



# A Review of International Legal Instruments

Facilitation of Transport and Trade in Africa

Second Edition

## CHAPTER III

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TREATIES

CONVENTIONS

PROTOCOLS

DECISIONS

DIRECTIVES



**SSATP**  
Africa Transport  
Policy Program

### III. Regional Instruments

165. **Presentation.** At the regional (Africa) level, the following sets of instruments of cooperation can be identified:

- The instruments related to the Organization of African Unity (OAU), which include the OAU Charter, the African Declaration of 1973 (Abidjan and Addis Ababa), the 1979 Monrovia Declaration, Lagos Plan of Action of 1980, and the African Maritime Charter. The OAU became the African Union (AU) in 2002. These instruments are reviewed in section B. The AU has developed specific programs on transport: the New Partnership for Africa's development (NEPAD) and the Programme for Infrastructure Development in Africa (PIDA). Both are reviewed in section A.
- The African Economic Community established by the Treaty of Abuja in 1991 (reviewed in section B).
- Treaty for Harmonizing Business Law, concluded in Port Louis, Mauritius on October 17, 1993. Because of differences in legal traditions, this treaty is special mainly to Francophone countries, it is a major tool of cooperation and modernization, and, consequently, it is worthy of review here. The Treaty is especially important as it deals with private law issues in a free market approach. Many other instruments are strongly inspired by a tradition of state control or seem anxious to ensure government control of economic life and economic operators. This treaty is reviewed in section C.
- Treaty Establishing an Integrated Organization for Insurance in African States, concluded in Yaoundé, Cameroon, on July 10, 1992 (reviewed in section D).
- Treaty Creating the Arab Maghreb Union (AMU), concluded in 1989 (reviewed in section E).
- Treaty Creating the Community of Sahel-Saharan States (CEN-SAD), established on February 4, 1998 (reviewed in section F).
- ACP-EU Partnership Agreement<sup>44</sup> (reviewed in section G).
- Yamoussoukro Decision on air transport (reviewed in section H).
- African Civil Aviation Commission (reviewed in section I).

**A. ORGANIZATION OF AFRICAN UNITY<sup>45</sup>**

*a. 1963 Organization of African Unity Charter*

- 166.** The Organization of African Unity (OAU) Charter was adopted at Addis Ababa, Ethiopia, on May 25, 1963. The Charter states that the reinforcement of African unity and solidarity shall be obtained, among other ways, through the coordination and harmonization of general policies, especially on transport and communications (Article 2-2(b)). The Constitutive Act of the African Union was adopted in 2000 in Lomé, Togo, at the OAU Summit and submitted for signature and ratification. To become effective, the Act had to be ratified by two-thirds of OAU Member Countries. In March 2001, this requirement was fulfilled, and in early July 2002 the OAU became the African Union (AU).<sup>46</sup> Article 14 (e) of the Constitutive Act established specialized technical committee on transport, communications, and tourism. The AU Committee on Transport played a key role in drafting the African Maritime Transport Charter, adopted in 2009.<sup>47</sup> The Charter is analyzed in detail in section B.

The OAU Charter appears in **Annex III-1** of this review. The Constitutive Act of the African Union appears in **Annex III-2**.

*b. 1973 Addis Ababa Declaration on Cooperation, Development, and Economic Independence*

- 167.** The Ministerial Conference on commerce, development, and monetary problems took place in Abidjan, Côte d'Ivoire, on May 9-13, 1973. It was followed by the 21<sup>st</sup> Ordinary Session of the Council of Ministers of the Organization for African Unity in Addis Ababa, Ethiopia, on May 17-23, 1973. Both meetings led to the adoption on May 23, 1973, of the Addis Ababa Declaration on Cooperation, Development, and Economic Independence. The Declaration identified the following objectives in the area of infrastructure and transport:
- Developing infrastructure as the "fundamental basis of development"
  - As a priority, connecting road networks, especially for access to the sea and to the benefit of landlocked countries
  - Eliminating obstacles to traffic by simplifying Customs and police procedures and harmonizing legislation

- Establishing African consortia of shipping lines
- Taking joint positions on the matter of level of freight rates<sup>48</sup>
- Developing shippers' councils
- Reinforcing cooperation between airlines, exchanging traffic rights, developing joint action on the selection of aircraft types, maintenance, and training

The relevant sections (A 3 and B 1 and 2) of the Declaration appear in Annex III-3 of this review.

c. *1979 Monrovia Declaration*

- 168.** At the 33<sup>rd</sup> Ordinary Session of the OAU's Council of Ministers, which met in Monrovia on July 9-20, 1979, the Council issued the Monrovia Declaration on the main principles and measures needed to reach domestic self-sufficiency, with the objective of attaining a new international economic order. In the Declaration, the Council committed itself to implementing completely the program of the UN Transport Decade in Africa.<sup>49</sup>

The Monrovia Declaration is not attached as an annex to this review.

d. *1980 Lagos Plan of Action and Final Act*

- 169.** The Lagos Plan of Action and Final Act were issued after the Lagos OAU meeting on April 28-29, 1980. The Plan was directed at the implementation of the resolutions formulated in the Monrovia Declaration.<sup>50</sup> It stated the will to establish before 2000 an African Common Market, followed by the establishment of an African Economic Community. Pending this, it assigned the objective to *reinforce effectively sectoral integration in transport* contributing to the creation of the Economic Community of Central African States (ECCAS).

The Lagos Plan of Action and Final Act are not attached to this review.

e. *Transport Programs Developed by the African Union*

- 170.** **Infrastructure Consortium for Africa (ICA).** ICA was launched at the G8 Gleanneagles Summit in 2005 to encourage investments in infrastructure in

Africa, including, of course, transport infrastructure. The Consortium aims at developing public-private partnerships and seeks new sources of financing. ICA membership includes the G8 countries, the World Bank Group, the African Development Bank, the European Commission, the European Investment Bank, and the Development Bank of Southern Africa. The African Development Bank hosts the ICA Secretariat.<sup>51</sup>

171. **New Partnership for Africa's Development (NEPAD).** The AU adopted NEPAD, a dynamic economic program of action to promote the integration process within the African Union, during its 37<sup>th</sup> Summit. NEPAD has gained legal status by Decision Assembly/AU/Dec.191 (X) of the 18<sup>th</sup> Heads of State and Government Implementation Committee (HSGIC) and the 10<sup>th</sup> African Union Summit of January/February 2008, which agreed to proceed with the integration of NEPAD into the structures and processes of the African Union.<sup>52</sup> The Program is important and seems holistic as it has identified six priority themes. This new development program seeks to eradicate poverty through the implementation of these priority themes, among which transport and trade facilitation are crucial. NEPAD is divided into five zones: north, south, east, west, and center. The details of this new development platform are not analyzed here as it is a program developed within the African Union.
172. **Programme for Infrastructure Development in Africa (PIDA).** PIDA was officially launched in Kampala, Uganda, in July 2010 by the African Union Commission. It is therefore a regional program grouping energy, transport, water, and information communication technology (ICT). For the purpose of this review, only the transport aspect is analyzed.
173. **Objectives.** The Program will (1) enable Africa to build a common market by improving access to regional and continental infrastructure networks; (2) accelerate growth by facilitating the continent integration in the world economy; (3) increase intra-African trade by making possible the formation of large competitive markets in the place of small, isolated, inefficient ones; and (4) improve living standards.
174. **Components.** Three criteria are important to the choice of projects: (1) eligibility and regional integration, (2) feasibility and readiness, and (3) development impacts. The main projects are energy and transport, which represent 95 percent of the total cost of the program. Transport projects include connectiv-

ity, corridor modernization, ports and railway modernization, and air transport modernization.

