



# A Review of International Legal Instruments

Facilitation of Transport and Trade in Africa

Second Edition

## CHAPTER IV

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TREATIES

CONVENTIONS

PROTOCOLS

DECISIONS

DIRECTIVES



**SSATP**  
Africa Transport  
Policy Program

## IV. Subregional Instruments: Central Africa

238. A private law approach. Central Africa has made considerable efforts to unify commercial and transport law. Its conventions are of special interest because they codify the practice applicable to the relations between shippers and carriers that come under private (commercial) law. Many of the other conventions address the public administration of transport corridors, police, Customs procedures, etc.—all matters of public law.
239. Inventory of subregional instruments. In Central Africa, the following main subregional instruments are enforceable:
- *Treaty of Brazzaville*. Dated December 8, 1964, this Treaty established the Customs and Economic Union of Central Africa or UDEAC, signed by Cameroon, Chad, the Central African Republic, Congo and Gabon.<sup>86</sup> UDEAC succeeded the Equatorial Customs Union created in 1959 (this Treaty is not reviewed here as it is outdated and obsolete). UDEAC was replaced by the Economic and Monetary Community of Central African States or CEMAC in 1998.
  - *Treaty of N'Djamena*. This Treaty established CEMAC on March 16, 1994. The Parties to CEMAC were the same as those to UDEAC and Equatorial Customs Union.
  - *Treaty of Libreville*. Concluded in Libreville, Gabon, on October 19, 1983, this treaty established the Economic Community of Central African States or ECCAS ) It has a broader reach than UDEAC and includes, in addition to the UDEAC and CEMAC Partner States, Angola, Burundi, Democratic Republic of the Congo, Rwanda, and São Tomé & Príncipe.
  - *Treaty of Gisenyi*. Concluded on September 20, 1976, this Treaty established the Economic Community of the Great Lakes Countries or CEPGL. It was signed by Burundi, Rwanda, and Zaire (now Democratic Republic of the Congo). Central African States are also party to the Maritime Transport Charter for West and Central Africa, a subject dealt with in the section on West Africa.

- *Brazzaville Agreement Establishing a Uniform Regime Applicable to Rivers.* This Agreement created the International Commission for the Congo-Oubangui-Sangha River Basin (CICOS). The Agreement was signed on November 6, 1999, and ratified or accepted from March to July 2003 by the states party to it: Cameroon, the Central African Republic, Democratic Republic of the Congo and Congo.

Central African States are also party to the Maritime Transport Charter for West and Central Africa, a subject dealt with in the section on West Africa.

The memberships of organizations in Central Africa are shown in table 1.

**Table 1 Memberships of Subregional Organizations, Central Africa**

	UDEAC & CEMAC	ECCAS	CEPGL	OHADA	CICOS
Angola		x			
Burundi		x	x		
Cameroon	x	x		x	x
Central African Republic	x	x		x	x
Chad	x	x		x	
Dem. Rep. of the Congo		x	x	x	x
Congo	x	x			x
Equatorial Guinea	x	x		x	
Gabon	x	x		x	
Rwanda		x	x		
São Tomé		x			

Source: SSATP

Note: UDEAC = Economic and Customs Union of Central Africa; CEMAC Economic and Monetary Community of Central Africa; ECCAS = Economic Community of Central African States; CEPGL = Economic Community of the Great Lakes Countries; OHADA = Organization for Harmonization of Business Law in Africa; CICOS = International Commission for the Congo-Oubangui-Sangha River Basin.

## A. CUSTOMS AND ECONOMIC UNION OF CENTRAL AFRICA<sup>87</sup>

- 240. General<sup>88</sup>.** The Treaty of Brazzaville creating a Customs and Economic Union of Central Africa was signed on December 8, 1964, by Cameroon, Central African Republic, Chad, Congo, and Gabon. Equatorial Guinea joined in 1983.

**241. Institutions.** The Treaty of Brazzaville established the following institutions:

- *Council of Heads of State.* This is the supreme agency of the institution. Decisions of the Heads of State must be unanimous. The council determines and coordinates the Customs and economic policies of the Partner States (Articles 7 and 8).
- *Executive Committee.* This committee is composed of two representatives per Member State; one is the minister of finance and the other the minister in charge of economic development or their representatives.
- *General Secretariat.*

UDEAC was replaced in 1994 by CEMAC, but a number of UDEAC covenants, agreements or regulations are still in place under their original UDEAC qualification.

The Treaty creating a Customs and Economic Union of Central Africa appears in **Annex IV-1** of this review. The treaty does not appear to have been filed with the UN Secretariat and could not be located in the UN Treaty Series.

**242. Infrastructure and transport.** Partner States agreed to foster integration of infrastructure; to harmonize and standardize facilities and equipment; and to promote transport coordination.

To reach these objectives, the Partner States will communicate their transport development projects to the General Secretariat as well as their documentation and regulations. The General Secretariat will prepare the transport plan and transport projects to be submitted for approval to the Executive Committee and to the Council of Heads of State.

Although the 2001 CEMAC Merchant Shipping Code has now replaced the 1994 UDEAC Merchant Shipping Code, two major UDEAC sets of rules are still in effect: the 1996 Interstate Convention on Road Transport of General Cargo and the Interstate Convention on Multimodal Cargo Transport.<sup>89</sup>

a. *Interstate Convention on Road Transport of General Cargo*

**243. General.** On July 5, 1996, the Council of Heads of State of UDEAC agreed on the legal framework of road transport of general cargo in the subregion (Act 4/96-UDEAC-611-CE-31). This framework gave birth to *the Convention inter-*

*États des transports routiers de marchandises diverses* known as the General Cargo Road Convention or GC Road. The preamble of the Convention insists on the desire to set forth the format and legal regime of the transportation documents and the carriers' liability regime. This wording was taken from the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) and based on the 1890 Bern Convention on International Railway Transport (modified). The plans of the 1996 General Cargo Road Convention and the 1956 Geneva Convention are the same. However, the clauses in the CMR Convention that deal with multimodal transport are missing from the General Cargo Road Convention as the UDEAC Heads of State agreed on a separate convention on such transport.

244. **Applicability.** There is no statement in the Convention that it is but supplementary. Apparently, the Parties to the transport contract are free to execute a contract different from that resulting from the Convention, or to use some of the clauses of the Convention and discard others. It has been ruled by a French appeals court that recourse to the CMR or part of it was the choice and will of the Parties "whom the law leaves free to stipulate the clauses of their contractual relations in the matter of transport."<sup>90</sup> However, an important restriction derives from Article 51, which states that any stipulation derogatory to the provisions of the General Cargo Road Convention would be void. Again, the wording is that of Article 41 of the CMR Convention.
245. **Salient points.** The salient points of the Interstate Convention on Road Transport of General Cargo follow:
- *General (Chapter I).* The General Cargo Road Convention is applicable to all general international cargo involving a payment when either the country of departure or the country where delivery takes place are parties to the Convention whatever the nationality or domicile of the carrier. The Convention is also applicable when transport is conducted by government or international governmental or non-governmental organizations.
  - *Waybill (Chapter II).* Transport takes place under a waybill of four copies (three in the CMR Convention) as evidence of the transport contract. Whether the absence of a waybill makes the contract void or whether it makes the Convention not applicable is not clear. The waybill format is detailed in the General Cargo Road Convention and is compulsory.

- *Liability (Chapter III)*. The carrier is liable except in "circumstances that it could not avoid and to the consequences of which it could not escape"—that is, basically, force majeure.<sup>91</sup> Cases of exoneration of liability are enumerated (Article 17) and the onus of proof is on the carrier (Article 20).
- *Claims and litigation (Chapter IV)*. There are statutes of limitation for delays in reservations, claims, and litigation. In case of arbitration, arbitrators are bound by the stipulations of the Convention.

