation field and is to be the framework within which both Organizations will co-operate more closely.¹³²

During AFCAC's 5th plenary session held in Lome in 1977, the representative of the OAU, referring to Article IX (Budgetary and Financial Arrangements) informed the Executive Committee

130. AFCAC Circular Letter No. 76/04-January 27, 1976.

131. AFCAC 5 - Appendix 4, p. 108.

132. Attendance of meeting, submission by AFCAC of an activity report to the Political Bodies of OAU, financial and budgetary arrangements.

that the OAU could not guarantee annual financial contributions to AFCAC but would finance AFCAC projects as the need arose. He explained that, in accordance with the OAU's budgetary practices, AFCAC would have to submit its financial requirements to the OAU Advisory Committee on budgetary of the Advisory Committee to scrutinize the submission and to make recommendations to the appropriate political organs which would decide, on the basis of need, what amount AFCAC should receive.

In view of the uncertainty concerning the budgetary and financial arrangements in Article IX, the Executive Committee was of the opinion that the Commission could not approve the draft agreement at the session. It agreed that the Bureau, with the participation of the other States, interested in contributing to this work should draw up a revised draft agreement in the light of the discussions at the session. The Bureau would then circulate the draft to Member States, and taking into account any comments received, would then present a revised draft to the OAU, before final submission to the Committee.

Nevertheless, the Committee decided to establish a working group to examine the differences between the draft co-operation agreement adopted by the joint meeting of OAU/AFCAC held in 1976 and approved by the OAU Council of Ministers at its 26th Session, and the draft which the Fourth Plenary Session had adopted by

its Recommendation S4-1. Upon receipt of the working group's report, the Executive Committee started to examine the substance of the draft agreement, taking into account the comments of the working group. Finally, the commission adopted a recommendation,¹³³ by which it instructed the Bureau to finalize the draft OAU/AFCAC co-operation agreement adopted in principle by the commission, with the assistance, as necessary, of qualified legal experts, to negotiate the differences between this draft and the OAU text with the competent authorities of the OAU, and to present the revised draft of the following plenary session.

At the 20th meeting of the Bureau¹³⁴ the following conclusion, reached during the OAU/AFCAC discussion, was ratified:

- a) The agreement should be signed by the Administrative Secretary General of OAU and the President of AFCAC at the earliest possible date;
- b) That as soon as possible thereafter, AFCAC could request the convening of the OAU/AFCAC joint co-ordination Committee, provided for in Article X of the agreement, to consider AFCAC's proposals for amending the agreement;
- c) The results of the work of the joint co-ordination committee are to be presented to the Sixth Plenary Session of AFCAC (1979) and thence to the 33rd Session of the OAU Council of Ministers for approval.

Subsequently the OAU/AFCAC Agreement as approved by the

133. Recommendation S5-32. AFCAC 5, p. 50.

134. Dakar March 28-31, 1978.

26th Session of the OAU Council of Ministers and endorsed by the 13th Assembly of the OAU Heads of State and Government was signed by the Administrative Secretary General of OAU and the President of AFCAC in Addis-Ababa on May 11, 1978.¹³⁵

Soon thereafter the Bureau initiated action for a meeting of the OAU/AFCAC Joint Co-ordination Committee to be held with a view to amending the signed agreement in accordance with Article XI of that Agreement, as desired by AFCAC. However it was not possible for such meeting to be held prior to the 6th Plenary Session of AFCAC and the whole matter was referred to that Session.¹³⁶

During the Session, the OAU representative explained the current policy and practice regarding administrative and budgetary support of OAU specialized agencies. He warned the meeting, that the OAU was concerned about the number of specialized agencies which were springing up and seeking OAU assistance and about the escalating costs of running OAU Organizations. He went on to inform the meeting that at a recent OAU Council of Ministers Session in Nairobi, a resolution was passed requesting the OAU Administrative Secretary General to study the whole matter of funding OAU specialized agencies and to submit a report. Pending the finalization of this exercise, the representative suggested that the only option open to AFCAC was to

135. The Text of the Agreement is attached as Annex IV.

136. AFCAC/6 - WP/23, 5/3/1979, Executive Committee.

continue under existing arrangements.¹³⁷

The President of the Council of ICAO reminded the meeting that all the 39 members of AFCAC were also members of ICAO and that six of them were represented on its Council. Therefore, they participated in the policy making machinery of ICAO. He also outlined the existing arrangements between ICAO and other similar regional organizations namely the ECAC and the LACAC. He recalled the ICAO Assembly resolution A10-5 which authorized ICAO to assist ECAC and similar regional organizations. He also referred to Article 9 of the new proposed agreement providing for an autonomous secretariat which if implemented would put the financial and budgetary arrangements outside the framework of resolution A10-5 and consequently the present working arrangements between ICAO and AFCAC would become obsolete. He concluded by assuring the Committee that ICAO is prepared and willing to continue its support to AFCAC under the existing arrangements.

The Executive Committee recognized that should they adopt the revised constitution and the financial and staff regulation presented to it, there would be serious financial and budgetary implications. It also noted that many States were in arrears with their contributions to AFCAC and that were it not for the advances made possible under existing arrangements between ICAO and AFCAC there would be difficulties in running AFCAC Secretariat.

137. AFCAC/6-WP65, Report of the Executive Committee, p.1.

Some delegations could not see how an increase of about 45% of the AFCAC Budget could be met through direct additional contributions by States.

In the light of the above discussion, the Commission approved the agreement between AFCAC and OAU and decided to maintain for the time being its present relationship with ICAO.¹³⁸

138. Rec. S-6 - 28.

2. The AFCAC Relationship with ICAO

Needless to say, AFCAC has a special relationship with ICAO. As already mentioned, ICAO provides AFCAC with Secretariat services on the same basis as those provided to ECAC. The decision of the ICAO Council in that respect allows the necessary funds to be advanced to cover direct expenditures, subject to reimbursement by AFCAC Member States. As far as indirect expenditures are concerned, these are to be borne by ICAO according to the practice followed by ICAO in the joint financing field, provided for in Chapter XV of the Chicago Convention.¹³⁹

The Air Transport Officer of ICAO's Dakar Office assumes the functions of AFCAC Secretary with the assistance and advice of the Dakar and Cairo ICAO regional offices as well as the ICAO Headquarters in Montreal. Thus the practice followed by ICAO with similar international organizations such as ECAC, whose seat is located in the ICAO office in Paris continues to be applied to AFCAC. In this connection, the necessary funds and assistance were provided to AFCAC for organizing and holding its meetings and implementing the recommendations of the plenary sessions.¹⁴⁰

139. Article 13 of AFCAC Constitution.

140. AFCAC 3 report pp. 76-77.

It should be mentioned that the wisdom behind establishing regional organizations, particularly those specializing in technical activities, is to transfer advanced technology to the various regions of the world. In line with this, the AFCAC constitution stipulates that among its functions, it must "encourage the application of ICAO standards and recommendations on facilitation and supplementing them by further measures aimed at greater facilitation on the movement by air of passengers, cargo and mail",¹⁴¹ and "foster arrangements between states whenever this will contribute to the implementation of ICAO regional plans for air navigation facilities and services, and ICAO specifications in the fields of airworthiness, maintenance and operation of aircraft, licensing of personnel and aircraft accident investigation".

During the fifth plenary session of AFCAC, consideration was given to a draft working arrangement between ICAO and AFCAC. The draft put in writing the arrangements which, in fact, had been followed since the inception of AFCAC, and provided the same services as the arrangements between ICAO and ECAC and LACAC.¹⁴²

141. Article 4.1(f) of AFCAC Constitution.

142. AFCAC/5 report, p. 51.

At the same session, the Commission adopted a decision¹⁴³ by which it approved the working arrangements considered¹⁴⁴ and authorized its President to so inform the President of the ICAO Council.

143. Decision S 5-33.

144. The text of ICAO/AFCAC working arrangements is attached as Annex V.

3. The AFCAC Relationship with ECA

Co-operation between ECA and AFCAC was established since AFCAC was set up in 1969. Both Commission normally attend the Conferences of each other. AFCAC accepted invitations from ECA to attend the Conference of West African Ministers of Transport¹⁴⁵ and the Conference of Central African Ministers of Transport.¹⁴⁶ These conferences were being convened for the purpose of establishing in each sub-region a permanent body for multinational economic co-operation in the transportation field responsible for co-ordination, planning, and policy and investment in this field. This permanent body was to be composed of Ministers designated by Member States, technical groups, including a specific sub-committee for each means of transportation.¹⁴⁷

145. Abidjan, June 1-7, 1975.

146. Kinshasa, September 1976.

147. AFCAC/5, Report, p. 108.

4. The AFCAC Relationship with ACAC

A strong relationship exists between AFCAC and ECAC. This is due to the fact that eight states are members of both organizations.¹⁴⁸ At the AFCAC fifth plenary session (May 1977) a draft co-operation agreement between the two Organizations was considered. A large majority agreed with the principle that there should be a co-operation agreement, a minority preferred that the agreement should be in the form of working arrangements.

Finally a recommendation¹⁴⁹ was adopted by which the Commission agreed in principle that there should be a co-operation agreement between the two Organizations and instructed the Bureau to examine the draft agreement and submit the text resulting from this examination to Member States and ACAC for their views and report to the following ordinary plenary session. The Bureau at its 19th meeting¹⁵⁰ examined the agreement and forwarded it to Member States for their Comments.