- 175. Institutional arrangements.** The AU Assembly decides among the project and program proposals submitted. The NEPAD Planning and Coordinating Agency (NPCA) (1) facilitates and coordinates the implementation of the continental and regional priority programs and projects; (2) organizes a donor coordination meeting with Regional Economic Communities (RECs), the African Development Bank (AfDB), development partners, and prospective private sector investors for the funding and financing of PIDA projects; (3) signs a Memorandum of Understanding with the Regional Economic Communities (RECs) for each PIDA project under implementation; and (4) produces consolidated ad hoc and annual reports on the status of implementation of PIDA and its priority projects. The RECs and countries are responsible for direct implementation of PIDA priority projects with the facilitation of the NPCA and the technical support of specialized agencies.
- 176. Evaluation.** To be efficient, this continental policy must be included into national policies and programs and be consistently implemented; the Program must also be enforced. PIDA supports the goals of the African Union's Abuja Treaty. PIDA has learned lessons from Asia, Europe, and South America. It establishes priorities for a large-scale, complex Program. It also conducts an in-depth analysis of the needs and gaps in the short, medium, and long term as the program is organized for the short, medium, and long term (from 2020 through 2040). Short-term implementation is included in the Priority Action Plan (PAP) of PIDA. This Program has been discussed with the RECs, the corridors management institutions, lake and river basin organizations, specialized agencies, sector ministers, and other relevant development stakeholders.

## **B. AFRICAN ECONOMIC COMMUNITY<sup>53</sup>**

- 177. 1991 Treaty of Abuja.** The Treaty of Abuja (Nigeria), concluded on June 3, 1991, established the African Economic Community (AEC) with OAU as depository. The treaty entered into force in 1994 when ratified by the required two-thirds of OAU Members. There are 53 Parties to the Treaty, all African countries. Morocco is not a party, probably because the Sahrawi Arab Democratic Republic is a Party. The Treaty establishes the AEC as an integral part of

the OAU, with an Assembly of Heads of State and Governments, a Council of Ministers, a Pan African Parliament, an Economic and Social Council, a General Secretariat (of the OAU), and specialized technical committees.

- 178. Objectives.** The main objectives of the African Economic Community are:
- To promote economic, social, and cultural development, as well as the integration of African economies
  - To establish on a continental scale a framework for the development, mobilization, and utilization of Africa's human and material resources
  - To promote cooperation
  - To coordinate policies to foster the gradual establishment of the AEC
- 179. Policies.** The main policies and measures in the area of trade and transport to be taken to attain these objectives are as follows:
- Strengthen subregional<sup>54</sup> communities
  - Harmonize policies
  - Promote and strengthen joint investment programs
  - Liberalize inter-regional trade by abolishing duties and nontariff barriers
  - Adopt a common trade policy and a common external tariff
  - Establish an African common market
  - Remove obstacles to the movement of persons, goods, and services, with special measures for landlocked countries
- 180. Timetable.** The timetable can be summarized as follows:
- Within five years, the existing (sub)Regional Economic Communities shall be strengthened, and additional (sub)communities shall be established where they do not yet exist.
  - Within eight years, tariff and nontariff barriers, Customs duties, and internal taxes should be stabilized and studies conducted for the gradual removal of tariff and nontariff barriers.
  - Within 10 years, a free trade area would be established in each (sub)regional economic community.

- Within two years,<sup>55</sup> tariff and nontariff systems should be harmonized with a view toward establishing a Customs union.
- Within four years, the African Common Market should be established with harmonization of fiscal, financial, and monetary policies.
- Within five years, the Common Market should be consolidated regarding residence and movement of goods and services and a monetary union, an African central bank, and an African currency should be established.

According to Article 88 of the AEC Treaty, the continental Community shall be constituted through the activities of five Regional Economic Communities: North Africa, West Africa, Central Africa, East Africa, and Southern Africa.

The 1991 Abuja Treaty Establishing the African Economic Community appears in **Annex III-4** of this review. The treaty cannot be traced in the treaties filed with the UN Secretariat. It does not appear in the UN Treaty Series, but is available in *International Law Materials* (30 ILM 1241 (1991)) and the *African Journal of International and Comparative Law* (3 AJICL 792).

a. *Protocol on the Relations between the African Union and the Regional Economic Communities*

**181. History.** The Protocol on the Relations between the African Union and the Regional Economic Communities was concluded in Addis Ababa, Ethiopia, on January 27, 2008, between the African Union and (i) the Economic Community of West African States (ECOWAS); (ii) the Common Market for Eastern and Southern Africa (COMESA); (iii) the Economic Community of Central African States (ECCAS); (iv) the Southern African Development Community (SADC); (v) the Intergovernmental Authority for Development; (vi) the Community of Sahel-Saharan States (CEN-SAD); and (vii) the Eastern African Community (EAC). To date, the Arab Maghreb Union (AMU) did not sign the Protocol.

The 2008 Protocol replaces an earlier protocol signed on February 25, 1988 between the African Economic Community and (i) the Intergovernmental Authority for Development (IGAD); (ii) the Economic Community of West African States (ECOWAS); (iii) the Southern African Development Community (SADC); (iv) the

Common Market for Eastern and Southern Africa (COMESA); and (v) the Arab Maghreb Union (AMU).

The text of the 2008 Protocol is attached as **Annex III-5** to this review. The Protocol does not appear in the UN Treaty Series.