The Interstate Convention on Road Transport of General Cargo appears in **Annex IV-2** of this review. This Convention does not appear to have been filed with the UN Secretariat and cannot be traced in the UN Treaty Series.

b. *Convention on Interstate Multimodal Cargo Transport*

- 246. General.** International multimodal transport takes place when, under the coverage of a single document, goods are transported from one country to another through different modes of transport. On July 5, 1996, UDEAC's Council of Heads of State agreed on the legal framework of multimodal transport in the subregion. The framework took the form of the *Convention inter-États de transport multimodal de marchandises* (Act 4/96-UDEAC-611-CE-31). The 1980 United Nations Convention on International Multimodal Transport of Goods did not come into force as it was not ratified by a sufficient number of countries. UDEAC's initiative therefore filled a gap in international law and provides its Central Africa member countries with a clear and undisputable framework for multimodal transport operations, the provisions of which were in fact borrowed from the non-ratified international convention.
- 247. TIPAC procedures.** Besides, the UDEAC Multimodal Convention is associated with enforcement of the International Transit in Central Africa (TIPAC) regime. TIPAC is a Customs regime for international transit, with the objectives of simplifying Customs procedures at origin and destination as well as during transit, and assigning liability for Customs duties to the carrier involved in a specific transit operation. Transit is on a fixed itinerary. Cargo in transit is covered by a TIPAC booklet describing the freight transported and used for Customs and other controls. The Regional Guarantee Fund issues the booklets, provides the necessary financial resources for guaranteeing payment of Customs dues, and settles any litigation.

**248. Provisions.** The content of the UDEAC Multimodal Convention is as follows:

- *Preamble.* The preamble states that the Partner States consider that "liability of the multimodal carrier is based on a presumption of faulty act and negligence." In fact, the liability regime of the multimodal carrier copied the regime applicable to the sea carriers per the Hamburg Rules in force since 1992 among the limited number of states that ratified them. In case of damage, the burden of proof falls on the carrier.
- *Articles 2 to 4 and 29.* Recourse to the UDEAC Multimodal Convention is compulsory; it applies automatically, without restriction, when acceptance and<sup>92</sup> delivery of cargo takes place in one of the party states. There is no room for a clause discharging all or part of the carrier's liability. Article 29 of the UDEAC Multimodal Convention is taken verbatim from Article 29 of the French law, specifically voiding any clause seeking directly or indirectly to free the carrier from its responsibility or to place the onus of evidence on any other party than the carrier. This is a paramount clause. Still, domestic law remains applicable to other transport regulations such as safety, licensing, security, insurance, etc.
- *Chapter II.* A multimodal waybill (*document de transport multimodal* or DTM) is signed by the carrier and may be negotiable. The format and content of the waybill are in accordance with the provisions of the Convention. The DTM is transferable. It specifically mentions that any clause contrary to the stipulations of the UDEAC Multimodal Convention is void (Article 29).
- *Chapter III.* The carrier is presumed liable for damages or delays in delivery unless it provides evidence that it, its employees, and agents "took all the necessary measures that could reasonably be required for the avoidance of the [damage or delay] and its consequences" (Article 16). This is an obligation of due diligence. A ceiling of liability is set, and such a ceiling is applicable in misfeasance or nonfeasance liability (Article 21).
- *Annex.* The annex to the UDEAC Multimodal Convention deals with the enforcement of TIPAC in multimodal transport in the subregion. Provisions are standard:
  - No physical check of cargo unless necessary
  - No special procedure except standard TIPAC procedures
  - No import and export Customs dues

Dues may be charges or fees for financing health and security services, but charges and fees should be limited to the amount needed to cover the costs of such services

The text of the *Convention inter-États de transport multimodal de marchandises en UDEAC* appears in **Annex IV-3** of this review. This Convention does not appear to have been filed with the UN Secretariat and cannot be traced in the UN Treaty Series.

c. *Interstate Regulation on Licensing of Road Carriers*

**249. General.** On July 5, 1996, UDEAC's Council of Heads of State agreed on the legal framework for licensing road carriers in the subregion (Act 5/96-UDEAC-611-CE-31). All road carriers, either for transport for own account or for professional transport, need to be licensed and to adhere to the third-party liability insurance guarantee system (TIPAC). Licenses are given by the ministries of transport of each Member State for a duration of five years and for a specific road network or specific itineraries.

The *Conditions d'exercice de la profession de transporteur routier inter-États de marchandises diverses* (Licensing Conditions) appear in **Annex IV-4** of this review.

**250. Evaluation.**<sup>93</sup> One of the obstacles to the integration process in the subregion is the lack of a monitoring and evaluation system to assess implementation of the laws enacted by the subregional institutions.<sup>94</sup> As of July 2010, there were no clear indications that those laws are implemented in the member countries of the Central African organizations. In the CEMAC action programs for 2005 and 2006, the Transports Program was limited to popularizing the different laws in the countries.<sup>95</sup> In both action programs, the agreed-on plan on transport in Central Africa refers to the Monitoring Operational Committee.<sup>96</sup> However, this Committee does not appear to play an efficient role because transport laws enacted within the Community are not fully incorporated into municipal laws.

## **B. ECONOMIC AND MONETARY COMMUNITY OF CENTRAL AFRICA**

**251. General**<sup>97</sup>. The Economic and Monetary Community of Central Africa or CEMAC instruments are as follows:

- Treaty establishing the Economic and Monetary Community of Central Africa. This Treaty was concluded in N'Djamena, Chad, on February 6, 1998, with an addition related to the institutional and legal system of the Community. It was slightly revised in Yaoundé, Cameroon, in June 25, 2008, to create the Community Parliament. The revised version appears in **Annex IV-5** of this review.
- *Convention régissant l'Union économique de l'Afrique centrale (UEAC)*
- *Convention régissant l'Union monétaire de l'Afrique centrale (UMAC)*
- *Convention régissant la Cour de justice de la CEMAC*
- *Convention régissant le Parlement Communautaire*. This Convention was adopted on January 28, 2004. The Community Parliament has its headquarters in Malabo, Equatorial Guinea, and was launched in April 2010.

**252. Policy**. Whereas UDEAC was based on cooperation between Partner States, CEMAC pursues an approach of integration. Its main policy objectives, not formulated in the instruments but only in separate declarations of intent, are the following:

- Reinforce the competitiveness of the economic and financial activities of the countries of CEMAC by harmonizing the legal framework (investment code, competition, regulation, etc.).
- Coordinate economic and budgetary policies to ensure coherence with the common monetary policy.
- Establish a common market, with total freedom of establishment, immigration, and free movement of goods and services.
- Coordinate sectorial policies, including trade and transport policies.
- Promote freedom of movement, residence, and establishment.

**253. Institutions**. Compared with UDEAC, the number of CEMAC institutions is much larger. There are eight executive branch institutions: Conference of

Heads of State, Council of Ministers, Commission of the CEMAC (which by means of an addition to the treaty carried out in N'Djamena, Chad, in April 25, 2007, replaced the Executive Secretariat), Ministerial Committee, Inter-State Committee, Central Bank, Banking Commission, and Development Financing Institution.<sup>98</sup> In addition, the treaty establishes the Central African States Development Bank. Legislative and judicial institutions are the Community Parliament and the Supreme Court, which includes the *Cour des comptes* (Court of Auditors).

254. **CEMAC codes and regulations.** Very soon after its creation, CEMAC issued the following new regulations and codes to replace those issued by UDEAC: the River Navigation Code (*Code de la navigation intérieure*) and Hazardous Cargo Regulations (*Règlement de transport des marchandises dangereuses*) in 1999; the Civil Aviation Code (*Code de l'aviation civile*) in 2000;<sup>99</sup> and the Merchant Shipping Code (*Code communautaire de la marine marchande*) and Road Traffic Code (*Code de la route*) in 2001. To date, the two UDEAC conventions on road transport and intermodal transport are still in effect.