148. See supra, note 14.

149. Recommendation 55-35, AFCAC/5, Report, 1977.

150. Dakar, October 1977.

At its 21st meeting the Bureau reviewed the comments received and prepared a revised text which was submitted to the sixth Plenary Session of the Commission (May 1979) for consideration.¹⁵¹

The Commission, at that session accepted and approved the substance of the revised draft co-operation agreement between AFCAC and ACAC and instructed the Bureau to consult with the OAU and with AFCAC on the basis of the revised draft agreement. It also instructed the president to sign the agreement on the finalization of this consultation.¹⁵²

According to the agreement, both Organizations shall co-operate in all matters relevant to their common objectives in respect of civil aviation as well as in the consideration of all matters which may be discussed in international meetings and particularly in the meetings of the International Civil Aviation Organization.¹⁵³ They shall further co-operate in the preparation of joint studies, in carrying out of common projects within their sphere of competence, and in the joint organization of meetings and seminars for consideration of problems of common interest and exchange of views in various fields of action.¹⁵⁴

151. The Draft Agreement is attached as Annex VI.

152. Rec. S6 - 29.

153. Articles 1, 2 & 3 of the draft agreement.

154. Ibid., Article 3.

5. The AFCAC Relationship with AFRAA

Both AFCAC and AFRAA are aiming at promoting co-ordination, better utilization and orderly development of African air transport systems.

Thus, the relationship between them should be strong and effective. However, reviewing the actual co-ordination and co-operation in certain fields of their mutual interest, one can say that such co-ordination and co-operations need to be more enhanced.

CHAPTER VIII

AFCAC ACTIVITIES AND EVALUATION

1. Aims and Functions of AFCAC

The basic aims of AFCAC are spelled out in Article 3 of its constitution, and under it AFCAC is required to:

- a. Provide the civil aviation authorities in the member states with a framework within which to discuss and plan all the required measures of co-ordination and co-operation for all their activities;
- b. promote co-ordination, better utilization and orderly development of African Air Transport Systems.

Article 4-1 spells out the functions of the Commission which include:

- a. Formulating plans at the regional and sub-regional levels for the operation of air services within and outside Africa;
- b. carrying out studies of the feasibility of standardization of flying equipment and ground units servicing aircraft;
- c. carrying out studies of the possibility of integration of the policies of governments regarding commercial aspects of air transport;
- d. carrying out studies of intra-African fares and rates with a view to adopting a structure conducive to the rapid growth of traffic in Africa;
- e. carrying out studies of regional or sub-regional air transport economic questions other than those mentioned in b, c and d above;

- f. encouraging the application of ICAO standards and recommendations on facilitation and supplementing them by further measures aimed at greater facilitation of the movement by air of passengers, cargo and mail;
- g. fostering arrangements between States whenever this will contribute to the implementation of:
 - i. ICAO regional plans for air navigation facilities and services, and;
 - ii. ICAO specifications in the fields of airworthiness, maintenance, and operation of aircraft, licensing of personnel and aircraft accident investigation;
- h. fostering and co-ordinating programmes for the development of existing and future training facilities to cope with the present and future regional and sub-regional requirements for personnel in all fields of civil aviation;
- i. studying the need for collective arrangements for technical assistance in Africa with a view to obtaining the best possible use of all available resources, particularly those provided within the framework of the United Nations Development Programme.

It is to be observed that AFCAC in performing these functions concentrated its activities mainly in two fields; the first is training, the second is air transportation.

2. Survey of Work of AFCAC

As mentioned above AFCAC paid much attention to the problem of training in Africa which is the most pressing problem due to the grievous shortage of training capacities and technical power on one hand, and the need for great funds to implement the plans made to bridge this shortage on the other.

The second field of interest of AFCAC is in "Air Transportation". This was quite normal in a continent like Africa so dependent on transport and communications for its development, so lacking in the conventional modes (road and rail systems) and with many of its states landlocked.

2.1. In the Training Field

One of the basic strategic elements of the air transport infrastructure and, without doubt the most important, is the availability of the necessary human resources. A problem currently encountered in many states is how, with modes means, to turn people into technicians and technologists. The safety and reliability patterns established by aviation are built on human skills and sense of personal responsibility, aided by modern sophisticated equipment that must be well maintained and capably used. Without this kind of human input, air

transport cannot serve people and may destroy itself.

Africa has produced and continue to produce civil aviation technical staff, the difficulty is to produce enough of them and on a self sustaining basis.¹⁵⁵

It was with a full realization of this situation that AFCAC decided to find out a solution for this difficulty. Its efforts in that respect took several forms:

a) Standardization of Training Centres Entrance Qualifications

This subject was discussed since the first AFCAC plenary session in 1971¹⁵⁶ and opinions were divided as to whether or not entrance levels should be standardized. It was decided to ask the Bureau to look into matter.¹⁵⁷ However, it was felt that special measures were required in order to assist candidates not fully meeting direct entrance qualifications, in achieving the desired standard.¹⁵⁸ There was general agreement that graduation levels of all Centres should, at least, be in accordance with ICAO Standards as stated in the appropriate Annexes and Training Manuals.

155. ICAO Publication, Manpower and Training Civil Aviation Africa, March 1978, p. 5.

156. Dakar 1971.

157. Rec. S 1-3.

158. Doc. S 1-4.

The Bureau suggested during the second plenary session that the sixth year of secondary school be set as the basis minimum level for entrance purposes in civil aviation training centres in Africa. The proposal was accepted by the commission and was regarded as a temporary compromise due to the significant differences which exist between the basic educational systems in English speaking and French speaking States in Africa. In this, connection, the importance of knowledge by aviation personnel in the Region of both English and French was stressed as an operational requirement for certain categories of personnel as a means of facilitating co-ordination between States and fostering African Unity. It was recommended¹⁵⁹ that Civil Aviation Training Institutions accepting foreign students should endeavour to develop the capacity of providing training in both English and French. Such institutions should also completely avoid the use of other languages for instructional purposes.

b) Standardization of the Duration of Identical Training Courses

A proposal to standarize the duration of identical training in the various institutions of the region was considered in the second plenary session in 1973 and it

159. See Rec. S2-8.

was felt that this aim could only be achieved progressively and that the workshop type meetings conducted by ICAO would afford a good opportunity for exchanging views in this regard. It was also decided that the Bureau should monitor progress and report on this matter to the Commission.¹⁶⁰

c) Training of Pilots

At the first Plenary Session of AFCAC, it was realized that training facilities in the region for up to commercial pilot licence were adequate but that there was a lack for pilot training at higher level, specially for jet aircraft operations.

Accordingly the Bureau was instructed to investigate the desirability of recommending the establishment of a training centre to serve the needs of all AFCAC States in respect of the advanced training required by holders of a commercial pilot licence to qualify as airline pilot on jet aircraft.¹⁶¹ The Bureau reported to the second plenary session and its proposal that a seminar on "Advanced Pilot Training in Africa" be convened to study the problem and propose solutions, was endorsed.¹⁶²

160. See Rec. S2-9.

161. Rec. S 1-10.

162. Rec. S 2-10.

It was agreed that the seminar may develop guidelines on the optimum siting, organization and equipment of an institution for the advanced training of airline pilots for further consideration by the Bureau.¹⁶³ The seminar's report together with other relevant documents were considered in the third AFCAC Plenary Session¹⁶⁴ and the following decisions were reached:

1. That there is a need to expand the existing capacity for training of pilots both ab initio i.e. up to CPL/IR level and advanced i.e. above CPL/IR level;
2. That the increase in capacity would be met by:
 - a) expansion of some of the existing centres,
 - b) creation of additional centres particularly to meet the needs of French Speaking States.
3. To seek the UNDP assistance through ICAO.¹⁶⁵

In 1974/75 a manpower and training survey was sponsored by the UNDP and carried out by the ICAO to determine the immediate and long term (five years) needs for civil aviation in governments and airlines in the States south of the Sahara. The data collected was then combined in a Final Report in April 1975.¹⁶⁶ In June an analysis of this report was issued under the title of "A General Plan for Meeting Civil Aviation Training Needs as revealed by the

163. AFCAC/2 Report 1973, p. 15.

164. Kampala 1975.

165. See para. 46, AFCAC 3, Report 1975, p. 12.

166. Rec. S 4-3.

African Manpower and Training Survey."¹⁶⁷ This General Plan outlined the numbers to be trained and in what specialities; where and to what extent it seemed desirable to establish training facilities, and the costs involved. The survey showed that there is great shortage of training capacities within Africa and of necessary technical power.

In 1975 AFCAC adopted the general plan as set out in UNDP/ICAO Document, with the addition however of the ASECNA Centre in Niamey and the Air Afrique Centre in Dakar and those African training centres which are not in the UNDP defined Africa region, as being the basis for the expansion of the existing capacity to meet the civil aviation training needs of AFCAC Member States.¹⁶⁸

In parallel to this and at the same session, the Commission specifically decided to establish two Multi-national Pilot Training Centres, one in Franceville (Gabon) to cater for French speaking countries and the other in Addis-Ababa (Ethiopia) to cater for English speaking states.