- 182. African Union's policy.** The Protocol aims at formalizing, consolidating and promoting closer cooperation among Regional Economic Communities and between them and the African Union through the coordination and harmonization of their policies, measures, programs and activities in all fields and sectors. Its goal is also to establish a coordination framework for the activities of the RECs. They will coordinate their policies and programs with those of the African Union, will exchange information and experiences. They will promote inter-regional projects and support each other in their respective integration endeavors. Relations with the Union will be reinforced.
- 183. Specific undertakings.** The tone of the Protocol clearly indicates that the performance of the RECs under the preceding 1998 Protocol did not permit to reach the objectives and action coordination. As a result, the new text stipulated specific undertakings. First, the RECs must review their treaties to establish an organic link with the Union and align their programs, policies and strategies with those of the Union. Second, they must prepare for their eventual absorption in the African Common Market. The parties specifically undertake to coordinate and harmonize their activities, policies and programs. The Union specifically undertakes to strengthen the RECs.
- 184. Institutions.** To implement the provisions of the Protocol, two committees were established (Articles 6 to 10):

  - *Coordination Committee.* The Coordination Committee comprises the chief executives, the Executive Secretary of the United Nations Economic Commission for Africa (UNECA), the President of the African Development Bank (AfDB) and the chief executives of the financial institutions of the Union. The Committee is responsible for providing policy orientation, implementing the coordination and harmonization of policies, monitoring and keeping under constant review the progress made by the RECs.
  - *Committee of Secretariat Officials.* This Committee is composed of representatives of the chief executives of the RECs, of the Executive

Secretary of UNECA, of the African Development Bank, and the chief executives of the financial institutions of the Union. It meets twice a year, prepares all documents to be approved by the Committee, conducts follow up and prepares reviews and budget documents. Its decisions are forwarded to the Executive Council as recommendations in matters related to the integration of Africa.

- 185. Benchmarks.** The Protocol summarizes the duties and prerogatives of the African Union regarding the RECs. The African Union Commission shall in consultation with the RECs, determine the progress of regional economic integration, and thereafter design appropriate programs to accelerate the integration process. Benchmarks are defined for progress of integration and programs in consultation with the RECs following strictly the provisions of the African Union Treaty. Time limits are set for the progress towards the objectives of the African Union. These objectives are to set a common market, free trade, a Customs union, harmonization of tariff and non-tariff systems.
- 186. Transport.** In the matter of transport, Partner States agree to
- Promote integration of infrastructure and develop transport coordination to increase productivity and efficiency
  - Harmonize and standardize legislation and regulations
  - Promote transport coordination, the development of local transport industries and local transport equipment industries, and encourage the use of local material and human resources
  - Reorganize and standardize railway networks in view of their interconnection in a Pan-African Network
  - Restructure the road transport sector for the purpose of establishing interstate links
  - Harmonize maritime transport policies
  - Harmonize air transport policies and flight schedules
  - In general, to coordinate and harmonize transport policies to eliminate nonphysical barriers to the free movement of goods, services, and persons
- 187. Evaluation.** The African Economic Community was envisioned as being created in six stages: (1) create regional blocs where they did not exist; (2) strength-

en intra-REC integration and harmonization; (3) establish a free trade area and a Customs union in each regional bloc; (4) establish a continent-wide Customs union; (5) establish a continent-wide African common market; and (6) establish a continent-wide economic and monetary union. Among these objectives, the first has been completed, and the second, third, and fourth are in progress. This is why it was preferable to carry-on the present evaluation based on the review of the subregional conventions. It is important to retain the AEC because, after the entry into force of the Treaty of Abuja, the OAU was operating on the basis of two legal instruments. For this reason, the OAU was officially referred to as the OAU/AEC. These complementary instruments were the foundation of the 200 Constitutive Act of African Union.

b. *African Maritime Transport Charter*

- 188. General and references.** The Third Conference of African Ministers of Maritime Transport held in Addis Ababa, Ethiopia, on December 13–15, 1993, adopted the African Charter on Maritime Transport to provide the framework for cooperation among African States and between African and non-African countries. In its Resolution CM/Res. 1520 (LX), the Council of Ministers of the OAU stressed the importance of and endorsed the charter, which was issued on July 26, 1994. It is open for signature by Partner States at the General Secretariat of the AU. The preamble of the Charter refers to the OAU Treaty, the UN Convention on a Code of Conduct for Liner Conferences, and the 1965 New York Convention on Transit Trade of Landlocked Countries, although not all African States ratified the 1965 New York Convention.
- 189. Issues and policy decisions.** The preamble of the African Maritime Transport Charter states that shipping conferences are making arbitrary decisions in the area of freight rate increases and that the interested African States need to take advantage of the favorable provisions of the April 6, 1974, UNCTAD Code of Conduct on the 40/40/20 basis, which is described shortly. As a consequence, these States agree to make a number of policy decisions in the areas of maritime affairs, development of shipping companies, ports, landlocked countries, and training.
- 190. Objectives.** The objectives of the Charter are as follows:
- To define and implement harmonized shipping policies

- To encourage the development of African fleets and regional and subregional shipping lines
- To promote cooperation between the Partner States (Chapters I and II)

The Charter is an implementation and formulation of the policies set broadly in the 1973 Addis Ababa Declaration for maritime transport. It was to come into force 30 days after the deposit of the instruments of ratification by two-thirds of the Partner States (Chapter IX), but a provisional entry into force was to take place after ratification by 20 Partner States.

- 191. Institutions (Chapter III).** To ensure effective coordination of maritime and port development policies, activities, and programs of integration, the OAU is to establish in its General Secretariat a continental unit for the coordination of activities of regional cooperation organizations in shipping and port operations in Africa (Continental Unit for Marine Transport, UCOMAR). Similar units are to be established in each subregion. Furthermore, national shippers' councils are to be strengthened, together with port committees and other institutions, with a view toward bringing these agencies together in subregional specialized cooperation institutions. The charter also encourages the Member States to establish at the national, subnational, and regional levels committees on the facilitation, harmonization, and simplification of administrative and Customs procedures.<sup>56</sup> Chapter VII of this review reveals that this goal was met, at least in legal terms, in West and Central Africa.<sup>57</sup>
- 192. Cooperation in maritime transport (Chapters IV and VII).** Cooperation among African shipping lines is to be strengthened with the development of consortia, pool agreements, and joint services. Traffic should be reallocated in each subregion and a harmonized system of cargo sharing developed. Multimodal transport joint ventures should be created within the framework of the 1980 UN Convention on International Multimodal Transport of Goods. A harmonized legal framework should promote and guarantee the stability of maritime transport joint ventures. Cooperation is also to be developed in the areas of ship repair, training, and electronic data interchange (EDI). Member States should update and harmonize their legislation.
- 193. Cooperation in the area of assistance to shippers (Chapter V).** Shippers organizations are to be encouraged. Effective consolidation of cargo at the national, subnational, and regional levels should be developed to obtain well-

adapted shipping services at a lower cost. Facilitation and harmonization of Customs procedures should be developed.

194. **Ports (Chapter VI).** Port management should be autonomous. Harmonized port tariff and statistics systems along the lines of the UNCTAD models should be encouraged.
195. **Landlocked countries (Chapter VII).** Transit Partner States agree to grant facilities and benefits to landlocked States and to apply nondiscriminatory administrative, fiscal, and Customs measures. They agree to coordinate their policies of acquisition and uses of land, river, air and maritime transport, and ports. They are encouraged to enter into bilateral and multilateral conventions on transit and to ratify those in force.
196. **Evaluation.** The Charter is to finally enter into force once 30 days have passed after deposit of the instruments of ratification, acceptance, or approval of two-thirds of Member States. As of May 2010, of the 53 Member States, 37 had signed and 12 had ratified and deposited the instruments of ratification. The two-thirds (35) of countries needed to enter into force is thus far from reached. Only four of the 12 countries that have ratified the Charter are landlocked: Lesotho (1999), Mali (2000), Niger (2007), and Uganda (2008).<sup>58</sup> This is a sign that Sub-Saharan countries have a long way to go and that they should take responsibility for their actions and have strong political will, the lack of which hinders the continent's legal development. The lack of success with this charter led the African Union to hold a Conference of Ministers Responsible for Maritime Transport in 2009 in Durban, South Africa. It led in turn to the adoption of a new African Maritime Transport Charter.