As noted, the text of the *Traité instituant la Communauté économique et monétaire d'Afrique centrale* (CEMAC) appears in **Annex IV-5** of this review. This treaty does not appear to have been filed with the UN Secretariat and cannot be traced in the UN Treaty Series.

a. *River Navigation Code*

255. The River Navigation Code was issued on December 17, 1999, as CEMAC/RDC (Democratic Republic of the Congo) Regulation 14/99/CEMAC-036-CM-03.<sup>100</sup> The code is mainly oriented toward the safety issues of river navigation, with some approaches to management issues. Ten titles cover rules applicable to channels and rivers, riverboats, health, police, the environment, captains, and crews. The 31 annexes give details on markings, signals, forms, etc. Pending the issuance of a *Code de la navigation intérieure* CEMAC/RDC set of rules on transport operations in river shipping, one annex deals with the limitations of liability of river carriers. In the main text, there are provisions on sureties and mortgages. But there are no provisions on carriage contracts for intermodal or multimodal transport and other commercial aspects of river transport. There is no provision as well on the international regime of rivers in CEMAC and on the rights and duties of Member States.

The text of the *Code de la navigation intérieure* (CEMAC) is attached as **Annex IV-6** of this review.

b. *Road Transport of Hazardous Cargo*

**256. Hazardous cargo regulations.** On June 25, 1999, CEMAC's Council of Ministers issued a regulation on the carriage of hazardous cargo enforceable in all CEMAC States.

The text of the Road Transport of Hazardous Cargo can be found in **Annex IV-7** of this review.

c. *Merchant Shipping Code*<sup>101</sup>

**257. General.** The CEMAC Merchant Shipping Code was issued in Bangui, Central African Republic, on August 3, 2001, as Regulation 03/01 UEAC 088-CM-06.<sup>102</sup> It replaced the UDEAC Merchant Shipping Code issued as Act No. 6/94-UDEAC-594-CE-30 on December 22, 1994. The code rules on the following:

- Applicability of the law to vessels
- Ship safety, classification, salvage, and wrecks
- Marine environment and pollution
- Seamen
- Maritime transport, including charter parties, bills of lading, and other carriage contracts
- Shipping and forwarding agents, consignees of cargo, pilots, and stevedoring companies
- Court and other procedures related to shipping.

**258. References to international conventions.** The Merchant Shipping Code makes reference to and follows the rules set forth by international conventions, even when CEMAC Member States did not ratify them. Vessel documentation to be handed over at arrival in port (Article 10) is in accordance with the 1965 London Convention with specific reference to it. Landlocked States may be members of boards of directors for ports in coastal States (Article 14), in line with the 1965 New York Convention. They may practice fishing in the exclusive

economic zone (Article 18) in line and with reference to the 1982 United Nations Convention on the Law of the Sea. The liability regime of ship owners (Articles 100 to 113) is similar and makes reference to the 1976 London Convention on maritime claims. Finally, the legal regime of the sea carriage contract is that of the 1978 Hamburg Rules. According to Article 396 of the Code, these rules are applicable to any carriage by sea to and from CEMAC countries. But things may be not that simple, and conflicts of laws are likely. The Code, incidentally, does not state that the provision is paramount and compulsory (*d'ordre public*) and whether Parties to the sea carriage contract may agree on a different liability regime. Altogether, the Code appears to reflect the views of the International Maritime Organization (IMO) on points that are still very much in dispute in the maritime community and still open to discussion or may be left to contract provisions rather than be frozen in statutes.<sup>103</sup>

- 259. Maritime transport policy.** The approach to shipping is regulatory rather than market-oriented. Article 375 sets forth that the overall organization of maritime transport and measures of regional cooperation are defined by national authorities within the framework of the general policy adopted by the regional and subregional authorities. Article 376 states that “maritime traffic is distributed in accordance with the 1974 Code of Conduct of Liner Conferences and that freight rates are negotiated according to the provisions of such Code.” “Such Code” is applicable to all traffic rights of the member countries (Article 312)—see **Annex II-20** of this review. But the provisions on reserved traffic are less constraining than those of UDEAC Code. The latter (Articles 370 to 373 of the UDEAC Code) reserved traffic between UDEAC ports, towage in UDEAC waters, transit, and interline cargo to UDEAC flag vessels. The CEMAC Code (Article 5) simply reserves to CEMAC flag vessels domestic coastal shipping and subregional coastal shipping. However, *subregional* remains undefined; whether it extends beyond CEMAC frontiers is uncertain.
- 260. Enforceability.** The CEMAC Merchant Shipping Code needed not to be filed in the UN Treaty Series as it was issued as a regulation and not as a negotiated instrument. Still, it resulted from a negotiation and probably impinges on international law. It may raise issues of interpretation and enforceability. For example, the provision in Article 396 that rules issued by the Code, and those regarding carriage contracts, shall be applicable to all cargoes to and from CEMAC Member States may conflict with similar provisions in foreign laws. Whether the code is supplementary or imperative on this important point is

uncertain. The Heads of State adopted Recommendation No. 01/04-UEAC-010 E-CM-12 relevant to the establishment of an ad hoc commission to revise the Merchant Shipping Code.

The text in French of the relevant chapters (*Organisation des transports maritimes*) of the Code appears in **Annex IV-8** of this review.

d. *Road Traffic Code*

**261.** The Road Traffic Code was issued in Bangui as Regulation 04/01 UEAC 089-CM-06 on August 2, 2001. Enforceable in all CEMAC States, it supersedes any earlier domestic provision, particularly the 1989 UDEAC Road Traffic Code. Regulations apply to the following:

- Driving permits
- Weight, dimensions, and other vehicle characteristics
- Traffic
- Signals

Nine annexes are attached, with details of marks and signals.

The text of the *Code communautaire de la route* appears in **Annex IV-9** of this review.

e. *Other CEMAC legal instruments since 2004 relevant to transport and transit facilitation*

The following instruments are relevant to the freedom of movement.

**262.** **Regulation No. 05/03-CEMAC-111-CM09** adopting facilities granted to travelers. The facilities granted are administrative measures that allow travelers to speed up the Customs procedures and the police formalities at their arrival and departure. The regulation establishes a system of a double circuit, green or red—a simplified Customs system for travelers at the frontiers. The green circuit allows the traveler without commercial goods to be exempt from Customs control. The red circuit requires the traveler with commercial merchandise to fulfill all the formalities required by Customs. Section 2 of the regulation briefly describes the merchandise subject to regulation.

- 263. Recommendation No. 01/05-UEAC-070 U-CM-13**, related to freedom of movement of people in CEMAC, and its additional Act No. 08/CEMAC-CCE-SE. Article 1 of the additional Act establishes the freedom of movement of people within CEMAC, provided that a valid national identity card or passport is produced and the visit in another Member State does not exceed three months.
- 264. Regulation No. 14/06-UEAC-160-CM-14** (March 11, 2006) adopting a program on the regional facilitation of transport and transit in CEMAC. The objectives of the program are to (1) create a coordinating committee for its implementation; (2) coordinate and evaluate the program implementation; (3) harmonize the laws between the Member States; (4) facilitate transit; and (5) implement a pilot project in the Douala-N'Djamena and Douala-Bangui corridors. The time frame to implement this program was set from March 2006 through December 2008.
- 265. Components of the pilot project on the Ndjamen-Douala-Bangui-Douala corridors.** The pilot project is divided in two sections: actions and objectives. The main actions are to (1) create an observatory to monitor operation of the corridors; (2) introduce a legal regime for interstate transit; (3) improve border crossings; and (4) strengthen capacity building at the border crossings. The main objectives are to (1) on a regular basis and in a neutral manner, identify, analyze, and publish the facts, practices, irregularities, and improper behaviors observed on the interstate major roads in the transport of persons and merchandise; (2) arrange for an interstate transit regime (TIPAC); (3) facilitate border passage; (4) put in place mechanisms for freight monitoring; (5) strengthen intermodal interfaces (ports, railways); (6) improve merchandise safety; (7) identify needs (safety, facilitation, interface between information technology systems, rest areas for trucks coming from landlocked countries); and (8) improve the social impact of projects.
- 266. Evaluation of the pilot project.** The facilitation component of the pilot project is its weakest point. The following activities need improvement and strengthening: communications between stakeholders, especially within the port community, including the interface between various information and communication technologies; the transit regime and border crossing through cargo tracking and improved border post constructions; port safety and security; and the CEMAC Customs union and national Customs. Stronger support is needed as well for transport facilitation institutions and better coordination

and management of the project's activities. Finally, the irritating problem of unlawful checkpoints on roads and rivers needs to be solved. These checkpoints represent a financial cost for road users, and they harm the reputations of local governments.