It further instructed the Bureau to take appropriate action to co-ordinate with the States concerned the establishment and expansion of the multinational centres

167. UNDP/ICAO Doc. RAF/73/006.

168. Rec. S 4-3, AFCAC/4, Report 1975, pp. 12-13.

and the urgent implementation of the facilities required in the "General Plan".¹⁶⁹

As a follow up to this recommendation, the Bureau convened a conference on the development of multinational pilot training centres in Addis-Ababa in June 1976, and participated at the informal ICAO/AFCAC/UNDP meeting held in Montreal in November 1976 to secure the funds required. The UNDP and ICAO secured some financial assistance for training facilities and requirements. The Commission's Fifth Plenary Session convened in 1977 decided to recommend to the OAU that urgent action be taken to secure additional financing necessary for the establishment and implementation of appropriate civil aviation training facilities including the convening of a donor's conference, and requested UNDP and ICAO to continue their efforts to assist AFCAC to achieve implementation of its training programme.¹⁷⁰

The OAU responded promptly and adopted in July 1977 a resolution on the establishment of Civil Aviation Training Centres in Africa, by which it requested its Administrative Secretary General to set up an OAU/AFCAC Co-ordination Committee with the participation of the UNDP and ICAO.¹⁷¹ The Co-ordination Committee was requested to complete its

169. Rec. S 4-3.

170. Rec. S 5-27.

171. C/M/Res.568 (XXIX)-1977, the text of the Resolution is reproduced in ICAO Publication "Manpower and Training Civil Aviation. Africa. March 1978. pp. i-ii.

work by the end of December 1977 at the latest, so that the OAU and the AFCAC could convene in this period a Conference of Donors.

The OAU/AFCAC Co-ordination Committee established pursuant to the Council of Ministers Resolution held three meetings with the participation of UNDP and ICAO, in Montreal (September 7-8, 1977) in Dakar (Feb. 8-9, 1978) and in Addis-Ababa (May 10, 1978).

During these meetings the Committee organized a Conference on Civil Aviation Training aiming at obtaining the additional funding necessary for implementating certain projects on the training of civil aviation personnel in Africa. The Conference was held in Geneva from May 31, to June 2, 1978.¹⁷²

The outcome of this conference was reported to the 31st Ordinary Session of the OAU Council of Ministers which was held in Khartoum in July 1978. The Council of Ministers noted, among other matters, that AFCAC had prepared a draft convention on the establishment of multinational civil aviation training centres, and was planning to convene ministerial conferences to consider and adopt conventions establishing

172. AFCAC, Sixth Plenary Session, 1979, Agenda Item 6, pp. 11-14.

multinational centres at Franceville MVengue (Gabon) and at Addis-Ababa (Ethiopia). The Council of Ministers then adopted a Recommendation calling on its Administrative Secretary General to "continue the work of the OAU/AFCAC Co-ordinating committee established in pursuance of Resolution CM/Res 568 (XXIX) with a view to establishing permanent contact with donors which would fully ensure the concrete realization of the establishment or expansion of the multinational centres".¹⁷³

Two Ministerial Conferences were organized for the purposes of adopting conventions establishing the multinational centres. The first Ministerial Conference held in Libreville in October 1978 adopted a Convention on the establishment of MVengué multinational civil aviation training centre. This Convention was signed by twelve States at the conclusion of the Conference. The Second was held in Addis-Ababa in December 1978. This however did not adopt an instrument establishing the Addis-Ababa Civil Aviation Training Centre as a multinational centre. The principle agreed earlier by the Fifth Plenary Session that the centres should be open for both multinational use and ownership was not accepted by Ethiopia who wanted to offer the centre only for multinational use. The Conference was

173. CM/Res 655 (XXXI), 1978.

therefore not able to make further progress. It decided that a report should be submitted to the Sixth Plenary Session of AFCAC so that a decision could then be taken on the proposal of Ethiopia for a joint use Multinational Centre as opposed to a joint ownership Multinational Centre.

Meantime the OAU/AFCAC Co-ordination Committee with ICAO and UNDP participation as well representatives of Gabon and Ethiopia was reconvened for a meeting in Dakar on February 5 and 6, 1979. At this committee, the UNDP provided information according to which most of the donors had entered into no definite commitment and had only expressed their support for a number of projects in particular those of a national nature.

At the AFCAC Sixth Plenary Session, the representative of ICAO informed the meeting that the UNDP had approved the draft project document, which provided for a UNDP contribution of 7.3 million dollars for the period 1980-1984. The project document would comprise three elements, viz: the contribution of the UNDP (\$7.3 million), that of Gabon (\$20 million) and the operating cost, which would be funded by fellowship (\$6.2 million).¹⁷⁴

The executive committee then adopted a resolution on the implementation of the multinational pilot training centre

174. AFCAC/6-WP/90 - Plenary, 31/5/1973, p. 4.

at Mvengue (Gabon), by which the Commission urged member states desirous to participate in the centre; to sign and/or ratify the convention establishing the centre, and to ensure the funding of the student's courses through their own appropriations or those that would be earmarked in the UNDP country programmes. On the Addis-Ababa multinational training centre, the Commission directed that the proposed AFCAC Convention be opened as soon as possible for signature and that there be appended to this Convention a Protocol indicating ways and means as well as the duration of the transitional period which should not exceed five years. It instructed the Bureau to make necessary arrangements for drafting the said Protocol as well as the draft Convention based on the existing one setting up the Mvengue multinational centre, and requested the OAU, the UNDP and the ICAO to assist in providing the necessary technical assistance in the preparation and implementation of this programme.

2.2. In the Air Transportation Field

As the President of the ICAO Council has rightly said in his opening address to the Sixth Plenary Session of the AFCAC:

"Air Transport is playing and will continue to play a decisive role in the development of Africa, taking into account its relative independence from the climatological and topographical difficulties that frequently impede the progress of surface transport. The relatively large number of land - locked countries, and the large stretches of thinly populated land that separate the main population and trade centres, make this continent a natural environment for the operation of air transport services as a tool for achieving social and economic progress."

Due to the role which air transport can play to the development of national economies of African States, the AFCAC tried to find means to contribute in the development of air transport in Africa in order to implement its objectives, in that respect.

The importance of the matter was realized by the commission which dealt with the different aspects of air transport and tried to find appropriate collective solutions to the problems impeding the development of air transport in Africa.

a) Policy of AFCAC Member States on Bilateral Air Transport Agreements

The Commission adopted several recommendations¹⁷⁵ by which it approved the following policy on bilateral air transport agreements between AFCAC Member States for air services within Africa:

175. Recommendations: S 5-16, S 5-17, S 5-18.

1) Concerning the First Two Freedoms of the Air:

The Commission recommended that when its member States negotiate bilateral agreements between themselves, they should bear in mind their obligations to exchange first and second freedom rights in accordance with the principles of the Chicago Convention,¹⁷⁶ and when they negotiate bilateral agreements with other States, the same principle will apply, except in cases where the granting of such rights is inconsistent with the overall policy of the Organization of African Unity and AFCAC.¹⁷⁷

2) Concerning the Third and Fourth Freedoms:

The Commission was of the opinion that the Bermuda principles are not satisfactory in as much as they do not permit a rational development of air transport in Africa. It then recommended the following policy:

- a) Member States do not put any obstacles to negotiations leading to exchanges of third and fourth freedom traffic rights and that the exercise of these rights be facilitated as much as possible;
- b) Pending the formal conclusion of an air services agreement or the fulfilment of the constitutional formalities necessary to bring the agreement into effect, Member States should as far as possible endeavour to permit on a provisional basis the introduction of air services between themselves particularly as regards Third and Fourth Freedom traffic rights;

176. Rec. S 5-16.

177. Rec. S 6-17.

- c) In the exchange of Third and Fourth Freedom traffic rights Member States should adopt a predeterminist approach through which they would endeavour to exchange reciprocal traffic rights while ensuring that capacity is adapted to demand.

3) Concerning the Fifth Freedom:

The Commission recommended that AFCAC Member States should endeavour to promote, to the fullest extent possible, mutual exchange of fifth freedom traffic rights among themselves, applying the principles governing the exchange of third and fourth freedom rights and should give preference to their designated airlines with regard to the granting of the fifth freedom. Whenever they consider it necessary to grant these rights to non-AFCAC member states, they should obtain reciprocal rights or adequate compensation.¹⁷⁸

b) Non-Scheduled Operations

The share taken by African airlines in world non-scheduled passenger traffic is very low.¹⁷⁹ However it is starting to attract operators. The share in the non-scheduled international traffic of African carriers taken by charter airlines rose from 30% in 1972 to 43% in 1977, thus coming slightly closer to the world average which is at present around 62% but the competition is still uneven between African carriers on the one hand and European and North American airlines on the other.

178. Rec. S 5-18.

179. 2.2% of the total expressed in passenger kilometer in 1977.

Concerning non-scheduled freight traffic, there is a relatively high demand for air freight services¹⁸⁰ and this can be attributed to the undeveloped surface transport in Africa.

The Commission approved in 1975 a common policy on regulations for non-scheduled operations including a standard application form for authorization to operate inclusive tour or affinity group charter flights.¹⁸¹ In 1977 it instructed the Bureau to keep the AFCAC common policy under review in order to bring it up to date in the light of studies being carried out by ICAO in this field pursuant to pertinent decisions of the ICAO Special Air Transport Conference of 1977.

AFCAC also published two circulars including an analysis of statistics on non-scheduled passenger traffic for 1976 and 1977 respectively.