The 1994 African Maritime Transport Charter appears in **Annex III-6** of this review. The instrument was not filed with the UN Secretariat and does not appear in the UN Treaty Series.

c. *2009 African Maritime Transport Charter*

197. **General overview.** The Second Session of the Africa Union Conference of Ministers Responsible for Maritime Transport was held in South Africa in October 2009. Representatives of the 36 Member States, Regional Economic Communities, European Union, and African and international organizations took part in the Conference. This meeting was provoked by the compelling

safety issues faced by the continent's maritime transport, which were about to be an obstacle to countries' economic development.<sup>59</sup> For example, in East Africa maritime transport contributes to about 95 percent of the total international trade. The regulation of this industry was therefore an urgent issue for the whole continent. As a result, an African Maritime Transport Charter and African Union Maritime Transport Plan of Action were adopted. One of the most important features of this Conference was the call by the Ministers to the African Union Commission to establish a mechanism to monitor implementation of the Charter in order to expedite its enforcement and inclusion in national legislation.<sup>60</sup> Chapters V, VI, VII, X, and XI are the most important chapters as they deal with (1) cooperation between landlocked and transit States; (2) multimodal transport and port development; and (3) information and communications technologies and facilitation. The preamble encourages (1) ratification by the States of the 1994 adopted Charter; (2) participation by the landlocked States in the consultative organs established in transit ports to ensure the smooth flow of goods and the competitiveness of port services as well as transport corridors; and (3) application of the most favorable port tariffs for the goods coming from or to a landlocked State.

- 198. Evaluation.** The 2009 African Maritime Transport Charter is a revised version of the 1994 Maritime Transport Charter in its objectives. The new Charter seeks to (1) adopt a continental policy and strategic framework by updating the 1994 charter; (2) review the implementation of the 2007 Abuja Declaration and Action Plan on Maritime Transport in Africa; and (3) coordinate the African position on the 2008 Convention on International Carriage of Goods Partially or Wholly by Sea of the United Nations Commission on International Trade Law (UNCITRAL). The 2009 charter was adopted during a conference entitled "Creating a Safe, Secure and Clean Maritime Transport Industry in Africa." This new Charter not only encompasses trade, transit, and transport facilitation in the region, but deals with the safety and environmental issues in maritime transport. The provisions of the 1994 Charter are reinforced, especially the multimodal transport aspects and the cooperation between landlocked and coastal States. The newest provisions are those related to information communication technologies (ICT), a clean environment, and security and safety issues.

It is too soon to evaluate the 2009 Charter. However, the African Union has lowered the number of ratifications required for the Charter to enter into force. Due to public

awareness of the safety and environmental issues and the international pressure on the African States, it can be affirmed that this Charter will be ratified and implemented faster than the previous one. However, practical measures must be taken in the field by local governments since, for example, the ports and inland waterways must be modernized to comply with the ICT aspects of the Charter, and roads must be rehabilitated to enable an effective transit and transport facilitation of goods and people. But these measures can only be carried out by exerting strong political will, which for the Sub-Saharan African Governments is a challenge.

The 2009 African Maritime Transport Charter appears in **Annex III-7** of this review.

### **C. TREATY ON THE HARMONIZATION OF BUSINESS LAW IN AFRICA<sup>61</sup>**

**199. History.** The Treaty on the Harmonization of Business Law in Africa (OHADA) was concluded in Port Louis, Mauritius, on October 17, 1993. It entered into force on January 1, 1998, between Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. The adhesion of the Democratic Republic of the Congo is almost complete because the law related to its adhesion was on its way to passage in 2010.<sup>62</sup> Senegal is the depository. In addition, Madagascar aligned all of its commercial code with OHADA standards. In October 2008, the Heads of States of OHADA's members met in Quebec, Canada. The objectives of the meeting were threefold: (1) amend the original treaty; (2) end the transitional measures defined by the "N'Djamena's Arrangements"; and (3) provide an independent financing scheme for OHADA. The Treaty was then modified by the Treaty of Quebec and approved and signed in October 2008.<sup>63</sup> As for the transport sector, there were no substantial changes. As noted, the main modifications were related to the formal aspects of enabling OHADA's institutions to be more effective. For the purpose of this review, the amendments will not be analyzed in detail as they do not affect the transport topic in its essence.<sup>64</sup>

**200. Civil law and OHADA.** All countries associated with the OHADA Treaty are civil law countries. Extension of OHADA beyond the range of civil law countries would have involved an in-depth review of the existing statutes and practices of the various common law states to arrive at a set of rules acceptable to all states of the region. On February 2008, the former Chair of the Nigerian

Bar Association in an address in Accra, Ghana, reiterated an invitation to Anglophone countries to join OHADA to facilitate the harmonization of business law, which is key to attracting foreign direct investment.<sup>65</sup>

**201. Institutions.** Enforcement of the Treaty is entrusted to OHADA through its following institutions:

- *Council of Ministers.* The Council is composed of the Ministers in charge of justice and those in charge of finance.
- *Permanent Secretariat.* The Permanent Secretariat is in charge of the *École régionale supérieure de la magistrature* for the training of future judges and magistrates.
- *Joint Court of Justice and Arbitration.* The court is composed of seven judges elected by the Council of Ministers from a list proposed by the Partner States (two candidates per State).

The Treaty stipulates that OHADA being an international institution enjoys diplomatic immunity.

**202. Objectives.** The Treaty has the following objectives:

- To develop a framework of business law that is "harmonized, simple, modern and well-adapted" (preamble) in order to facilitate business and ensure the security of transactions.
- To develop arbitration as a standard technique for solving contractual issues and litigation.

**203. Provisions.** A summary of the provisions of the Treaty follows:

- *Common rules.* Business law includes all rules regarding companies, debt, bankruptcy, arbitration, labor law, accounting, sales, transport, and any other item the Council of Ministers decides to include. All these matters should be covered by rules common to all Parties.
- *Uniform Acts.* Uniform Acts are prepared by the Secretariat in consultation with Governments. Once a uniform act is adopted by the Council of Ministers, a government must update its legislation to introduce the Uniform Act within 90 days of its adoption. A Uniform Act supersedes any past, present, or future domestic provision contrary to it. Interpretation of the act is within the jurisdiction of the Joint Court of Justice and

Arbitration. To date, eight Uniform Acts have been issued on commercial law (1997), corporations and consortia (1997), sureties (1997),<sup>66</sup> procedures for recovery and measures of execution (1998), procedures for bankruptcy (1998), arbitration (1999), accounting standards (2000), and road carriage contracts (2003).