- 267.** **Decision No. 10/06-UEAC-160-CM-14** related to the establishment of a Management Committee for interstate cross-border corridors in Central Africa. This Decision was made on March 10, 2006, by CEMAC's Council of Ministers. Three main provisions are relevant to the transport and transit facilitation. First, the objectives of the Committee are to encourage commercial activities along the corridors, facilitate partnerships among nationals of the Member States, encourage reduction of the costs associated with freight transport, and implement best practices in Customs transit. Second, the Committee is composed of representatives of the departments of road transport, departments of Customs, professional organizations of road carriers, transit companies, and the CEMAC Commission. Finally, the Committee's responsibility is to monitor the activities related to the competitiveness of corridors, identify the obstacles to traffic flow, and provide solutions to improve or eliminate those issues.
- 268.** **Decision No. 12/06-UEAC-160-CM-14** establishing a Coordinating and Monitoring Committee to follow implementation of the regional program on transport and transit facilitation in CEMAC. This Decision was adopted on March 10, 2006. The main objectives are to coordinate and monitor implementation of the program components, which are to (1) update the road program; (2) prepare and implement the facilitation program within the subregion; (3) implement the pilot project in the Douala-N'Djamena and Douala-Bangui corridors; (4) implement interventions in the port's area and accompanying measures; (5) assess the harmonization between national and regional programs; (6) secure monitoring of maintenance on the interstate road network; (7) identify the obstacles to the implementation of projects and propose solutions to accelerate their implementation; and (8) assess progress made in the program's implementation. The Coordinating and Monitoring Committee is composed of the CEMAC Commission, which chairs the committee, and other members: four representatives of Member States nominated by the department in charge of public works, the department financing road maintenance, and the department of road transport and Customs; one representative of the transit carriers trade unions of Member States; and three representatives

of CEMAC of which two are from the department of transport and telecommunications and one from the department of the common market. The Secretariat of the Coordinating Committee is assured by the CEMAC department of transport and telecommunications. The Coordinating Committee may also call on any expertise that is useful in fulfilling its purpose.

- 269.** **Decision No. 99/07-UEAC-070 U+042-CM-16** establishing a Committee of Monitoring and Evaluation in the area of freedom of movement of people. This Decision was adopted on December 18, 2007. The Committee is composed of the Heads of cross-border police and immigration, civil society, national departments in charge of regional integration, and the CEMAC Commission. Representatives of CEEAC and EAC participate as observers. The conclusions of the Committee are transmitted to the CEMAC Commission, which follows up with Member States and the Council of Ministers.
- 270.** **Decision No. 10/07-UEAC-160-CM-15** establishing a mixed coordinating Technical Committee for implementation of the program on transport and transit facilitation funded by the African Development Fund, the concessional window of the African Development Bank group. The Committee is responsible for monitoring all activities related to the implementation of the transit and transport facilitation financed by the African Development Fund in the Douala-Bangui and Douala-N'Djamena corridors. The Committee is also responsible for coordinating and following up on the different components of the program. It may also examine and give its opinion on all its technical aspects, identify the obstacles to its implementation, and propose solutions to accelerate its implementation. The Committee is composed of the directors of national roads, land transport, and Customs of the States that are beneficiaries of the program or their designated representatives. Coordination of the project activities is ensured by the Commission of CEMAC.
- 271.** **Regulation No. 07/10-UEAC-205-CM-21** establishing the regulation on the legal regime of the Community transit and the mechanism of a single security or guarantee.<sup>104</sup> The guarantee of the merchandise in transit is required to secure the payment of the debt that may arise from its transit. As for the main provisions of the regulation, Appendix 1, Chapter IV, describes the rights and obligations of the Parties; Article 10 states the steps to be taken to constitute the guarantee; Article 12 establishes the mutual recognition of all the legal documents presented for the transit; and Annex 1, Article 1, stipulates that this regulation covers the goods that transit throughout the Community with a fi-

nal destination outside the CEMAC region. The text states that this regime allows the movement of non-Community goods from one border to the other to be exempted from import taxation. Article 7 requires national Customs authorities to assist one another from an administrative standpoint.

272. **Regulation No. 09/10-UEAC-205-CM-21** establishing a Transit Committee. The main provisions of this Regulation are Articles 2 and 5. Article 2 describes the composition of the Committee: two representatives of each Member State. Article 5 enumerates the duties of the Committee, which are (1) to ensure the effective implementation of transit rules; (2) to act as an arbitrator when conflict arises; (3) to propose recommendations and provide technical advice on the transit and guarantee procedures; and (4) to update at least once a year a list of merchandise that is at risk. The recommendations and advice of the Committee are submitted to the Council of Ministers for its approval.

The following instruments are relevant to Customs.

273. **Regulation No. 08/10-UEAC-205-CM-21** establishing modification of the Customs code relevant to Community transit. The following articles were modified. Article 155 (4) of Chapter II which is related to the movement of goods through a non-Community Member State or by sea, states that the foreign goods with a final destination to Member States are subject to import taxes and duties through a guarantee system.<sup>105</sup> Chapter III on transit modifies the definition of what is called “transit.” According to the modified provision, transit is “the movement of goods under Customs with a final destination or a point of departure from one existing custom territory.” The other articles (162 to 173) have also slightly modified the transit regime within CEMAC.
274. **Regulation No. 10/10-UEAC-206-CM-21** establishing regional harmonization of Customs data. This regulation adopts a harmonized declaration form within the Community.

The following instruments are relevant to conflicts of laws.

275. **Recommendation No. 01/10-UEAC-208-CM-21** related to the problem of conflicts of laws between OHADA instruments and CEMAC laws. The Council of Ministers recommended the systematic cooperation and involvement of CEMAC institutions in the OHADA lawmaking process.

f. *Air transport in CEMAC*

276. **Regulation No. 06/07-UEAC-082-CM-15** establishing the air carrier liability regime in case of breach of rules of boarding procedures of passengers in the airports of Member States. Article 2 of the regulation defines the scope of the instrument, which applies in three cases: (1) refusal by an airplane company to allow on board passengers validly booked; (2) unreasonable delay; and (3) cancellation of flight. The regulation also defines compensation measures in case of damages suffered by a passenger at any Member State's airport, regardless the passenger's nationality or destination. The compensation modalities are enumerated in Articles 5 to 9. For instance, in the case of refusal to embark a passenger, the airline company must reimburse the total amount of the ticket, or change the itinerary to accommodate the passenger's destination, or change the travel date at the discretion of the passenger. Article 9 specifies other types of compensation that the carrier may offer to accommodate the passenger: free lodging, free food, and payment for telecommunication to the country of destination. Article 10 of the regulation, however, stipulates that such accommodations cannot prevent a passenger from later bringing a contractual or civil liability action against the carrier.
277. **Regulation No. 6/10-UAC-204-CM-21** related to air transport safety within Member States, adopted on October 28, 2010. Article 2 of the regulation states that Member States agree to act in conformity with the following international conventions: the Convention of Tokyo signed on September 14, 1963, on offenses and certain acts committed on board aircraft; the Hague Convention of December 16, 1970, for the suppression of the unlawful seizure of aircraft; the Montreal Convention signed on September 23, 1971, for the suppression of unlawful acts against the safety of civil aviation; the Montreal Convention of February 24, 1988;<sup>106</sup> Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation; and the Montreal Convention of March 1, 1991, on plastic explosives.<sup>107</sup> Although most of the CEMAC countries agree on implementing these conventions within their territory, the Central African Republic, Chad and Congo still need to ratify two of them.
278. The following instruments are cited for information only: Decision No. 15/05-UEAC-163-CM-13 on the implementation of the COSCAP Project, a program directed at air transport safety and maintenance of aircraft navigability; Decision No. 13/05-UEAC-066-CM-13 establishing the Air Transport Community Company; Decision No. 03/08-UEAC-066-CM-17 establishing a Steering

Committee for the launching of an air transport company in CEMAC; Additional Act No. 15/07-CEMAC-162-CCE-08 establishing a Supervision Agency on Air Transport Safety in Central Africa; Directive No. 01/07-UEAC-082-CM-15 establishing the procurement rules in stopover services assistance in Member State airports; Directive No. 02/07-UEAC-082-CM-15 establishing a legal framework on time slots in Member States' airports; Regulation No. 06/10-UEAC-204-CM-21 establishing the agreement related to the security of civil aviation of CEMAC Member States; Decision No. 08/10-UEAC-066-CM-21 establishing shareholding and distribution of capital of the CEMAC company Air CEMAC; and Regulation No. 01/10-UEAC-066-CM-SE establishing a tax and Customs regime specific to the Air CEMAC.