At the sixth AFCAC plenary session, the Commission did nothing more than reactivating AFCAC working group to study the possibility of arriving at a common AFCAC position in the field of non-scheduled operation for presentation to

180. In 1977 about 242 million freight tonne-kilometres were carried in international non-scheduled operations by scheduled airlines and non-scheduled operators registered in Africa. This represents 7.2% of the world total.

181. Rec. S 3-4.

the second ICAO Air Transport Conference in February 1980, and in a second phase, to up-date the AFCAC's policy in this field in the light of recommendations of the second Air Transport Conference.¹⁸²

c) Co-ordination of Airline's Schedules

As part of its work programme, AFCAC has to determine measures for the optimum development of all aspects of African international air services including scheduling.

When the Commission considered this subject at the fifth plenary session it adopted, inter alia, Recommendation S 5-8 as follows:

"The Commission:

Considering the inadequacy of air links within a number of Sub-regions or between some African Sub-regions and other world great traffic generating areas;

Considering that the schedules of inter-African scheduled services fail to meet fully the requirements of the users of those services;

Considering the non-observance by a number of African Airlines of published schedules and the inconvenience which this causes to the users;

RECOMMENDS:

- a. That air routes within African Sub-regions, between various sub-regions, and between

182. Rec. S 6-5.

Africans States and other areas in the world be established and developed;

- b. that airlines operating in Africa adequately examine and closely co-ordinate their schedules so as to better meet the requirements of their passengers."

The Recommendation was forwarded to States and to AFRAA for necessary action. In reply, AFRAA indicated that it has a schedules planning sub-committee whose terms of reference included the co-ordination of time-tables and the improvement of route patterns. Additionally, a description of route networks by sub-region in effect as of September 1977 contained in ICAO circular 147-AT/51 indicated that the situation of direct air connections in Africa needed a number of improvements. However, it was recognized that progress in this field is hindered by difficulties concerning traffic rights, facilitation, co-operation between States and between airlines as well as levels of demand.¹⁸³

The AFCAC sixth plenary session continued to consider the subject and the Commission adopted a recommendation directing the Bureau in co-operation with AFRAA to make further intensive efforts to implement the provisions of

183. AFCAC/6 - WP 83, Plenary 31/5/1979.

recommendation S 5-8 and urging Member States to encourage their airlines to co-operate in providing good service connections for the public.¹⁸⁴

d) Air Freight and Air Mail

Air Freight is of increasing importance to the economic development of Africa. Rapid growth of international and domestic air freight traffic is being experienced on scheduled and non-scheduled services. The growth rates of international non-scheduled are substantially higher than those of scheduled freight traffic.

In 1977, AFCAC adopted a recommendation by which it urged member states to facilitate the operation of air freight charter flights between themselves and to encourage the establishment of air freight and air mail planning groups.

The Bureau in 1978 considered the implementation of the above mentioned recommendation and instructed the Secretariat to encourage establishment and better operation of air freight and air mail planning groups both at

184. Rec. S 6-6.

national and sub-regional levels, to encourage relaxation of regulations for operation of non-scheduled freight services and to include in the agendas of the sub-regional meetings on airline co-operation and integrations, examination of:

- a) The proposal for establishment of an African aircraft leasing corporation which was made by "the ICAO/UNDP studies to determine the contribution of civil aviation to the development of the national economies of African States".
- b) The possibility of establishing multinational freight airlines on sub-regional or other levels.¹⁸⁵

All these matters were considered by the Commission at its sixth plenary session, together with the study made by the ICAO on "The International Air Passenger and Freight Transport In Africa"¹⁸⁶ and the Commission recommend its member states to establish active national and/or sub-regional air freight and air mail planning groups which should, inter alia, provide information for the AFCAC data bank to be established pursuant to a recommendation made at the same session.

185. AFCAC/6-WP/12, Bamako 1979.

186. ICAO Circular 147-AT/51.

e) Airline Co-operation and Integration

Co-operation among African airlines has been one of the main objectives pursued by AFCAC for ten years. This co-operation is seen from the geographical viewpoint and from the viewpoint of technical, commercial or regulatory organization.¹⁸⁷

In 1977, the Commission adopted a recommendation by which it approved a four year plan¹⁸⁸ for the establishment of co-operation between the African airlines.

The plan aims at finding means of co-operation in the fields listed hereunder:

- Aircraft standarization and establishment of common technical specifications for the types of aircraft to be operated;
- Optimum utilization of technical and training facilities through better distribution of the work load in all fields of activities;
- Sizable reduction in the operation costs and greater profitability of investments;
- Creation of jobs requiring a high level of technical skill;
- Strenghtening of relationships among member States;

187. See The Ten Years of AFCAC Activity, the record and prospects, Lecture by Géo R. Beso to the Sixth Plenary Session of the AFCAC, Bamako, May 2 to June 2, 1979.

188. 1978-1981.

- Transfer of technology;
- Establishment of multinational airlines.

AFCAC at its sixth plenary session dealt specifically with the following subjects:

1. The establishment of multinational airlines in Africa

The air transport committee was of the opinion that the establishment of the needed framework for multinational airlines, required as a preliminary condition, the existence of political motivation. In the course of its discussion of this matter, several points of view were brought to the attention of the committee. It was suggested that the member States of AFCAC should follow the example of larger airlines elsewhere in the world which had achieved this present state of development with the help of a considerable degree of inter-airline co-operation. This was the case in Europe where airlines participated in many common activities, where spare part pools were established, and maintenance facilities operated for groups of airlines. Another point that was made was the possibility for the African training centres to provide for the training of airport personnel as well as airline pilots and maintenance technicians. It was indicated that the two training centres in Addis-Ababa and Mvengue were intended for training pilots and aircraft maintenance technicians.

2. Financing of Aircraft Procurement

The air transport committee considered that it might not be necessary to consider separately the idea of an aircraft financing agency and of an African aircraft leasing corporation, and that the same organization could possibly perform both functions. It considered that what was essential was that groups of countries should combine to obtain the required financing because bankers seldom extended this type of loan to individual countries.

3. The Establishment of a Data Bank of Air Freight

The idea of the establishment of a data bank which would process and distribute information on the nature, locations and potentials of freight, for the benefit of Member States and African airlines, was also discussed in the air transport committee.

The Commission then adopted a recommendation on Airline co-operation and Integration¹⁸⁹ by which it instructed the Bureau to arrange for the following tasks to be implemented:

1. To establish in co-operation with AFRAA common specifications for aircraft types in general use and those expected to be acquired in substantial numbers by African operators by the year 1982. The study should also include types of aircraft not operated by AFRAA member airlines;
2. To examine the problems arising from the application in Africa of three different types of national civil aviation regulations with a view to standardizing these regulations in particular those concerning the procedures for aircraft airworthiness certification and personnel licensing;
3. To study with the assistance of financial institutions and aircraft manufacturers, the amount of investment required for the installation of a network of maintenance facilities and their operational costs;
4. To consider in co-operation with the African Development Bank and other interested African Financial Institutions the need to inter alia:

189. Rec. S 6-21.

- i. create facilities for the procurement of aircraft by African airlines under the most favourable conditions;
 - ii. undertake feasibility studies on the creation of an African financing and leasing company.
5. To establish a Data Bank for information relating inter alia to the nature, origin, destination and potentialities of air freight for the benefit of interested States and airlines.
- f) International Air Fares and Rates

According to its current work programme AFCAC should attempt, with respect to the development of international air passenger transport, to determine measures for establishment of regular and creative international air passenger fares at levels that would take account of economies of air transport, and to the greatest extent possible, promote the growth of traffic. With respect to the development of air freight transport it should determine effective measures for establishment of more specific commodity rates and weight-break-points on particular routes in order to encourage potential new traffic and to reduce traffic imbalance.

At the fifth plenary session, the Commission adopted a Recommendation¹⁹⁰ by which it provided for the training of qualified personnel specialized in air tariffs in African

190. Rec. S 5-4.

Member States, and recommended that Member States consider establishing a machinery for the enforcement of approved air tariffs.

The recommendation was adopted in the light that IATA would continue to function as the principal air fares and rates fixing machinery and that States would continue to rely upon airlines to consider the commercial implications of air fares and rates.

The United States decision to issue a "Show Cause Order" on IATA changed the expected direction of developments in the regulation of air transport especially with respect to the role of IATA as a multilateral fares and rates setting machinery.

When the subject was considered by the air transport committee at the AFCAC Sixth Plenary Session, there was a strong feeling that the existing machinery of rate-making should be maintained. The committee considered that the airlines of developing states were still fragile and needed a stable regulatory environment within which to develop, and that the new United States civil aviation policy would divisive and work against the political and economic interests of Africa as had been demonstrated by the statement made by the United States Civil Aeronautics Board.¹⁹¹

191. AFCAC/6 - WP/84, p. 6.

A recommendation on this subject was adopted by the Commission urging¹⁹² all States including non-AFCAC member states to refrain from taking or supporting any action which could jeopardise the orderly development of international civil aviation and to refer any matter relating to the reform of the existing international instruments and associated procedures to the competent international organizations for consideration in the spirit of international comity.

The recommendation urges further the United States Civil Aeronautics Board to rescind the "Show Cause Order" and commends the action taken by individual States and AFRAA to file objections to the order. The Commission directed the Bureau to take immediate action to communicate the recommendation to the United States Government, to ICAO and all other interested organizations.