- *Arbitration.* Arbitration is encouraged. Arbiters are designated by the Joint Court of Justice and Arbitration, which does not conduct arbitration itself, but reviews decisions before they are issued. It does not, however, propose changes to the decision and only delivers an exequatur decision.<sup>67</sup>

The 1993 OHADA Treaty on Harmonization of Business Law in Africa appears in Annex III-8 of this review.<sup>68</sup> The Treaty could not be traced in the instruments filed with the UN Secretariat, and it does not appear in the UN Treaty Series.

a. *OHADA Uniform Act Relative to the Contracts on Road Transport*

**204. History.** The OHADA Uniform Act Relative to the Contracts on Road Transport of Goods was issued on March 22, 2003. It was to be enforceable on January 1, 2004. As of June 2010, no case law related to the Uniform Act had been identified.<sup>69</sup> The 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) was apparently used as a model, subject to some differences and additional provisions due to, among other things, the incorporation in the Uniform Act of rules resulting from judge-made law.<sup>70</sup> Altogether, the Uniform Act<sup>71</sup> is more detailed and precise than the CMR.

**205. Differences with the CMR.** The main differences between the 2003 Uniform Act and the CMR are as follows:

- No mention is made that the Uniform Act applies to carriage by governmental agencies or institutions (Article 1).
- Definitions are given of the main terminology. Noticeable is the definition of a written document, which includes documents issued by e-mail (Article 2).
- The carriage contract is in effect as soon as the Parties agree on carriage against payment (Article 3).

- Whether the consignment note is missing or irregular is without impact on the carriage contract (Article 4). This is a judge-made rule resulting from court decisions on the enforcement of the CMR, which OHADA makes statutory.
- Conditions regarding packing, description of cargo, hazardous cargoes, etc. are stricter for the shipper (Article 7) than in the CMR.
- The liability regime is more favorable to the carrier (Article 17) because its due diligence is easier to demonstrate.

**206. Risks of conflicts of law.** As already mentioned, legal instruments, as they multiply, tend to overlap. The 2003 Uniform Act is an example. If, as stipulated in the OHADA Treaty, the Uniform Act is reissued in each Member State as domestic legislation, it will become the law of the land. Cameroon, the Central African Republic, Chad, Congo, Equatorial Guinea, and Gabon, which are members of OHADA, are also members of the Economic and Customs Union of Central Africa (UDEAC), which has been replaced by the Economic and Monetary Community of Central Africa (CEMAC). And yet Act No. 3 issued by UDEAC in 1996 as a legal framework for the interstate road transport of general cargo is still in effect. OHADA has no authority to cancel it. If the UDEAC Act issued by the UDEAC Heads of State is to be rated as an international instrument (a point that needs clarification), it may well in court supersede OHADA's Uniform Acts because these will be issued as domestic legislation.

**207. Evaluation.**<sup>72</sup> Lawyers consider OHADA's impact to be quite positive. Not only is a modern, market-oriented legal system introduced, but also business operators, magistrates, and the bar feel more secure. A body of law is being built, with an easy access thanks to wide distribution, and inter-African Francophone court jurisprudence is widely distributed through OHADA's website,<sup>73</sup> There are, however, reservations on two points:

- The transfer of jurisdiction for commercial law from parliaments and governments to the OHADA structure; and
- OHADA's Uniform Acts are typically civil law legislation and may not be easy to adjust to the conditions in common law countries. OHADA, however, shows a direction that other subregional or regional institutions should follow. Significantly, there are now requests for unification of trading laws in Anglophone Africa because differences in legislation and interpretation of the law are an obstacle to foreign trade.<sup>74</sup>

The text of the *Acte uniforme relatif aux contrats de transport de marchandises par route* appears in Annex III-9 of this review.

**D. TREATY CREATING AN INTEGRATED ORGANIZATION FOR INSURANCE<sup>75</sup>**

- 208.** The Treaty Creating an Integrating Organization for Insurance in African States was concluded in Yaoundé, Cameroon, on July 10, 1992. It came into effect on February 15, 1995. Signatories are Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Congo, the Comoros, Côte d'Ivoire, Gabon, Equatorial Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. Signatories of the OHADA Treaty have not apparently acceded to this Treaty.
- 209. Objectives and formulation.** The 1992 Yaoundé Treaty results from action by the Inter-African Conference of Insurance Markets (*Conférence interafricaine des marchés d'assurance*, CIMA), composed of officials and insurers from Sub-Saharan civil law countries. Its objectives are formulated in the preamble and in Article 1.

The preamble sets forth the objective to establish African unity by harmonizing national insurance markets, thereby continuing the efforts begun with the cooperation conventions on the regulation of insurance companies and operations concluded in Paris on July 27, 1962, and November 27, 1973.

Article 1 sets forth the following objectives:

- Reinforce national markets through a better use of resources
- Transform local (national) markets in a vast inter-regional market with common rules and regulations
- Continue the nationalization of local markets, with local reinvestments of reserves of insurance companies
- Harmonize and unify laws and regulations
- Improve protection of clients and victims of insurance companies

The Insurance Code (CIMA Code) is annexed to the Treaty. According to Article 3, "it defines the one and only insurance legislation."

**210. Institutions.** The Yaoundé Treaty sets forth the following institutions:

- *Council of Ministers (Articles 6 to 15).* The Council is formed by the Ministers in charge of insurance in each Contracting State. It meets twice a year. It is responsible for attaining the objectives of the Treaty. It defines the insurance policy and controls the implementation of the joint insurance legislation in Member States.
- *Regional Regulatory Commission (Articles 16 to 30).* The Commission is in charge of regulating insurance companies. It ensures overall control and contributes to the organization of local insurance markets. It formulates an opinion on the licensing of insurance companies, the license being delivered—or denied—by the minister in accordance with the Commission’s opinion. When the Commission is aware of breaches of regulations, it may apply sanctions up to suspension or revocation of the managers of an insurance company, cancellation of license, or transfer of portfolio to another insurer. The Regional Regulatory Commission has been substantially modified by the Decision of the Council of Ministers of April 2, 2008. However, the changes made do not affect the purpose of this review.<sup>76</sup>
- *General Secretary (Articles 31 to 49).* The Secretary prepares, conducts, and supervises the implementation of decisions of the Council. He or she may conduct inquiries in insurance companies. The secretary also produces an annual review. This official is appointed by the council for five years and performs his or her duties in full independence.

**211. Legal arrangements for implementation.** In exercising its jurisdiction, the Inter-African Conference of Insurance Markets issues regulations and decisions; it also formulates recommendations and opinions. All these must be issued with motives:

- *Articles 39 to 43.* Regulations, which formulate general rules and decisions applying to individual cases, have a direct and imperative effect. Recommendations and opinions have no direct effect.
- *Articles 44 to 47.* Governments take the necessary measures to implement regulations and decisions; they abstain from any measure that may be an obstacle to implementation. The council may notify a government about companies that have not performed in compliance with the Treaty and of the need to take the necessary measures for the performance of its duties. Local courts must enforce the provisions of the Treaty. Whatever provi-

sions of municipal law are contrary to them and future legislation must be in line with the Treaty.