- 279. Evaluation.** In 2005 CEMAC Conference of Heads of State ordered an audit to highlight the reasons for CEMAC inefficiency.<sup>108</sup> Institutional weaknesses were among the reasons cited for CEMAC non-performance. Indeed, CEMAC bodies lacked the funds to implement their missions. Many laws have been enacted since 2004, but they have still not been implemented. However, there appears to be a strong political will from the Member States to implement those laws for better and truer regional integration. The effectiveness of this implementation will depend partly on harmonization of the Customs procedures and information technology throughout the Community. Capacity building of Customs officers should also be a priority.

### C. ECONOMIC COMMUNITY OF CENTRAL AFRICAN STATES

- 280. Treaty Establishing the Economic Community of Central African States (ECCAS)** . ECCAS was created by this Treaty on October 18, 1983, in Libreville, Gabon. Members are Burundi, Cameroon, the Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, São Tomé & Príncipe and Rwanda which left in 2007. Angola became a full member in 1999. Burundi and Rwanda are also members of the Common Market for Eastern and Southern Africa (COMESA). Gabon is the depositary. The preamble of the Convention makes express reference to the OAU Charter, the 1973 Declaration on Cooperation and Development Independence, the Monrovia Declaration, and the Lagos Plan of Action and Final Act. Chapter IV (Trade Liberalization), Chapter V (Residence), and Chapter IX (Infrastructure and Transport) are reviewed shortly. The wording of the

ECCAS Treaty borrows much from the French text of the OAU Charter, frequently verbatim.

- 281. Annexes.** The ECCAS Treaty includes as annexes nine Protocols, which are an integral part of the Treaty:
- *Annex I.* Rules of origin for products traded between Partner States
  - *Annex II.* Nontariff hindrance to trade
  - *Annex III.* Export of goods within the Community
  - *Annex IV.* Transit and transit facilities
  - *Annex V.* Customs cooperation between Partner States
  - *Annex VI.* Compensation fund for loss of revenue
  - *Annex VII.* Freedom of movement
  - *Annex VIII.* Clearinghouse
  - *Annex IX.* Cooperation in agricultural development

The Treaty appears in **Annex IV-10** of this review, together with the annexes, with the exceptions of Annexes IV and VII which are reviewed here and are attached as separate annexes. The ECCAS Treaty does not appear to have been filed with the UN Secretariat. It cannot be traced in the UN Treaty Series but is reproduced in *International Legal Materials* (23 ILM 945 (1984)).

a. *Trade liberalization*

- 282. Phasing of Customs Union according to the ECCAS Treaty (Articles 27 and seq.).** The objective is the step-by-step creation of a Customs Union between Partner States in three basic stages.
- *Phase 1.* Freeze *imposed* on categories and levels of Customs duties, with a joint review of Customs issues by the ECCAS Secretariat
  - *Phase 2.* Phased reduction and elimination of Customs duties and elimination of quotas, restrictions, and other obstacles to interstate commerce
  - *Phase 3.* Creation of a Community Customs tariff and elaboration of a Community Customs list of goods, procedures, and regulations.

- 283. Fairness in trade (Articles 32 and seq.).** The Partner States agree that in a Member State domestic taxes (e.g., value added tax or VAT) will be the same for goods produced locally and goods produced in other Partner States. No discrimination, direct or indirect, will be acceptable. However, if because of dumping or any other reason there is a serious imbalance in the trade of one Member State with another Member State, the Council of Ministers of the Community will be informed and corrective measures will be proposed to the Conference of Heads of State. If balance of payment problems result even though the Member State experiencing such problems has taken all the necessary corrective measures, quantitative restrictions may be imposed, with a prompt report to the Council of Ministers. Customs regulations and procedures are to be harmonized.
- 284. Most favored nation treatment (Article 35).** Partner States should grant one another, in intra-Community trade, most favored nation treatment. In no case shall tariff concessions granted to a non-Member State be more favorable than those applicable pursuant to the ECCAS Treaty.
- 285. Transit policy (Article 36).** Freedom of transit through their territories is granted to all Partner States.

b. *Freedom of movement and right of establishment*

- 286. Article 40 and Annex VII.** According to this annex to the ECCAS Treaty, nationals of the Partner States are considered citizens of ECCAS. Partner States agree to simplify procedures and to facilitate their residence inside the Community. Provisions on the subject are developed in Annex VII to the Treaty (Protocol Relating to the Freedom of Movement and Right of Establishment of Nationals of Member States within the Economic Community of Central African States).

The main provisions of the protocol are as follows:

- *Freedom of movement (Article 3).* Freedom of movement is granted to nationals holding a valid passport and health certificates. Tourists may stay up to three months but are not authorized to work. Businessmen must hold a certificate from their national chamber of commerce. Workers are free to accept employment offered in a Member State.

- *Right of establishment (Article 4)*. Right of establishment is granted to nationals of Partner States. It does not include political rights. Liberal professions may be exercised, but in accordance with the legislation of each country.

The Protocol Relating to the Freedom of Movement and Right of Establishment of Nationals of Member States within the Economic Community of Central African States appears in **Annex IV-11** of this review.

c. *Infrastructure and transport*

- 287.** In the matter of infrastructure and transport, ECCAS (Libreville Treaty) is more ambitious than UDEAC (Brazzaville Treaty) and its program more comprehensive. Partner States agree to do the following:
- Promote integration of infrastructure and develop transport coordination in order 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.
  - Reorganize railway networks in view of their interconnection.
  - Develop subregional joint shipping lines, river transport companies, and airlines.

d. *Transit and transit facilities*

- 288.** As indicated earlier, transit and transit facilities are the subject of Annex IV of the ECCAS Treaty. This Protocol was probably inspired by the provisions of the 1975 Geneva Convention on the International Transport of Goods under Cover of TIR Carnets, which was not ratified by Sub-Saharan African States (notable exception: Liberia).<sup>109</sup>

The ECCAS Protocol on Transport and Transit Facilities appears in **Annex IV-12** of this review.

- 289.** **General provisions and scope of application (Articles 2 to 5)**. The fundamental rules of the Protocol on transport and transit are as follows.

- Economic Partner States will grant freedom of transit through their territories to cargoes and vehicles bound for other Partner States or Third-Party States, subject to prohibition for reasons of public safety or another enumerated cause.
  - No import or export duties shall be levied on transit traffic.
  - Transit and warehousing procedures shall be simplified to lessen the burden on landlocked countries.
  - There will be no discrimination on rates and tariffs; Partner States will grant transit trade the same treatment and facilities granted to their own traffic.
  - The transit regime shall be applicable to the carriage of bonded goods (in means of transport approved by Customs) by licensed operators and under a surety.
- 290. Bonds and sureties (Articles 6 to 8).** Bonds and sureties shall be issued by the Partner States, banks, or approved institutions. All transit goods and means of transport shall be covered by and shall travel under cover of TIR (ECCAS) carnets. Each Member State shall, subject to such conditions as it may deem necessary, authorize a carrier or its agent to prepare a TIR (ECCAS) carnet in accordance with rules set forth in the Protocol. Carnets shall be checked by Customs officers en route. Goods covered by carnets and bonds and carried in Customs-sealed means of transport shall be exempt from the payment of Customs duties and shall not be examined by Customs officers.
- 291. Customs control (Article 9).** Unless irregularities are suspected, the Customs officers en route within the Partner States shall respect the seals affixed by the Customs authorities of other Partner States, but they may affix any additional seal of their own. They may also either require the mean of transport to be escorted through the territory of the country or require examination of the means of transport and of the goods. Goods destroyed by *force majeure* shall be exempted from paying Customs duties, provided evidence is furnished of such destruction.
- 292. Obligations of Partner States (Article 10).** Partner States will undertake to facilitate the transfer to the other Partner States of the funds necessary for the payment of premiums or other charges and penalties incurred by the holder of a carnet. Other obligations result from the duty of each Member State to en-

force the Protocol in good faith. The Protocol also states that Partner States shall cooperate in the establishment of a multinational coastal shipping line, the Trans-African Highway project, a joint freight booking center, and other inter-Africa transport projects.