192. Rec. S 6-4.

3. How Can AFCAC Function Efficiently

The emergence of AFCAC in 1969 invoked a lot of speculations about the possible role it was going to play to develop the Civil Aviation in Africa.

The Commission has so far played its role efficiently, although it encountered certain impediments which unnecessarily consumed much time and efforts, thus diverting the Commission from its primary concern.

For example, the issue of granting AFCAC the status of OAU's specialized agency. The Commission should have realized from the very beginning that that endeavour would be encountered by the implications of financing. And even if the envisaged affiliation status had been attained, it would not have served any substantial purpose. On the contrary, such status might have affected the well established relations between AFCAC and ICAO, the International Organization specialized in civil aviation, which provides it with the secretariat services. On the other hand, we observe that both ECAC and LACAC, in spite of being regional organizations similar to AFCAC and having similar relations with ICAO, never tried to be specialized agencies to their respective political regional organization.

Evaluating the achievements of the Commission since its establishment, one cannot deny the effective role it played in

establishing the multinational training centres for both Anglo and Francophone African States and securing the necessary funds for their establishment. Undoubtedly, AFCAC's activities in this field were of great benefit for all African States, because the only alternative to multinational centres is to continue the pattern of the past, by sending African students overseas to be trained, which would deny Africa the opportunity to play an active part in its own developments to create and foster its own skills and eventually to become self-sufficient in this vital area.

In the field of Air Transport, the Commission dealt with all its aspects and issued numerous building up recommendations and conducted several useful studies on the African Air Transport and the policies followed by African States on bilateral air transport agreements.

The trend of the Commission to establish relations with other International Organizations should be encouraged, especially with those concerned with civil aviation in Africa. We do believe that more co-operation should exist between the Commission and AFRAA. Unquestionably, the more co-ordination and co-operation between these two organizations are made the more the benefits the civil aviation in Africa will receive.

The Commission exerted remarkable effort in providing solutions to the problems which encountered the African Civil Aviation. One can record here the African Civil Aviation Medical achievements, i.e. providing technical expertise and assistance to the African Member States, through co-operation with ICAO and UNDP and the convening of several regional and sub-regional meetings to set up the appropriate plans to develop the different aspects of African Civil Aviation.

Continuing the evaluation of the work of the Commission, in a bid to enhance AFCAC's role, it is worthwhile to take into consideration the following points:

1. The Commission did not follow the method of Multi-national Agreements in certain aspects of air transport. Other similar regional organizations, such as ECAC, have successfully made effective achievements by following this method, which might as well benefit the African Air Transport, especially in promoting non-scheduled passengers air transport.
2. In respect of exchanging traffic rights, we agree to the policy of the Commission to encourage bilateralism instead of multinationalism for the following reasons:
 - i) Bilateral Agreements are easier to conclude and therefore more rapidly beneficial to air transport than the implementation of agreements among a large number of countries.
 - ii) The systematic use of bilateralism permits the rapid creation of air services if they do not exist between two countries.

However such policy has, on the other side, a detriment effect. A great number of African States, due to political or economical reasons, are adopting a restrictive policy, which led to the weakness of the

African air network and consequently to a weak connection between the African countries.

Professor Géo R. Besse, the Director General of ITA has reflected this point in his lecture to the AFCAC's Sixth Plenary Session, by stating that "the aviation policy of the vast majority of African countries is very relatively restrictive. They are jealous and admittedly they have good reasons for being so - of their political sovereignty and of the commercial sovereignty of their national airlines. The result is the conclusion of transport agreements with clauses strictly limiting capacity and frequency providing almost exclusively for directly exchanged traffic and banning exercise of the Fifth Freedom. On this basis, air services are therefore created only between two countries which have sufficient reasons for wanting to set them up, as when traffic demand is heavy and co-operation between the two countries exists. Whether these reasons are really technical or simply political, it is not certain that they always correspond to the needs of the African continent seen as a whole."

It is true that there is confusion and perplexity between the Commission's Member States on which policy they should follow in that respect. This was clear from the discussions which took place in the air transport committee, during the AFCAC's Sixth Plenary Session. Some States believed that protectionism was a policy to be avoided by developing states and that AFCAC should undertake concrete studies that would demonstrate the advantages of liberalizing air transport in the African region.

Others were of the opinion that traffic rights should be available to all on the basis of reciprocity, and that reciprocity could be interpreted in different ways. It could consist of an equivalent exchange of rights, not necessarily requiring a strict equivalence between the same types of traffic rights. A third group of states indicated that the experience in Africa generally pointed to the policy of protectionism when dealing with other African States, while the rights being refused to African States were often granted freely to non-African states.

Here comes the role of AFCAC which it should play in guiding its members to the policy which they should follow for the benefit of air transport in the continent as a whole. Of course this policy will be based on intensive studies conducted either by the Bureau or by experts specially nominated for that purpose.

3. The newly independent African States suffer from the lack of experience and shortage in technical staff to run their civil aviation administrations. The AFCAC could help those States by establishing unified African Civil Aviation Law and Regulations, which they can make use of as comprehensive standards when preparing their national civil aviation laws and regulation. It may further prepare another standard on civil aviation charges of the guidance of the African member States.

Such standards are very useful for the African States on the one hand and help to standardize and unify the civil aviation laws applied in Africa, on the other.¹⁹³

4. The tendency of the Commission to work on the establishment of a multinational airline in Africa should be treated carefully.

The experience has revealed that such projects have very limited chance to succeed. In some cases, the political element interferes and makes its creation practically difficult or liable to deterioration after it is created. In others, the obstacle of securing the necessary funds for such projects makes its creation rather impossible. The East African Airways established by the East African States group and the PAN Arab Airlines¹⁹⁴ planned by certain Arab States are concrete examples.

193. ACAC has succeeded in setting up a unified air law between its Arab Member States.

194. The PAN Arab Airlines Agreement was concluded between Arab States to establish a multinational airline.

In fact, there is a need for establishing strong African airlines and there are some African States who cannot afford establishing their own national airlines due to lack of funds and experience. However, such projects will not solve the problem but will rather complicate it.

It is advisable to start with developing strong co-operation between the African Airlines in all aspects. Pooling, commercial agreements, co-ordination of operation, agreements on exchange of spare parts and standardization of aircraft types are possible examples for such co-operation.¹⁹⁵

After reaching a certain level of co-operation and standardization, the AFCAC may recommend the integration of certain airlines existing in one region, by establishing a consortium to this effect.¹⁹⁶

Adopting this policy by the AFCAC, which is the Governmental Civil Aviation Organization in Africa, will help in achieving the aim of establishing strong African airlines and in the same time will meet the desire of developing African States to have their own airlines, through their participation with limited shares in the Consortium.

5. To ensure the African identity and in order to settle the disputes which arise between African States in the field of Civil Aviation locally, AFCAC can establish a machinery for settlement of disputes between its member states, before they resort to International Arbitration. Such machinery may be endowed with certain power to give its resolutions a kind of binding force.

195. ECAC has succeeded in making the framework for the European airlines co-operation, which was very beneficial to them.

196. The successful experience of the Scandinavian Countries in creating SAS.

6. In order that the Commission may perform its function efficiently, its constitution should be amended to give its resolutions and recommendations a certain binding force. It was noted that during the past ten years, the Commission adopted several resolutions and recommendations which were really useful for the African Civil Aviation, however their application by the member states were limited.

If it is desired to develop civil aviation in Africa, states should be under the obligation to apply the resolutions of the commission or provide the commission with reasonable explanation for non-application.

The amendements should include further the possibility of giving the commission the power of suspension of membership of any member, for violating its aims and for not applying its binding resolutions.

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ANNEX I

LIST OF THE STATES REPRESENTED IN THE
AFCAC'S CONSTITUTIVE CONFERENCE

- | | |
|-----------------------------|----------------------------|
| 1. ALGERIA | 17. MAURITANIA |
| 2. BURUNDI | 18. MAURITIUS |
| 3. CAMEROON | 19. MOROCCO |
| 4. CENTRAL AFRICAN REPUBLIC | 20. NIGER |
| 5. CONGO (BRAZZAVILLE) | 21. NIGERIA |
| 6. CONGO (KINSHASA) | 22. RWANDA |
| 7. EQUATORIAL GUINEA | 23. SENEGAL |
| 8. ETHIOPIA | 24. SIERRA LEONE |
| 9. GABON | 25. SUDAN |
| 10. GHANA | 26. SWAZILAND |
| 11. IVORY COAST | 27. TANZANIA |
| 12. KENYA | 28. TOGO |
| 13. LIBYA | 29. TUNISIA |
| 14. LIBERIA | 30. ARAB REPUBLIC OF EGYPT |
| 15. MALAWI | 31. UPPER VOLTA |
| 16. MALI | 32. ZAMBIA |

- ANNEX II

AFRICAN CIVIL AVIATION COMMISSION

CONSTITUTION

1. The African Civil Aviation Commission (AFCAC) is an autonomous body and membership shall be open to African States members of ECA or OAU.
2. AFCAC is a consultative body and its conclusions and recommendations shall be subject to acceptance by each of the governments.

OBJECTIVES

3. The objectives of AFCAC are:
 - (a) To provide the civil aviation authorities in the member States with a framework within which to discuss and plan all the required measures of co-ordination and co-operation for all their civil aviation activities;
 - (b) To promote co-ordination, better utilization and orderly development of African air transport systems.