- *Articles 48 and 49.* The validity of regulations, decisions, and other acts issued or decided by the Inter-African Conference of Insurance Markets can be disputed only in front of the council and within two months after issuance or notification. The council rules on the interpretation of the Treaty and of municipal court decisions that may be an obstacle to the uniform enforcement of the law of the conference. Interpretation by the council has the force of law for all agencies and courts. The provisions of Articles 48 and 49 may be a source of problems at the constitutional level, for they clearly impinge on judicial independence.

- 212. Financial and other provisions.** The Council of Ministers is financed by the contributions of Member States from taxes on insurance companies and other fees and levies (Articles 50 to 57). The Inter-African Conference of Insurance Markets is incorporated. Along with its institutions, it benefits from all immunities granted to international organizations (Articles 58 to 68).<sup>77</sup>

The text of the Treaty appears in **Annex III-10** of this review. The Treaty was apparently not filed with the UN Secretariat and is not listed in the UN Treaty Series.

a. *CIMA Code*

- 213. History.**<sup>78</sup> The 1992 Yaoundé Insurance Treaty was intended to replace the French Act on Insurance of July 13, 1930, passed to discipline the insurance industry and eliminate the abuses being carried out by companies in their relations with clients before insurance was regulated. The 1930 Act was generally enforceable in Francophone Africa before independence. It was modified over the years in France, but African statutes did not follow suit, and the system became obsolete. The 1992 Yaoundé Insurance Treaty therefore updates the provisions of the 1930 French Insurance Act with the same objective of establishing and maintaining a fair and sound insurance market.

- 214. Provisions of the CIMA Code.** Since its entry into force on January 15, 1995, the CIMA Code has been modified several times. The last update was April 2, 2008. The main provisions of the Code are as follows:

- The Code is applicable to road transport but not to maritime or river transport. Recent information indicates that it is not yet applicable to rail

transport, despite requests to that effect from African railway companies. In the first chapter of Title I of the new Code, Article 1 states: “Titles I, II and II of the present book are only applicable to earthbound insurances, excluding therefore maritime insurances, river insurances.”<sup>79</sup> There is no indication in the CIMA Code that the notion of earthbound may include railway transport. As a whole, the new Code does not dramatically change in its substance the scope of the risk covered, and there is no trace of any existing case law to lead to an edifying analysis.

- The CIMA Code is imperative. Based on the modified 1930 French Act, (1) it reinforces the insurer's right to sincere information from the policyholder on risks, and especially the policyholder must answer precise questions from the insurers as formulated in standard questionnaires (Article 12); (2) it reinforces the policyholder's right to information on tariffs and conditions, prohibiting "fine print" contracts (Article 7); and (3) it lists the clauses that should be in any case stipulated in the insurance contract (Article 8) such as delays in payment of damages due to the policyholder.

## E. TREATY CREATING THE ARAB MAGHREB UNION

215. The Treaty Creating the Arab Maghreb Union (AMU) was concluded in Marrakech, Morocco, on February 17, 1989. Signatories are Algeria, Libya, Mauritania, Morocco, and Tunisia. The Treaty came into effect on July 1, 1989, and was registered in the UN Treaty Series as No. I-26844.
216. **Objectives and missions.** In its objectives and missions, the Treaty stipulates in its Article 2 the freedom of movement of persons, services, merchandise, and floating assets. Establishing over the long term a Maghreb economic union between the Member States will require implementing two steps: (1) creating a free zone of exchange with the creation of a nontariff area and (2) establishing a Customs union and a common market.
217. **Major Institutions.** The major institutions are as follows:
- *Council of the Presidency.* This body is composed of Heads of State. It is the supreme organ of the AMU. The council has the ability to make decisions unanimously. The presidency, which lasts six months, rotates among the Member States.

- *Council of Prime Ministers.* The council meets whenever necessary. The Council of Ministers of Foreign Affairs prepares the session of the Council of the Presidency and reviews the proposals of the Follow-up Comity and the specialized ministry commissions.
- *The Council of Ministers of Foreign Affairs* prepares the session of the Council of the Presidency and reviews the proposals of the Follow-up Comity and the specialized ministry commissions.
- *Follow-up Comity.* This body, made up of one member per Member State, is responsible for following up on AMU affairs. It submits its works to the Council of Ministers of Foreign Affairs.
- *Four specialized ministerial commissions.* The commissions are created by the Council of the Presidency. One ministerial commission is devoted to basic infrastructure and is responsible for the following sectors: equipment, public works, housing, urban, transport, telecommunications, and hydraulic.

**218. Other institutions.** The General Secretary created by the Council of the Presidency is responsible for the secretarial tasks of the Council of the Presidency, the Council of Ministers of Foreign Affairs, the Follow-up Committee, and the specialized ministerial commissions. The Consultative Council (whose members are chosen by each Member State's parliament) gives an opinion on each project undertaken by the Council of the Presidency and also provides recommendations to the Council of the Presidency. The judiciary body is composed with two judges per country. It is responsible for solving the conflicts arising from interpretations of the Treaty and the different agreements concluded within the AMU. The *Banque maghrébine d'investissement et de commerce extérieur* is responsible for promoting the free movement of goods and assets within the AMU and strengthening the investments.

**219. Specific provisions related to transport and transit facilitation.** The following agreements are related to transport and transit facilitation:

- Maritime Cooperation Agreement, concluded in Libya on March 10, 1991, and revised at Syrte, Libya, in July 2009
- Agreement on the Road and Transit Transport of Passengers and Goods, concluded in Alger on July 23, 1990, and revised in Syrte in July 2009

- Agreement on land transport of dangerous products, concluded in Syrte, Libya, in July 2009
- Agreement on the mutual recognition of driving licenses in the Member States, concluded in Nouakchott, Mauritania, on November 11, 1992

**220. Evaluation.** Progress toward establishing a Maghreb common market has been slow, despite the cultural unity. Most of the obstacles to regional integration are political, especially between the two largest members, Morocco and Algeria. The obstacles to integration also stem from the differing economic structures of the member countries. Morocco and Tunisia are more liberal market-oriented, whereas the economies of Algeria and Libya are more centrally controlled. Most of the agreements were concluded in the 1990s. Thus for more than two decades, no major agreements on transit and transport facilitation have been signed. In July 2009, there was some activity on agreements that have been revised.

The Treaty appears in **Annex III-11** of this review.