- e. *Monitoring and implementing committee on transport*
- 293.** To better coordinate transport programs and actions, the ECCAS Heads of State issued in January, 27, 2004, Decision No. 16/ECCAS/CCEG/XI/04—Agreed Transport Master Plan in Central Africa<sup>110</sup> (*Plan Directeur Consensuel des Transports en Afrique Centrale*, PDCT-AC)—to enable access to landlocked States and market places. By Decision No. 17/CEEAC/CCEG/XI/04, the Conference also put in place a Monitoring and Implementing Committee of the Agreed Transport Master Plan of Transports in Central Africa.<sup>111</sup> The Committee will (1) promote the programs and projects of the Transport Master Plan to the traditional and non-traditional stakeholders in order to raise funds; (2) put in place innovative financing techniques; and (3) organize meetings with stakeholders and the NEPAD Implementing Regional Coordination in Central Africa. To date, more than 50 transport and transit projects have been identified, of which 25 are underway.
- 294. Evaluation.** The PDCT-AC encompasses NEPAD transport projects for Central Africa, including roads, railways, air and maritime transport. The plan is supported by the Central African banks. Although the Committee responsible for its implementation has remained dormant since June 2010, the Governments have decided to resurrect it in order to deal with the many challenges the region is facing in terms of integration and economic development when compared with the relative advances being made by its West African counterparts. A meeting of ministers of transport was held in September 2008 in Kinshasa, Democratic Republic of the Congo, to elaborate on the 2008-15 action plan for safe and secure air transport in Central Africa. The plan was adopted on October 24, 2009 (Decision No. 20/CEEAC/CCEG/XIV/09). On October 25, 2010, the Ministers of transport validated the 2008-15 action plan, renewed their commitment, and required the granting of the Fifth Freedom of Air Transport within the States of the Community.

f. *Recent various bilateral agreements on transport signed under the umbrella of a subregional community*

295. The Protocol Agreement between the Democratic Republic of the Congo and Congo on the Construction of the Bridge Road-Rail between Brazzaville and Kinshasa and the Extension of the Rail-Road from Kinshasa to Ilebo was signed in Kinshasa on June 24, 2009. The main objectives of the Agreement are to (1) increase the speed and reliability of the travel modes between Brazzaville and Kinshasa; (2) favor the creation of multimodal services to improve river transport to the Atlantic coast; and (3) facilitate connections between landlocked countries in Central Africa. Articles 5 and 6 create a Committee to take charge of implementing the protocol. The Committee is composed of five representatives of each Member State, representatives of stakeholders, the General Secretary of ECCAS, and the Commission of CEMAC.

The text of the Protocol Agreement on the Construction of the Bridge Road-Rail between Brazzaville and Kinshasa and the Extension of Rail-Road Kinshasa-Ilebo appears in **Annex IV-13** of this review.

296. The Cooperation Protocol between ECCAS and ECOWAS on the Transport and Transit Facilitation Programme along the Trans-national Corridor of Bamenda-Enungu (Cameroon and Nigeria) was signed on December 11, 2008. The main objective of this agreement is to harmonize the transport and transit facilitation program along the transnational corridor. A pilot steering committee has been put in place to implement and supervise the project (Article 3). A joint Technical Committee has been set up to ensure the management and monitoring of the project, to resolve problems linked to the project, and to ensure good implementation of the project components in the two countries.

The Cooperation Protocol appears in **Annex IV-14** of this review.

297. Other agreements or memoranda of understanding signed under ECCAS are between the Congo and Gabon on the Brazzaville-Libreville road and between Congo and Cameroon on the Brazzaville-Yaoundé road.

g. *Air transport in ECCAS*

298. **Background information.** Since 2008, ECCAS has taken the lead in improving air transport in the Central Africa subregion. Because of the dysfunction in

road transport, air transport assumed the lead in trade and movements of people in Central Africa. ECCAS adopted an action plan covering the years 2008–15 to improve air transport services in the subregion. After an initial assessment, it was agreed to pursue the approved action plan.<sup>112</sup> However, air transport services did not satisfy users' needs because the services were irregular, the costs were among the highest worldwide, the rate of accidents was higher as well, and the liberalization advocated by the Yamoussoukro Decision was taking a long time to be effective. In response, the transport Ministers from the subregion organized a meeting in Kinshasa on October 24, 2009, and agreed on the following objectives: (1) put in place a policy framework that will create an institutional legal framework on air transport; (2) improve the services provided; (3) reduce the costs; (4) implement the Yamoussoukro Decision on liberalization of the air transport market; and (5) guarantee the security and safety of civil aviation.

299. The action plan was confirmed on October 24, 2009, by a Declaration of ECCAS Heads of State on the improvement on air transport in Central Africa and ratified by Decision No. 20/CEEAC/CCEG/XIV/09. A series of decisions made since the Declaration are analyzed here. The most important of the seven decisions made since the action plan and adopted in 2012 are also analyzed in the following sections. The action plan, declaration, and decisions cited in this section can be found in the legal publication of the Community.<sup>113</sup>
- h. *Decision No. 16/CEEAC/CCEG/XV/12 regarding the duties of an air transport carrier in ECCAS States*
300. **General provisions.** The general provisions in Article 1 define the various specific terms cited in the text. For example, a *license* is an administrative authorization given to an enterprise by the aeronautic authority to implement for a fee air transport of passengers, cargo, or mail. *Certificate of air carrier* is a document delivered to an enterprise by the competent authority of a Member State certifying that the beneficiary has the professional and management capacities to operate airplanes safely in order to conduct the air transport activities included thereof. An *air transport enterprise* (as in Article 96 of the 1944 Chicago Convention on International Civil Aviation) is any enterprise of air transport offering or operating a regular or non-regular air service. An *enterprise plan* is a detailed description of the commercial activities provided during the time related to, especially the progress made by, the market and the in-

vestments that the enterprise intends to accomplish, as well as the financial and economic impacts of its activities. An *air carrier* is an enterprise that possesses a valid license. And the *work of the air carrier* is an air transport activity during which an airplane is used for specialized services such as agriculture, construction, photography, topography, observation and monitoring, research and rescue, and air advertisement.

- 301. Scope of the provisions.** As stated in Article 3 of the Decision, anyone seeking to obtain a license to become an air carrier must comply with the cumulative requirements of Article 4. The headquarters must be located in the Member State delivering the license; the main activity must be air transport, exclusively or in combination with another commercial activity, including operations or repair and maintenance of airplanes; and the Member State or its citizens must own the majority of company shares. The Member State or its citizens must effectively control the company. The services provided must have as a starting point and an arrival point at one or several airports of a Member State, and its technical, operational, and management personnel must be composed mainly of citizens of Member States. Finally, the company must be capable of proving at any time to the aeronautic authority that delivered the license that it is fulfilling the requirements of Article 4.
- 302. Obligations of the air carrier.** The licensed company must be able to prove to the aeronautic authority its capacity to meet for a period of 24 months its present and potential obligations and to meet for a period of three months the fees and operations expenses deriving from its activities in compliance with the company's plan. The company's plan must be presented for a time frame of at least two years of operation. The company must also notify the authority about any plans to operate a regular or irregular service on a continent or in a region of the world that was not previously served, changes that may occur in the type or the number of operated airplanes, or a substantial modification in the volume of its activities. The company must also notify the aeronautic authority of any plans for merger or redemption prior to its implementation and notify it within 14 days of any change equal to 10 percent or more in the assets of a carrier controlling it. Delivery of the license is dependent on the professional fitness and competence of the persons managing effectively the activities of the air carrier (Article 6). The obligation to be insured is stated in Article 7. The insurance company must have its headquarters within the subregion, covering, among other things, the risk of accidents affecting passenger, baggage,

cargo, mail, and third parties on the ground, in compliance with the provisions stated in international conventions, treaties, and protocols. The remaining requirements are common to those recommended by Annex 6 of the 1944 Chicago Convention on International Civil Aviation related to the certification of air transport and the leasing of airplanes. Article 15 of the Decision clearly states that all its provisions shall not be understood as contrary to the Yamoussoukro Decision of November 14, 1999, regarding freedom of access to the air transport market in Africa, except that the Decision reviewed here is more favorable to the process of the subregional integration.