FUNCTIONS

- 4.1 The functions of AFCAC shall, in particular, include:
 - (a) Formulating plans at the regional and sub-regional levels for the operation of air services within and outside Africa;
 - (b) Carrying out studies of the feasibility of standardization of flying equipment and ground units servicing aircraft;
 - (c) Carrying out studies of the possibility of integration of the policies of governments regarding commercial aspects of air transport;
 - (d) Carrying out studies of intra-African fares and rates with a view to adopting a structure conducive to the rapid growth of traffic in Africa;
 - (e) Carrying out studies of regional or sub-regional air transport economic questions other than those mentioned in (b), (c) and (d) above;

- (f) Encouraging the application of ICAO standards and recommendations on facilitation and supplementing them by further measures aimed at greater facilitation of the movement by air of passengers, cargo and mail;
- (g) Fostering arrangements between States whenever this will contribute to the implementation of:
 - (i) ICAO regional plans for air navigation facilities and services, and;
 - (ii) ICAO specifications in the fields of airworthiness, maintenance and operation of aircraft, licensing of personnel and aircraft accident investigation.
- (h) Fostering and co-ordinating programmes for the development of existing and future training facilities to cope with the present and future regional and sub-regional requirements for personnel in all fields of civil aviation;
- (i) Studying the need for collective arrangements for technical assistance in Africa with a view to obtaining the best possible use of all available resources, particularly those provided within the framework of the United Nations Development Programme.

4.2 AFCAC shall, in the exercise of its functions, work in close consultation and co-operation with OAU, ECA, ICAO and any other governmental or non-governmental international organization concerned with civil aviation.

ORGANIZATION AND WORKING ARRANGEMENTS

- 5. AFCAC shall meet in ordinary plenary session once every two years.
- 6. At each ordinary plenary session, **AFCAC** shall elect its President and four Vice-Presidents, one for each sub-region, who will constitute the Bureau of AFCAC.
- 7. Extraordinary plenary meetings may be convened by the Bureau and must be convened if the Bureau received a request from two-thirds of the AFCAC members.

8. At each ordinary plenary session, AFCAC shall establish its work programme for the period until the following ordinary plenary session.
9. The direction, co-ordination and steering of the work programme between ordinary plenary sessions shall be the responsibility of the Bureau of AFCAC.
10. AFCAC shall determine its own internal organization, arrangements and procedures, including the formation of committees to study special aspects of civil aviation in Africa.
11. Member States should be represented at meetings of AFCAC by delegates senior in rank and competent in the field to be discussed for the authoritative handling of the problems.
12. There shall be established by AFCAC a Secretariat for organizing studies, meetings, maintenance of records and the like. The rules governing the recruitment and conditions of service of the staff shall be determined by AFCAC. ICAO, during the initial period to be determined by AFCAC, shall have the following responsibilities:
 - (i) To provide staff to carry out studies, organize meetings and undertake related activities;
 - (ii) To handle minutes, correspondence, etc.

AFCAC shall make full use of the experience and assistance of ICAO in conformity with the practice followed by the latter with similar international organizations.

FINANCIAL MATTERS

13. At each ordinary plenary session, AFCAC shall prepare and approve a budget of the direct costs of its activities, as indicated in the work programme for the ensuing years. AFCAC shall establish its own financial rules for the assessment of members' contributions and control of expenditure. As regards the indirect costs, these shall be the responsibility of ICAO in accordance with the practice followed by ICAO in the joint financing field under Chapter XV of the Chicago Convention.

SIGNATURE, RATIFICATION AND WITHDRAWAL

14. The present constitution is open to signature by all States attending the Constitutive Conference of AFCAC and by all other independent African States members of the OAU or ECA.

The instruments of ratification shall be deposited with the Secretariat of the OAU which shall give notice of the date of deposit to AFCAC and all member States of AFCAC.

The present Constitution shall be open for the signature of African States as of 17 January 1969 at the Headquarters of the OAU in Addis Ababa.

The Constitution shall come into force provisionally as of 17 January 1969 and shall come into force definitively after ratification by twenty member States.

15. To withdraw from AFCAC, a State shall address a notification to that effect to the Secretariat of OAU which shall immediately notify AFCAC and all other members.

Withdrawal shall take effect one year from receipt of the notification.

AMENDMENT

16. This Constitution may be amended by a two-thirds majority of all members

ANNEX III

RULES OF PROCEDURE FOR PLENARY MEETINGS OF
THE AFRICAN CIVIL AVIATION COMMISSION

(For its subordinate bodies, the AFCAC decided, on each occasion, which are the applicable rules)

Meetings

Rule 1

The African Civil Aviation Commission (AFCAC) will meet in ordinary plenary session once every two years. It shall be convened by the President of AFCAC at a suitable time and place, and in accordance with any directives given by the Commission.

Rule 2

Extraordinary Plenary meeting of AFCAC may be convened by the Bureau and must be convened if the Bureau receives a request from two-thirds of the AFCAC members.

Delegations

Rule 3

All AFCAC members shall have an equal right to be represented at the sessions of the Commission. No person shall represent more than one State.

Rule 4

Delegations of Member States may be composed of delegates, alternates and advisers. One of the delegates shall be designated as the Chief Delegate. In case of his absence the Chief Delegate may designate another member of his Delegation to serve in his stead.

Rule 5

The Bureau of AFCAC shall invite OAU, ECA and ICAO to attend each session of the Commission as observers. Furthermore the Bureau may invite, at its discretion, other observers to attend a session of the Commission.

Credentials

Rule 6

1. Delegations shall be provided with credentials signed on behalf of the State or organization concerned, by a duly authorized person, specifying the name of each member of the Delegation and indicating the capacity in which he is to serve. The credentials shall be deposited with the Secretary of the AFCAC.

2. A credentials Committee, appointed by the President at each Plenary meeting shall examine the credentials and report thereon to the Commission without delay.

3. Delegates, alternates, advisers and observers shall be entitled pending the presentation of a report on credentials by the Credentials Committee and action thereon by the Commission, to attend meetings and participate in them, subject, however to the limits set forth in these Rules.

4. The Commission may debar from further participation in the meetings any delegate, alternate, adviser or observer whose credentials it finds not to be in order.

Officers

Rule 7

At each ordinary plenary session, AFCAC shall elect its President and 4 Vice-Presidents, who will constitute the Bureau of AFCAC. The President and Vice-Presidents may be re-elected. The Bureau shall itself establish the order in which the functions of the President will be assumed by each Vice-President in case of unavailability of the President. The new officers shall assume office as soon as they are elected and shall continue until the next ordinary plenary session.

Agenda

Rule 8

1. Provisional Agenda. Before each ordinary plenary session of the Commission, the Bureau, in consultation with the States members of the Commission and with the ECA, OAU and ICAO shall determine the Provisional Agenda. The

Provisional Agenda for an ordinary plenary session shall be made available to all AFCAC members not less than three months before the opening date of that session.

2. Final Agenda. The Commission shall adopt the final Agenda at the beginning of each plenary session.

3. The Commission may, at any time, add any item to the Agenda of an ordinary plenary session or otherwise amend it.

Rule 9

The Agenda of extraordinary plenary meetings of AFCAC convened by the Bureau shall be confined to items specified by the Bureau and, for extraordinary meetings convened at the request of States, to the items specified in their request. The Agenda for an extraordinary session shall be made available to all States members of the Commission not less than one month before the opening date of that session.

Committees and subordinate organs

Rule 10

1. At each ordinary plenary session, the Commission shall establish an Executive Committee and may also establish committees, open to all States members of AFCAC. Sub-committees of limited membership and committees of experts shall be established as necessary or desirable, with such functions as the Commission may specify.
2. The President of AFCAC shall be the Chairman of the Executive Committee.
3. The Chairmen of Committees shall be elected by the plenary and the Vice-Chairmen, by the Committees themselves.
4. Sub-Committees of limited membership and committees of experts shall appoint their own Chairmen, and, if necessary, Vice-Chairmen.
5. A Sub-Committee may establish such subordinate organs as it may deem fit.

Secretariat

Rule 11

The Secretariat of AFCAC shall act as the Secretary at each plenary session and shall arrange for the provision of secretariat services for the committees. He shall be assisted as required by representatives of ECA, OAU or ICAO.

Conduct of Business

Rule 12

Plenary meetings of the Commission shall be held in public unless the Commission decides that any of its meetings shall be held in private. Meetings of the Committees and working groups shall be held in private unless the body concerned decides otherwise.

Rule 13

Members of delegations of member States not represented in a sub-committee of limited membership may attend and participate without voting or the right to make or second proposals, in the meetings of such body.

Rule 14

Observers

Observers shall have the right to attend all public meetings and private meetings of Committees, except the Executive Committee, unless the body concerned decides otherwise. Observers may attend meetings of working groups if so decided by the group concerned. Observers shall have the right to participate in discussions of the meetings that they are allowed to attend and to present documents, but not to vote or to make or second proposals.

Rule 15

Quorum

1. A majority of the member States of AFCAC shall constitute a quorum for plenary sessions of the Commission.
2. A majority of the States represented at a plenary session shall constitute a quorum for meetings of the Executive Committee.

3. The Commission shall determine the quorum for the committee and groups, if in any case, it is considered necessary that a quorum be established for such bodies.

Rule 16

Powers of the presiding officer

The presiding officer of the Commission or of any body concerned shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and, subject to those Rules, shall have complete control of the proceedings of the body concerned and maintain order at its meetings.