## **F. TREATY CREATING THE COMMUNITY OF SAHEL-SAHARAN STATES**

**221. The Treaty Creating the Community of Sahel-Saharan States (CEN-SAD)** was concluded on February 4, 1998, following the Conference of Leaders of States held in Tripoli, Libya. It was signed by Burkina Faso, Chad, Libya, Mali, Niger, and Sudan (the founders). As of March 31, 2011, there were 28 Member States: Burkina Faso, Chad, Libya, Mali, Niger, Sudan, as well as, chronologically, the Central African Republic (1999), Eritrea (1999), Djibouti (2000), The Gambia (2000), Senegal (2000), Egypt (2001), Morocco (2001), Nigeria (2001), Somalia (2001), Tunisia (2001), Benin (2002), Togo (2002), Côte d'Ivoire (2004), Guinea-Bissau (2004), Liberia (2004), Ghana (2005), Sierra Leone (2005), the Comoros (2007), Guinea (2007), Kenya (2008), Mauritania (2008), and São Tomé and Príncipe (2008).

**222. Objectives.** The objectives of the Treaty are to establish an economic union; remove all restrictions hampering integration of these countries by adopting the necessary measures to ensure the free movement of the persons, capital, and interests of nationals of Member States; ensure the right of establishment, ownership, and exercise of economic activity, as well as free trade and the

movement of goods, commodities, and services originating from the signatory countries; and increase land, air, and maritime transport and communications among Member States by implementing common projects.

**223. Institutions.** The institutions established by the Treaty are as follows:

- *Conference of Heads of State.* The conference is composed of the Community Heads of State. The supreme organ of policy and decision making, the conference meets once a year in an ordinary session. It can meet in an extraordinary session at the request of a Member State.
- *Executive Council.* The Council is responsible for preparing the programs of integration and implementing decisions of the Conference of Heads of State. It is composed of Ministers in charge of external cooperation, economy, finance and planning, the interior, and the public security portfolio. It meets every six months in ordinary session.
- *General Secretariat.* This body is the administrative and executive organ of CEN-SAD, responsible for the daily operation of the Community. The General Secretariat is composed of the Secretary General, Assistant Secretary General, Office of the Secretary General, Administrative and Financial Affairs Directorate, Complementarity and Integration Directorate, and Research and Legal Affairs Directorate.
- *African Bank for Development and Trade.* The Bank carries out activities relevant to CEN-SAD development projects within the framework of the Convention and the statutes.
- *Economic, Social and Cultural Council (ESCC).* The Council is an advisory body composed of 10 members designated by each member country and mandated to assist the organs of the Community in the design and preparation of the development, policies, plans, and programs of an economic, social, and cultural nature of the Members.

The Treaty appears in **Annex III-12** of this review.

a. *Specific agreements relevant to transit and transport facilitation*

**224. Cooperation Agreement in Maritime Transport between the Members of the Community of Sahel-Saharan States (CEN-SAD).** This Agreement was concluded on June 1, 2006. Its objectives are to (1) organize the maritime rela-

tions between Member States; (2) ensure better coordination of the bilateral and multilateral maritime traffic; (3) prevent all obstacles to the development of maritime transport between Member States; (4) coordinate the efforts aimed at preventing illegal activities such as piracy and terrorism; (5) facilitate the port transport of cargo in transit from the coastal Member States to the landlocked Member States; (6) develop technical cooperation in training personnel; and (7) assist and develop information sharing. The Agreement is applicable to maritime transport between the Member States. Article 5 of the Agreement promotes cooperation among ship-owners to share the maritime traffic within the countries. Article 6 of the Agreement promotes the equal treatment of ships in the ports of Member States.

- 225. Convention of Cooperation in Transit and Road Transport between States Members of the Community of Sahel-Saharan States (CEN-SAD).** This Convention was concluded on June 2, 2005. Article 2 of the Convention defines its scope. Title II of the Convention is related to interstate road transport. It applies to travelers' road transport and the transport of goods within the territories of Member States. Title II sets forth the requirements of this type of transport by regulating the vehicle itself, its technical aspects, the number of passengers authorized to travel, and the duty to have a valid transport insurance policy. Title III addresses interstate transit by road. It establishes interstate road transit to facilitate the Customs clearance of goods. Articles 23 to 46 regulate the transit operation from the State of departure to the State of destination, including the passage to the transit State. Articles 49 and 50 mention expressly the right of landlocked Member States to receive equal treatment for their ships, goods, and travelers.
- 226. Evaluation.** All CEN-SAD countries already belong to existing Regional Economic Communities. The objectives of the Convention overlap with those of the other REC trade and integration blocs. CEN-SAD, as other RECs, will implement the transport and integration projects launched by the Programme for Infrastructure Development in Africa (PIDA) led by the African Union Commission, NEPAD Secretariat, and the African Development Bank.

## G. ACP-EU PARTNERSHIP AGREEMENT

**227. Background information.** The ACP-EU Partnership Agreement between the African, Caribbean, and Pacific (ACP) States and the European Union (EU) was concluded on June 23, 2000, in Cotonou, Benin. Thirty-five African countries are associated with the EU through this agreement, of which 15 are landlocked (see list in Article 2 of Annex VI to the Agreement).

A first revision of the 2000 Cotonou Agreement was concluded in February 2005.<sup>80</sup> The revised Agreement entered into force on July 1, 2008. The new Agreement liberalized trade to be compatible with the World Trade Organization. As for transit and transport, the first revision focused on several points, among which facilitation of cooperation between ACP States and other developing countries was key. The revised Cotonou Agreement allows regional groups of ACP countries to negotiate economic partnership agreements (EPAs) with the EU. A second revision of the Cotonou Agreement was signed on March 19, 2010, to take into account the growing importance of regional integration among the ACP countries.<sup>81</sup>

**228. Provisions related to transport and regional integration.** The following articles are relevant to transit and transport:

- *Article 84.* Special attention shall be paid to transport and communication infrastructure.
- *Article 87.* Specific provisions and measures shall be established to support landlocked ACP States in their efforts to overcome their difficulties and the obstacles hampering their development.
- *Article 41.* The Parties reiterate their commitment to the GATS (GATT).
- *Article 42.* Maritime transport is the *only* transport mode specifically mentioned in the Agreement. It is seen as the main mode of transport facilitating international trade. The text stipulates its liberalization and free access to the market. It also stipulates equal treatment of ships in the ports of the States party to the Agreement, which confirms the provisions of the 1923 Geneva Convention and Statute on the International Regime of Maritime Ports.
- *Article 20 (aa).* ACP-EC cooperation strategies at the regional level shall aim at fostering regional cooperation and integration.

- *Article 28(2)b.* Economic development and cooperation shall be enhanced through the build-up of larger markets; the free movement of persons, goods, services, capital, labor, and technologies among ACP countries; the accelerated diversification of the economies of ACP States; the promotion and expansion of trade among ACP States and with third countries; and the gradual integration of ACP States into the world economy.
- *Article 28 (2)c.* The management of sustainable development challenges with a transnational dimension should be promoted through, among other things, coordination and harmonization of regional and subregional cooperation policies.
- *Article 29(2)f.* Cooperation shall be pursued in the area of regional economic integration, support, and infrastructure, particularly transport and communications and services.
- *Article 36.* The Parties reiterate their commitment to the WTO.