303. **Decision No. 17/CEEAC/CCEG/XV/12** regarding the requirements to access air transport in Central Africa. The most important articles of this instrument are related to safety and security measures (Articles 10 and 11). They refer to the 1944 Chicago Convention and compliance with its recommended measures on security and safety.
304. **Decision No. 18/CEEAC/CCEG/XV/12** on tariffs for passengers, cargo, and mail applicable to services within, coming from, and going to ECCAS Member States. This Decision gives air carriers the freedom to establish air transport tariffs for passengers, cargo, and mail (Article 3). However, this freedom may be suspended if the tariff is assessed to be excessively high or low. The Member State in this case may establish rules and procedures for transparency in order to protect consumers in the absence of a legal framework on competition.
305. **Decision No. 19/CEEAC/CCEG/XV/12** on air carrier liability toward passengers in case of accident within the subregion. This decision refers to the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage. The scope of the liability is stated in Article 2. The liability applies in case of death, physical injuries, or any other injuries so long as the accident causing the prejudice occurred inside the airplane or during the act of entering or exiting the airplane on the subregion territory. The level of air carrier liability is stated in Article 3 of the Decision. This liability is similar to that one stated in the 1999 Montreal Convention establishing the strict liability of the air carrier. The prejudice is paid in special drawing rights, as it is stated in the 1999 Montreal Convention.
306. **Decision No. 20/CEEAC/CCEG/XV/12** regarding competition in air transport services in the ECCAS Member States. The main objective of this Decision is to promote and guarantee freedom of competition and transparency in the

field of air transport in Central Africa, to bring about the establishment of an air transport industry, and to contribute to development and regional integration (Article 2). Agreements, decisions, and anti-competition practices are considered illegal. Article 3.2 provides a non-limitative list of what practices may constitute anti-competition practices. Article 4 prohibits abuse of a dominant position and defines what constitutes abusive practices. Article 5 refers to a regional agency on regulation to be created by the General Secretary of ECCAS. It would seek to monitor the practices on competition implemented by air carriers. The missions, operation, and financing of the regional agency on regulation are defined by the Council of Ministers and adopted by the Conference of Heads of State of ECCAS. The regional agency on regulation is created by Article 9 of the Decision under review here.

- 307.** **Decision No. 21/CEEAC/CEEG/XV/12** regarding exemptions on some agreements, decisions, and practices related to competition in air transport services in the Member States. It establishes the right for air carriers to plan and coordinate joint programs of flight, joint operations, and joint consultations on tariffs for passengers and cargoes on regular flights. The Decision regulates the manner in which this is possible. For this purpose, the regional agency on regulation plays a key role in monitoring these exemptions. The agency is also competent to investigate any infringement of these rules and may also act as a judiciary body (Article 12 and seq.).
- 308.** **Decision No. 22/CEEAC/CEEG/XV/12** on creating a Steering and Coordination Committee on the implementation of the 2008-2015 action plan to improve air transport in Central Africa. The Committee is composed of the Ministers in charge of civil aviation and the General Secretary of ECCAS. It is assisted by a Technical Commission composed of General Directors of the civil aviation administrations, airport General Directors, weather broadcast service General Directors of Member States, General Directors of public and private airlines or their representatives, and experts from ECCAS, CEMAC, Central African States Development Bank (BDEAC), and Bank of Central African States (BEAC) (Article 2). The Committee is responsible for monitoring implementation of the action plan; ensuring that the objectives selected are reached by mobilizing human, financial, and material resources; liaising with the Heads of State on the importance of gathering the required resources; implementing the Community rules; and ratifying the international conventions in the air transport field and on the freedom of movement of people. The

Technical Commission prepares for the Committee meetings, ensures implementation of decisions made by the Committee, decides on the practical aspect of implementation of the action plan, and reviews the reports and documents presented by the institutions and services in charge of air transport in the Member States and by the ECCAS General Secretary.

- 309. Evaluation.** Being too recent, it is too early to evaluate the implementation of these decisions. However, ECCAS is showing its will to comply with the Ya-moussoukro Decision and the international conventions on air transport by following the recommended practices.

#### **D. ECONOMIC COMMUNITY OF THE GREAT LAKES COUNTRIES**

- 310. General.** The Convention Establishing the Economic Community of the Great Lakes Countries was concluded in Gisenyi, Burundi, on September 20, 1976, between Burundi, Rwanda, and Zaire (now Democratic Republic of the Congo). The Convention originates in the Declaration of Goma, dated March 20, 1967, in which the three States committed themselves to developing their mutual cooperation. The 1969 Gisenyi Conference concluded with the Gisenyi Resolution confirming the intention to cooperate. This resulted in a number of agreements between 1971 and 1975 and then to the 1976 Gisenyi Convention reviewed here. The Convention stipulates that cargoes and goods in transit in one of the Partner States shall be free of taxes and duties. On September 10, 1978, at Gisenyi the same States entered into a Trade and Customs Cooperation Agreement.
- 311. Objectives (Article 2).** The objectives of the Community are (1) safety of populations, (2) design of common projects, (3) trade development, and (4) co-operation in various areas, mainly transport and Customs administration.
- 312. Institutions (Article 5).** The institutions of the Community are:
- *Conference of Heads of State.* The Conference has the power of decision making in all matters and overall policy-making authority. Each Head of State is in turn chair of the conference for a period of one year.
  - *Council of Ministers and State Commissioners.* The council is composed of members of Governments, appointed by the Conference of Heads of State.

The council prepares the meetings of the Conference and drafts proposals for decisions.

- *Permanent Executive Secretariat*. The Secretariat is in charge of studies, review of the elaboration of decisions, and the preparation and supervision of Community projects.
- *Arbitration Commission*. The Commission is composed of four judges in charge of controlling the legal aspects of enforcement of the Convention.
- *Specialized commissions* (policies, trade and finance, planning, transport, etc.). These commissions are in charge of evaluating the degree of cooperation by Member States in the areas of jurisdiction of the Conference of Heads of State.

The Convention Establishing the Economic Community of the Great Lakes Countries was filed under No. 16748 with the UN Secretariat (reference 1092 UN Treaty Series 43). The text appears in **Annex IV-15** of this review.

a. *Trade and Customs Cooperation Agreement*

- 313.** This Agreement between Burundi, Rwanda, and Zaire (today Democratic Republic of the Congo) was concluded on September 10, 1978, and amended on January 31, 1982,<sup>114</sup> both in Gisenyi, Burundi. It does not seem to have been filed with the UN Secretariat, nor has it been published in the UN Treaty Series. The text is available in UNCTAD document TD/B/C7/51 (Part II), Add.1 (Vol. IV), 1988, p. 228. The Agreement was later amended.
- 314. Objectives.** The objectives of the Agreement and its amendment as formulated in their preambles are to (1) develop and facilitate trade between the states party to the agreement and (2) fight fraudulent practices in trade.
- 315. Provisions.** The main provisions are as follows:
- *Article 1*. The Parties agree to the import to and export from their respective territories of products listed in attachments to the agreement, providing these products originate from such respective areas. In summary, there are no quantitative restrictions.