Rule 17

Speakers

1. The presiding officer shall call upon speakers in the order in which they have expressed their desire to speak. He may call a speaker to order if his observations are not relevant to the subject under discussion.
2. Generally, no Delegation may speak a second time on any question, except for clarifications, until all other delegations desiring to speak have had an opportunity to do so.
3. At plenary meetings of the Commission, the Chairman of a Committee or group of experts may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In meetings of a committee or group of experts, similar precedence may, for the same purpose, be accorded to the Chairman of any other organ of the Commission.

Rule 18

Time limit on speeches

A presiding officer may limit the time allowed to each speaker, unless the body concerned decides otherwise.

Rule 19

Points of order

1. Notwithstanding the provisions of Rule 17, a delegate may at any time raise a point of order, and the point shall immediately be decided by the presiding officer.
2. Any delegate may make a motion appealing against such decision. In that case, and subject to the provisions of Rule 20, the procedure specified in Rule 21 2. shall be followed. The decision given by the presiding officer under paragraph 1. shall stand unless over-ruled by a majority of the votes cast.

Rule 20

Motions and amendments

1. A motion or amendment shall not be discussed until it has been seconded.
2. Motions and amendments may be presented and seconded only by members of the Delegations of States members of the Commission.
3. No motion may be withdrawn if an amendment to it is under discussion or has been adopted.
4. Proposals for formal action shall not be discussed until 24 hours after they shall have been submitted in writing, except in the absence of objection to earlier discussion.

Rule 21

Procedural motions

1. Subject to the provisions of Rule 20, any delegate may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion on an item, or the closure of the debate on an item.
2. After such a motion or one under Rule 19 2. has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it and no further speeches shall be made in its support before a vote

is taken. Additional speeches on such motion may be allowed at the discretion of the presiding officer. A delegate speaking on such a motion may speak only on that motion and not on the substance of the matter which was under discussion before the motion was made.

Rule 22

Order of procedural motions

The following motions shall have priority over all other motions, and shall be taken in the following order:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on an item;
- (d) To defer the debate on an item;
- (e) For closure of the debate on an item.

Rule 23

Consideration of proposals

Re-opening within the same body and at the same session of a debate already completed by a vote on a given item shall require a majority of votes cast. Permission to speak on a motion to re-open shall normally be accorded only to the proposer and to one speaker in opposition, after which it shall be immediately put to vote: when a larger number of speeches is allowed by the presiding officer, priority of recognition shall be given to the leading participants in the debate affected by the motion, or in the sponsorship of or opposition to the proposal that would be affected. Speeches on a motion to re-open shall be limited in content to matters bearing directly on the justification of re-opening. Discussion of the substance of the question at issue will be in order only if, and after, the motion to re-open prevails.

Rule 24

Discussions in subordinate organs

A subordinate organ established by a committee or group of experts may conduct its deliberations informally, save that it may at any stage decide that these Rules shall be observed at its meetings.

Rule 25

Voting rights

Each State member of the Commission, if duly represented, shall have one vote at meetings of the Commission, committees, groups of experts or subordinate organs of which it is a member.

Rule 26

Voting of presiding officer

Subject to the provisions of Rule 25, the presiding officer of the Commission, committee, group of experts or subordinate organ shall have the right to vote on behalf of his States.

Rule 27

Majority required

1. Except as otherwise provided in these Rules, decisions shall be by a majority of the votes cast; provided that the affirmative votes of a majority of those present in the meeting where the vote is taken are required for the approval of recommendations and conclusions. An abstention shall not be considered as a vote.
2. Decisions regarding any amendments or additions to the Constitution shall require the affirmative vote of two-thirds of the States represented at the session, provided that the number of those affirmative votes should not be less than a majority of the States members of AECAC. An abstention shall not be considered as a vote.

Rule 28

Method of voting

1. Subject to paragraph 2 hereof, voting shall be by voice, by show of hands or by standing, as the presiding officer may decide.
2. In meetings of the Commission and its committees there shall be a roll-call vote if requested by two States members of the Commission. The vote or abstention of each State participating in a roll-call vote shall be recorded in the minutes.

Rule 29

Division of motions

On request of any delegate, and unless the meeting otherwise decides, parts of a motion shall be voted on separately. The resulting motion shall then be put to a final vote in its entirety.

Rule 30

Voting on amendments

Any amendment to a motion shall be voted on before a vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness to the original motion, commencing with the most remote. The presiding officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion; this ruling may be reversed by a majority of votes cast.

Rule 31

Voting on alternative or substitute motions

Alternative or substitute motions shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motion and any amendment thereto. Such decisions may be reversed by majority of the votes cast.

Rule 32

tie voting

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Commission or body concerned decided at such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, the motion shall be considered lost.

Rule 33

Languages

English and French shall be the languages of AFCAC.

Rule 34

Reports

Reports prepared by meetings of the Commission shall be distributed to States members of the Commission, to observers which attended the meetings, to ECA and OAU and ICAO and to other bodies that the Commission may decide.

Rule 35

Records of proceedings

1. Minutes of the plenary meetings of the Commission shall be prepared by the Secretariat and approved by the Commission.
2. Proceedings of committees, groups of experts and subordinate organs shall be recorded in summary form, except where the Commission directs otherwise in the case of committees dealing with matters of high importance.

Rule 36

1. Except in the case of Rules 1, 2, 3, 9, 15, 27 and 33, these Rules may be amended, or any portion of the Rules may be suspended, at any time by the Commission in plenary session by a majority of the members of AFCAC represented at the session.
2. Amendment or suspension of Rules 1, 2, 3, 9, 15, 27 and 33 shall require the affirmative vote of two-thirds of the States represented at the session, provided that the number of those affirmative votes should not be less than a majority of the States members of AFCAC. An abstention shall not be considered as a vote.

ANNEX IV

AGREEMENT BETWEEN THE ORGANIZATION OF AFRICAN UNITY (OAU)
AND THE AFRICAN CIVIL AVIATION COMMISSION (AFCAC) ESTABLISHING
AFCAC AS A SPECIALISED AGENCY OF OAU.

The Organization of African Unity (OAU) and the African Civil Aviation Commission (AFCAC),

Considering paragraph 2 of Article II of the Charter of the Organization of African Unity, which stipulates that Member States shall co-ordinate and harmonize their general policies in all fields, including matters relating to economic co-operation, transport and communications;

Considering Article 3 of the Constitution of the African Civil Aviation Commission, which stipulates the objectives of the Commission, including, inter alia, promotion of co-ordination, better utilization and orderly development of African air transport system;

Considering Resolution CM/res.357 (XXIII) of the Twenty-Third Session of the OAU Council of Ministers relating to AFCAC;

Considering Recommendation S3-19 of the Third Plenary Session of AFAC adopted as a follow-up on the above-mentioned OAU Resolution;

Considering Resolution CM/res.439 (XIV) of the 25th Session of the OAU Council of Ministers relating to AFCAC;

Recognising of the common concern of the parties hereto for the development of air transport in Africa;

Determined to give AFCAC and OAU a working relationship and framework for the promotion of a common air transport policy on civil aviation matters.

AFCAC shall be established:

Article I
STATUS OF AFCAC

AFCAC shall be the OAU Specialized Agency in the field of civil aviation working towards the achievement of the objectives as stipulated in the Constitution of AFCAC.

Article II
MEMBERSHIP AND EXCLUSION

1. Any application for membership submitted to AFCAC by a non-OAU Member State shall be forwarded to the Assembly of Heads of State and Government of OAU through the Council of Ministers for consideration. The Assembly's decision shall be binding to AFCAC.
2. Pursuant to a decision of the OAU Assembly of Heads of State and Government to exclude any AFCAC Member State from AFCAC, the same shall be excluded.

Article III
MEETINGS

1. OAU shall attend and participate in all AFCAC Bureau Meetings and Plenary Sessions. For this purpose AFCAC shall notify OAU of such meetings.
2. AFCAC shall make available to OAU for possible comments all draft agenda and working documents of the meetings aforesaid.
3. OAU shall invite AFCAC to attend its Sessions and to participate in all OAU Meetings dealing with civil aviation matters included on the agenda.
4. OAU shall communicate to AFCAC the agenda and the relevant working documents for the above-mentioned sessions and meetings.

Article IV
AGENDA

1. AFCAC shall include on the Agenda of its Plenary Sessions and its other meetings any item or items proposed to it by OAU, which shall prepare a working paper on each of these items.

2. OAU shall include on the agenda of the meetings of its Specialized Commissions and of its sessions any item or items relating to civil aviation as may be proposed to it by AFCAC, which shall prepare a working paper on each of these items.

Article V

REQUESTS FOR STUDIES

1. OAU may request AFCAC to undertake studies and to prepare reports on civil aviation matters.
2. Subject to any difficulties mutually acknowledged, AFCAC shall carry out studies and submit reports as requested by the OAU.

Article VI

EXCHANGE OF INFORMATION AND DOCUMENTS

OAU and AFCAC hereto undertake to exchange in confidence information, statistics and documents on matters of common interest.

Article VII

REPORT

AFCAC shall submit a report on its activities to the relevant political organs of the OAU every two years and shall have the right to take part, in accordance with Article III, paragraph 3 in any discussion of such report.