**229. Evaluation.** Scholars have raised the question of whether the Cotonou Agreement was a mere change of rhetoric or a change of substance.<sup>82</sup> The Agreement focuses on being compatible with the provisions of the 1994 Agreement Establishing the World Trade Organization by granting equal treatment to countries in the area of commerce.<sup>83</sup> This was not so with the 1982 Lomé Convention Relating to Interstate Road Transit of Goods, in which trade was based mostly on non-reciprocity, granting enormous advantages to the countries belonging to the African, Caribbean, Pacific group with access to the markets of the European Union. The Agreement also encourages Sub-Saharan African countries to engage in more trade with regional neighbors and to increase the volume of trade among themselves. However, several issues that hinder transport, transit, and trade facilitation in the region are identified: lack of viable transport linking the countries within the subregions; lack of basic infrastructure in general, lack of political will, abundance of political rivalries, lack of sincerity and political commitment, and continuing political instability. As a result, transport, transit, and trade facilitation in the region is very low,<sup>84</sup> and the completion of regional integration seems very remote. Structural adjustment policies are required to create real transport facilitation, and for this purpose the respective governments should create binding rules for transport facilitation as well as an accountability system to be more effective.<sup>85</sup>

A copy of the ACP-EU Partnership Agreement appears in **Annex III-13** of this review. This Agreement does not appear to have been filed with the UN Secretariat.

## **H. YAMOUSSOUKRO DECISION**

- 230. Historical background.** On October 17, 1988, the ministers of transport of 40 African States met in Yamoussoukro, Côte d'Ivoire, and concluded a new African air transport policy. The policy focused on airline cooperation and integration within a time frame of eight years. The meeting also reinforced the idea that the air transport sector in Africa needed to be liberalized. This is known as the Yamoussoukro Declaration. The African ministers of transport met again in Mauritius in 1994 and agreed to facilitate the granting to African carriers of the Third, Fourth, and Fifth Freedoms listed in the 1944 Convention on International Civil Aviation.
- 231. History.** The Yamoussoukro Decision came into existence on November 13–14, 1999, when the Ministers of transport met in Yamoussoukro, Côte d'Ivoire, to discuss the liberalization of air services. The Yamoussoukro Decision was formally adopted during the Assembly of Heads of State held in Lomé, Togo, on July 10–12, 2000, and it came into force on August 12, 2000.
- 232. Objective.** Article 2 of the Decision states that its main objective is to gradually liberalize scheduled and non-scheduled intra-African air transport services.
- 233. Main provisions.** The Decision grants to the States party to the Decision the free exercise of the First, Second, Third, Fourth, and Fifth Freedoms on scheduled and non-scheduled passenger and freight services performed by an eligible airline. Article 4 liberalizes tariffs for international air services. An increase in tariffs may be filed with the competent authorities only 30 working days before it comes into force. Article 5 states that no member country shall unilaterally limit the volume of traffic, the type of aircraft to be operated, and the number of flights per week, provided that environmental, safety, and technical considerations are taken into account. Articles 6 and 7 outline the procedure for designating and authorizing an airline and the rules for fair competition.
- 234. Institutional arrangements.** Article 9 establishes a monitoring body whose main responsibilities are the supervision, follow-up, and implementation of the Decision. The monitoring body assists the Subcommittee on Air

Transport, composed of the African Ministers of transport, in following up on implementation of the Decision. This body includes representatives of the United Nations Economic Commission for Africa (UNECA), African Union, African Civil Aviation Commission (AFCAC), and African Airlines Association (AFRAA).

Article 9 also refers to the creation of an African air transport executing agency. Its main responsibilities are the supervision and management of Africa's liberalized air transport industry to ensure successful implementation of the Yamoussoukro Decision. The Third African Union Conference of Ministers responsible for air transport held in Addis Ababa on 7-11 May 2007 decided to assign to AFCAC the functions of the Executing Agency of the Yamoussoukro Decision. The AFCAC Constitution was revised on 16 December 2009 to take into account the new mandate.

**235. Strengths of the Yamoussoukro Decision..** Focusing on safety and security, the Decision requires airlines operating in Member States to meet the standards defined by ICAO. The Decision promotes mutual recognition of air operating certificates, certificates of airworthiness, certificates of competency, and personnel licenses, provided that the requirements for issuing those documents conform with the minimum standards set by ICAO. Little progress has been made toward establishing the official institutions, but operational implementation has moved forward with greater freedom to negotiate bilateral agreements throughout the continent, although implementation is uneven. For example, routes and aircraft sizes are better adapted to the market, and viable carriers are expanding. The greatest progress has been made in West Africa, where the Banjul Accord Group Agreement was signed on January 24, 2009, by Cabo Verde, The Gambia, Ghana, Guinea, Liberia, Nigeria, and Sierra Leone. According to this instrument, the Signatory States must harmonize their policies and procedures in civil aviation.

The principles of the Yamoussoukro Decision have been agreed upon, with the result that 43 percent of flights are operating under the Fifth and Seventh Freedoms. The West African Economic and Monetary Union (WAEMU) composed of Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo have fully implemented the Yamoussoukro Decision. As a result, all freedoms, including cabotage, have been granted, tariffs have been liberalized, and 44 percent of flights are operating under the Fifth and Seventh Freedoms. By contrast, only 6 percent of flights are operating under the Fifth and Seventh Freedoms in the Southern African Devel-

opment Community (SADC), even though civil aviation policy includes gradual liberalization of air services within the Community.

- 236. Weaknesses of the Yamoussoukro Decision.** A number of factors underlie the delay in implementation of the Yamoussoukro Decision. The first is the difficulty in complying with ICAO's safety and security standards or recommended practices. The second is the absence of leadership by the African Union—a platform for continental economic integration. The third is the difficulty encountered by the African Union in delegating to the Regional Economic Communities the responsibility for establishing fair competition rules in the air transport sector. And the fourth is the lack of resources needed to hire a core team of experts and lawyers to put in place fair competition rules that will protect smaller African carriers and the ultimate consumer against price dumping and discriminatory practices by larger companies. It has been noted, however, that too many local African air carriers are not considered safe enough and as such are blacklisted in Europe and elsewhere.

The Yamoussoukro Decision appears in **Annex III-14** of this review.

## **I. THE AFRICAN CIVIL AVIATION COMMISSION**

- 237.** The African Civil Aviation Commission (AFCAC) was set up on January 17, 1969 in Addis Ababa (Ethiopia). It is an advisory body whose membership stands at 44 African States. AFCAC became an OAU specialized agency following an agreement signed in Addis Ababa on May 11, 1978.

AFCAC is also one of four ICAO regional commissions, the other three being the European Civil Aviation Conference (ECAC), the Arab Council of Civil Aviation (ACAC) and the Latin American Civil Aviation Commission (LACAC).

AFCAC was entrusted by the African Union with the powers of the Executing Agency of the Yamoussoukro Decision in 2007.