- *Article 2.* The domestic legislation of each State shall apply to these imports and exports, but states may grant each other, with reciprocity, any rebate on Customs tariffs they consider advisable.
- *Article 3.* The Parties agree to grant the right of transit to goods originating from and bound for one of the said States “within the limits and according to regulations on international transit of goods” free of Customs and other duties, except fees and charges compensatory of costs of services rendered during such transit.
- *Article 8.* Jurisdiction and working hours of respective Customs agencies shall be harmonized.
- *Articles 10 to 14.* These are standard provisions on cooperation and exchange of information between Customs agencies, inspired by the Customs Cooperation Council in Brussels.

The text of the Amendment to the Trade and Customs Cooperation Agreement appears in **Annex IV-16** of this review.

b. *Protocol on Transit and Transport Standards*

- 316. General.** The Protocol was concluded in Gisenyi, Burundi, on January 11, 1982, on transit and transport standards. The objective was to harmonize road transport policies.
- 317. Provisions.** The main stipulations of the Protocol are as follows:
- *Article 3.* Interstate road corridors are identified.
  - *Articles 4 and 5.* Pending agreement between Partner States, the rules on axle loads are those in force in each of the Partner States. The maximum dimensions of vehicles and trailers are set.
  - *Articles 9 and 10.* Safety and other checks on vehicles are conducted every three months for vehicles for public transport of passengers and six months for vehicles carrying goods.
  - *Articles 12 and 13.* Vehicles from any Member State may load in another Member State for international traffic only and in accordance with the rules and regulations of freight bureaus and other regulations such as those related to railroad coordination.

- *Article 14.* Combining the transport of passengers and goods in the same vehicle is prohibited.
- *Article 17.* Third-party liability insurance is compulsory in accordance with the provisions of the Convention on the subject in force between CEPGL States.

**318. Evaluation.** In 1996, following the Rwandan crisis, all agreements were suspended. Before the regional crisis, the CEPGL had promoted freedom of movement, transport and transit facilities for goods, cooperation in agricultural development, and creation of a regional bank. It was only in 2004 that the Government of Belgium called the Parties to the CEPGL to restart the organization's activities. In 2007, the reopening of the CEPGL was officially launched in the capital city of Burundi. The road linking Rwanda to Burundi was launched and constructed. In December 2009, the French Government and the CEPGL signed a financing convention to support the capacity building of the organization's Executive Secretariat.

The text of the Protocol on Transit and Transport Standards appears in **Annex IV-17** of this review.

#### **E. INTERNATIONAL COMMISSION FOR THE CONGO-OUBANGUI-SANGHA RIVER BASIN**

**319. General.** This Agreement stems from the interconnection of rivers running into the Congo-Oubangui-Sangha River Basin and the need to develop their capacity and potential in the common interest. The Agreement is also likely to open the way to a revision of the existing Protocol between the Democratic Republic of the Congo and the Central African Republic on river maintenance by the interstate Agency for the Common Management Service of Waterways (*Service commun d'entretien des voies navigables*). Significantly and despite the fact that the two countries are not or were not automatically Parties to these instruments, the Brazzaville Agreement specifically refers to the major international instruments applicable to international rivers, such as the 1885 Act of Berlin and the 1921 Barcelona Convention on the regime of the Congo River. The Agreement reviewed here is therefore well in line with the tradition of international cooperation in the matter of international rivers inaugurated by the 1815 Treaty of Vienna.

- 320. Objectives.** The objectives are in line with the Organization of African Unity's objectives to create common institutions and reinforce the existing ones. In addition, the Agreement (Article 2) aims to undertake the following:
- Establish a uniform river regime based on freedom and equal treatment.
  - Equip and operate the rivers on the basis of "a right to equitable and reasonable participation to the benefits derived from the lasting use of the rivers."
  - Establish to that effect an International Commission of the Congo-Oubangui-Sangha River Basin. The seat of the commission is in Kinshasa, Democratic Republic of the Congo.
- 321.** Details on the spirit in which the Agreement should be interpreted appear in Article 15, concluding with the special provisions applicable to special circumstances such as war. Article 15 stresses the importance of integrated management for the river basin, for the optimal use of the existing navigable waters, and for the community of interest of the Parties to the Agreement.
- 322.** Detailed terms of reference are assigned to the Commission (Article 17) with short-term, mid-term, and long-term objectives. Short-term objectives are basically to enforce the existing regulations, police river traffic, and develop common standards. Mid-term objectives are to formulate and implement a coherent maintenance policy and a transport policy conducive to the opening of landlocked areas. The long-term objective is to extend implementation of the agreement to other river basins and lakes of the subregion.
- 323. Operating provisions.** The following are the main operating provisions:
- *Access to river basin (Article 4).* Freedom of navigation for riverboats of all nations is the rule. However, the carriage of cargo or passengers between two points on the territory of one Contracting State by a riverboat of another Contracting State (cabotage) requires a specific agreement.
  - *Rules regarding transport (Article 5).* If navigation is free, transport is not reserved to the Contracting States. A special regime, as determined by the Commission, is applicable to transport by third-party boats.
  - *Fees (Article 6).* Navigation in the river basin is tax-free, and no duty, whatever its basis or denomination, may be levied. Fees may be levied for

construction, maintenance, and improvements of rivers and associated transport facilities. These fees are to be “equitable and reasonable.”

- *Special circumstances (Articles 11 to 14)*. Special circumstances are mainly an emergency and war. In both cases, action and compensation for damages is based on solidarity between states party to the agreement. In case of war, “the rivers, their facilities...enjoy the protection granted by rules and principles applicable to armed conflicts.”

**324. Institutions.** The following are the main institutions:

- *International Commission (Article 16)*. The Commission is the basic international institution established by the Agreement. Its organs are:
  - Committee of Ministers
  - Management Committee
  - General Secretariat
- *Committee of Ministers (Articles 19 to 24)*. Members of the Committee are the Ministers in charge of river navigation in each Member State. The Committee is a policy-making body that supervises the Management Committee and approves budgets and accounts. It settles litigation between Member States on river navigation.
- *Management Committee (Article 25)*. The Committee is composed of two representatives of each Member State: a representative of the agency in charge of river transport and a representative of the carriers. The Committee prepares all deliberations of the Committee of Ministers. It reviews all proposals for decision by the Committee of Ministers and formulates recommendations.
- *General Secretariat (Articles 26 and 27)*. The General Secretariat conducts the day-to-day affairs of the International Commission with wide powers of coordination and actions in the implementation of the commission’s plans, programs, and budget.

The Agreement appears in **Annex IV-18** of this review, but was not filed with the UN Secretariat and does not appear in the UN Treaty Series.

a. *Instruments on river transport signed under CICOS*

325. **Convention on Exploitation of Pool Malebo between Congo and the Democratic Republic of the Congo.** This Convention was signed on November 22, 2005, under the facilitation of CICOS. The objectives of the Convention are to regulate navigation between Kinshasa and Brazzaville, notably to administer the conditions of access to and docking in the ports; to transport passengers and their baggage; and to facilitate the journey by river and resolve any potential dispute regarding navigation (Article 2). The Convention also requires the port authorities to adjust and maintain access to ports to direct the flow of passengers and their baggage in order to facilitate control and suppress fraud (Article 5). Implementation of the Convention is monitored by a consultation committee composed of representatives of the two States: port authorities; ship-owners, border post services, agencies responsible for regulating the river; and services responsible for river maintenance. To date, passenger and trade traffic is facilitated by Customs in both ports.

This Convention appears in **Annex IV-19** of this review.

326. **Tripartite Protocol on Maintenance of Navigable River.** This Protocol, discussed in 2008 by the Central African Republic, Democratic Republic of the Congo and Congo, has not yet been signed by the three Parties. The Protocol divides the sections of the river to be maintained by each Party (Article 1). A Technical Committee in charge of controlling the implementation of the works is created and is responsible for providing a detailed report to the Governments and the General Secretary of CICOS. The Tripartite Protocol is not attached to this study because it has not yet been ratified.
327. **Evaluation.** In June 2008, a workshop took place in Congo, Brazzaville, to create monitoring agencies within the riparian countries that will serve as an interface between the State Parties and CICOS. These agencies will be responsible for ensuring that CICOS actions are effectively implemented by the riparian countries, notably in ensuring possible joint investments in shipping to facilitate transport and transit within the Member States.