Article VIII

AGREEMENTS

AFCAC shall consult with OAU on the nature and extent of any agreement it wishes to conclude with any inter-governmental and/or non-governmental organizations.

Article IX

BUDGETARY AND FINANCIAL ARRANGEMENTS

1. In order to permit the establishment of an autonomous Secretariat of AFCAC, a detailed study of the financial implications shall be prepared and submitted to the Plenary of AFCAC and then to the OAU Advisory Committee on Budgetary and Financial Matters for appropriate recommendation to the appropriate political organs of the OAU, which shall decide on the aid to be accorded to AFCAC.

2. Once that objective is attained, the OAU shall annually contribute to AFCCAC a financial grant. In addition, Member States may make voluntary contributions to AFCCAC.

Article X

JOINT CO-ORDINATION COMMITTEE

1. There shall be a joint AFCCAC/OAU Co-ordination Committee which shall meet in principle twice a year.
2. The agenda and arrangements for each Committee meeting shall be the subject of a prior exchange of correspondence between AFCCAC and OAU.
3. Other relevant African Organization may be invited to attend the meetings of this Committee.

Article XI

AMENDMENT

This Agreement may be amended by consent of the parties hereto.

Article XII

ENTRY INTO FORCE

This Agreement and any subsequent modifications thereto pursuant to Article XI thereof shall come into force after approval by the OAU Council of Ministers and Assembly of Heads of State and Government and the Plenary Session of AFCCAC. It shall become effective on the thirtieth day after the latter's approval.

Article XIII

INTERPRETATION OF THE AGREEMENT

Any dispute arising out of this Agreement relating to interpretation shall be finally disposed of by the Joint Co-ordination Committee referred to in Article X.

Article XIV

LANGUAGES

This Agreement has been drawn up in six original copies, two in English, two in French and two in Arabic, all three texts being equally authentic.

Article IVRELATIONS WITH AFRICAN LIBERATION MOVEMENTS

AFCAC shall co-ordinate within its competence with African Liberation Movements as recognized by OAU.

Article XVI

AGREEMENT BETWEEN AFCAC AND THE INTERNATIONAL
CIVIL AVIATION ORGANIZATION (ICAO)

AFCAC shall, with the participation of OAU, negotiate with the International Civil Aviation Organization (ICAO) a co-operation agreement defining the relationship between AFCAC and ICAO.

Article XVIIPRIVILEGES AND IMMUNITIES

1. AFCAC shall have a flag depicting AFCAC crest against a background of OAU colours in the order in which they appear on the OAU flag.
2. Notwithstanding the Agreement between AFCAC and the Republic of Senegal on establishing the Seat of AFCAC, OAU Member States shall grant AFCAC personnel such privileges and immunities as will enable them to carry out their functions in their respective territories.
3. A special travel document shall be issued by the OAU to AFCAC personnel to enable them to travel into the territories of Member States to carry out their functions.

Signed, sealed and delivered at
on this day of **11 MAY 1978**

IN WITNESS WHEREOF the undersigned Administrative Secretary-General of the Organization of African Unity and the President of the African Civil Aviation Commission duly authorized, have deposited their hand and seal to this Agreement, respectively.

President of the
AFRICAN CIVIL AVIATION COMMISSION

.....
Moussa
.....

Administrative Secretary-General of
THE ORGANIZATION OF AFRICAN UNITY

.....
William
.....

ANNEX V

Working Arrangements between ICAO and AFCAC

The President of the Council of the International Civil Aviation Organization and the President of the African Civil Aviation Commission, acting under the authority delegated to them by their respective organizations, have agreed as follows regarding the relationship between the two organizations.

General

1. ICAO and AFCAC shall maintain close liaison and co-operate with each other to facilitate the discharge of their respective responsibilities without overlaps.
2. ICAO shall, in conformity with the general policy established by its Assembly and the practice established by it with similar regional organizations, assist and support the work of AFCAC.
3. AFCAC shall, in carrying out the functions outlined in its Constitution, give regard to the work of ICAO so as to avoid unnecessary duplication.

Co-ordination

4. The ICAO officials designated on an ad hoc basis by the ICAO Secretary General will keep themselves fully informed of the relevant activities, plans and requirements of AFCAC particularly in the air transport, air navigation and technical assistance fields and, as necessary, will bring them to the attention of the appropriate body of ICAO. The Secretariat of AFCAC will transmit to ICAO the documentation necessary to permit implementation of this paragraph.
5. The Secretary of AFCAC and the AFCAC officials designated by him will keep themselves fully informed of the activities, plans and requirements of ICAO that are related to or may affect or require co-ordination with the activities, plans and requirements of AFCAC. The ICAO Secretariat will transmit to AFCAC the documentation necessary to permit implementation of this paragraph.
6. ICAO will be invited to attend AFCAC Plenary Sessions and AFCAC will be invited to attend sessions of the ICAO Assembly.

Secretariat services and financial matters

7. ICAO will provide, as far as possible, pursuant to the decisions and resources made available by its Assembly and Council, secretariat services as may be required by AFCAC.

8. The Secretariat services referred to in the preceding paragraph shall be provided by ICAO through personnel assigned on a regular basis and personnel assigned on an ad hoc basis. As regard the latter, ICAO will endeavour to make available staff qualified for the specific tasks included in the AFCAC Work Programme, for meetings of the Plenary and, as required for the committees that may be established pursuant to paragraph 10 of AFCAC's Constitution.

9. The personnel mentioned in paragraph 8 above will carry out their work for AFCAC only as directed by the authority designated by AFCAC. However, from an administrative point of view all those personnel will come under the authority of the ICAO Secretary General in accordance with the ICAO Service code.

10. The emoluments and benefits paid by ICAO to some of the personnel assigned to AFCAC on a regular basis may be fully or partly reimburse by AFCAC in conformity with arrangements made between the two organizations.

11. Regarding other direct and indirect costs of AFCAC, the practice of ICAO in the joint financing field under Chapter XV of the Chicago Convention will be followed, namely, that ICAO shall bear the cost of the emoluments and benefits paid to personnel assigned on an ad hoc basis, as well as the production at ICAO Headquarters of certain advance documentation for AFCAC meetings. The direct costs, such as travel and subsistence of personnel assigned on a regular or an ad hoc basis when on mission or at meetings shall be charged to AFCAC. The cost of meeting rooms and conference facilities, supplies and temporary personnel for AFCAC meetings will also be charged to AFCAC.

ANNEX VI

DRAFT

AGREEMENT BETWEEN THE AFRICAN CIVIL AVIATION COMMISSION (AFCAC) AND THE ARAB CIVIL AVIATION COUNCIL (ACAC)

PREAMBLE

The African Civil Aviation Commission, hereinafter referred to as "AFCAC" and the Arab Civil Aviation Council, hereinafter referred to as "ACAC" :

Considering that both AFCAC and ACAC aim at developing air navigation principles and techniques and at promoting the efficiency, safety and economical operation of air transport;

Anxious to cooperate in the achievement of their common objectives in the fields of Civil Aviation;

Noting that some countries are members of both AFCAC and ACAC ;

Considering relevant resolutions approved by the ORGANIZATION OF AFRICAN UNITY and the LEAGUE OF ARAB STATES towards the development of closer relationship and greater cooperation between Arab and African countries;

HAVE AGREED AS FOLLOWS:

Article I

Fields of co-operation

AFCAC and ACAC shall co-operate in all matters relevant to their common objectives in respect of civil aviation.

Article II

Consultation

In order to coordinate and harmonize their activities in their respective fields of interest, AFCAC and ACAC shall consult and co-operate in the consideration of all matters which may be discussed in international meetings and particularly in the meetings of the International Civil Aviation Organization.

Article III
Technical co-operation

AFCAC and ACAC shall inter-alia cooperate :

- in the preparation of joint studies and in the carrying out of common projects within their sphere of competence;
- in ensuring that the best use shall be made of their joint studies and that the required data shall be obtained and analyzed as necessary;
- in the joint organization of meetings and seminars for consideration of problems of common interest and exchange of views in various fields of action.

Article IV
Exchange of information and documents

AFCAC and ACAC agree to exchange information and documents on a confidential basis.

Article V
Representation and communication

- 1) - In order to promote cooperation between AFCAC and ACAC member States, each party shall invite the other to attend conferences and meetings of common interest organized by the other party. Representatives attending such meetings shall have the right to participate in the discussions but shall not participate in the vote.
- 2) - In international meetings and in all fields of common interest, both parties in accordance with Article II of this Agreement shall as far as possible endeavour to agree on a common stand.

Article VI
Common activities

AFCAC and ACAC may conclude special agreements in relation with the execution of projects for the achievement of common objectives.

Article VII

Implementation of the agreement

The President of AFCAC and the President of ACAC may take all necessary action towards the implementation of this agreement.

Article VIII

Amendment

This agreement may be amended subject to the approval of AFCAC and ACAC.

Article IX

Entry into force

This agreement and any amendment thereto shall come into force, in accordance with Article VII above after approval by AFCAC and ACAC on the thirtieth day after the later approval.

In witness whereof, the undersigned duly empowered Representatives shall sign this agreement on behalf of their respective organizations on the dates indicated under their signature.

Done at _____ on the _____ ; two original copies of this text shall be established in the Arabic, English and French languages, each text being authentic.

On behalf of the
African Civil Aviation Commission

On behalf of the
Arab Civil Aviation Council

Date _____
(Signature)

Date _____
(Signature)