

RESOLUTION ON THE FREEDOM OF THE AIR

The Council of Ministers of the Organization of African Unity, meeting in its Thirty-seventh Ordinary Session in Nairobi, Kenya from 15 to 26 June, 1981,

Having considered the report of the Secretary-General on the implementation of the Programme of the UN Transport and Communications Decade for Africa contained in Doc.CM/1137 (XXXVII),

Taking note of Resolution ECA/UNTACDA/Res.81/19 adopted by the Second Conference of Ministers of Transport, Communications and Planning held in March 1981 in Addis Ababa, transmitting Resolution ECA/UNTACDA/Res.79/6 on the Freedom of the Air:

- 1. DECIDES to transmit Res.ECA/UNTACDA/Res.79/6 adopted by the First Conference of African Ministers of Transport, Communications and Planning in May, 1979 to the Eighteenth Ordinary Session of the Assembly of Heads of State and Government along with the explanatory note on the subject for their consideration.**

ECA/UNTACDA RESOLUTION ON THE FREEDOM OF THE AIR

The Conference of African Ministers of Transport, Communications and Planning meeting in Addis Ababa from 16 to 18 March 1981,

Recalling its Resolution ECA/UNTACDA 79/6 adopted at Addis Ababa in May 1979 at its first meeting,

Noting that no significant progress has been made with respect to granting of Fifth Freedom Rights to African national airlines,

Considering that the related AFCAC recommendations have not been implemented,

Recalling that African airlines, under the auspice of AFRAA, agreed to the principle of facilitating the granting of traffic rights by their respective Governments, especially as concerns of the Fifth Freedom Rights within Africa for the benefits of African airlines,

Considering that it is necessary to improve regular air links between African sub-regions:

- 1. DRAWS THE ATTENTION of the Heads of State and Government of the Organization of African Unity to the importance and urgency of improving African air links,**

- 2. RECOMMENDS to the Assembly of Heads of State and Government of the OAU to (a) endorses resolution Eca/UNTACDA/79/6; (b) consider all useful measures for the implementation of this resolution.**

RESOLUTION ECA/UNTACDA/RES.79/6

FREEDOM OF THE AIR

The Conference of African Ministers of Transport, Communications and Planning meeting at Addis Ababa from 9 to 12 May, 1979,

Considering the importance of air transport as a major factor in accelerating the socio-economic development of African countries,

Considering that development of air transport implies co-operation among African airlines in the commercial, technical and operational activities,

Considering the acute need to provide shorter and quicker air services linking African cities with sufficient frequency through a grid system,

Considering the benefits to be derived from the joint operation of new and existing air routes by African Airlines,

Considering that the basis for meaningful co-operation and integration of African airlines is the liberalization of traffic rights for African carriers,

Considering that African airlines through the African Airlines Association have agreed and resolved to facilitate the granting of traffic rights, within Africa to African airlines,

Considering that members of that airlines Association at the ninth annual general assembly adopted a resolution,

Considering further that AFCAC at its fifth plenary session adopted recommendations on the policy of African States concerning bilateral air transport agreements,

Considering the global strategy for the implementation of the United Nations Transport and Communications Decade in Africa,

Considering the African Declaration on Co-operation, Development and Economic Independence adopted by the OAU Heads of State of Government (Addis Ababa, May 1973),

DECLARES:

- 1. All African States shall facilitate the granting of traffic rights, especially the Fifth freedom rights within Africa to airlines of the OAU Member States. To reach the same objectives of developing intra-African transport links to the states shall use forms of co-operation like the purchase of blocked space or other arrangements. In granting such rights, the interests of the national airline shall be taken into consideration,**
- 2. The right of transit and landing for technical reasons (first and second freedoms of the air) as stipulated in the Chicago Convention on International Civil Aviation and in the International Air Services Transit Agreement shall be granted without restriction to all airlines of OAU Member States;**
- 3. RECOMMENDS that the concept of sabotage and its implications on international air transport in Africa be examined by AFCAC in order to promote the development of intra-African air transport;**
- 4. RECOMMENDS that all African States shall avoid the granting of Fifth freedom rights within Africa to non-African airlines at least without having a similar right granted outside of Africa;**

5. **RECOMMENDS that African Airlines study and implement in the course of the decade the appropriate provisions with a view to achieving regular air links between the various sub-regions of Africa.**

ANNEX IV: NOTE ON THE RESOLUTION ON THE FREEDOM OF THE AIR**Introduction**

- 1. Inter-State relations as far as international air transport is concerned have their basis in the legal system developed in 1944 at Chicago. This system comprises a convention concerning international civil aviation which determines the principles of inter-state co-operation in this area. The Chicago Conference also had as its objective the adoption of a multinational agreement on the operation of air services, but was unable to meet this objective. The system developed at this Conference for air rights nevertheless constituted a point of reference for the negotiation of all inter-state agreements. This system comprises what have come to be known as the five air freedoms. The first two freedoms, which are considered to be technical liberties (the right to fly-over a State's territory – first freedom, and the right to land for technical reasons – second freedom), have been incorporated in a multilateral agreement called the International Air Transit Agreement. The other three freedoms contain provisions of a commercial nature; they constitute the basis of all inter-State transport negotiations since the conclusion in 1946 of the bilateral agreement between the United States and the United Kingdom known as the Bermuda Agreement, which sanctioned bilateralism in International Air Transport Operations following the failures of the Chicago attempt.**
- 2. The third and fourth transport freedoms between two signatory States of a bilateral air transport agreement do not generally pose any particular problems in conventional bilateral negotiations, in which the balancing of concessions of the parties gives way to more varied exchanges (route for route, rights for rights). The States have at their disposal a broad range of**

- possibilities from which they can select combinations of the operating rights they may exchange.
3. **Third and fourth freedom traffic rights, i.e., the rights to carry traffic between two States parties to a bilateral air services agreement, constitute the basis for the establishment of commercial relations between the two States concerned.**
 4. **In terms of international aeronautical policy, the fifth freedom traffic is considered to be supplementary traffic. The fifth freedom traffic right implies, in the negotiation of a bilateral agreement, the possibility of transporting traffic of a State that is party to the agreement to or from a third State situated at an intermediate point between the two signing States, or to a point beyond one of them.**
 5. **The exercising of fifth freedom rights thus implies the conclusion of an agreement with a third party by one or the other of the two parties seeking to carry the traffic coming from or destined to the third State.**
 6. **There is a basic link between the system of bilateral agreements in operation throughout the world, beginning with the 1946 Bermuda Agreement, and the multilateral expression of the tariff aspect of these agreements stemming from the existence of a traffic clause which acknowledges either formally, by making reference to it, or tacitly the authority of the International Air Transport Association (IATA) in the setting of international rates.**

The current status of air transport in Africa

7. **The current status of African air transport is characterized by the lack, indeed absence, of inter-State air links. This situation is explained in particular by the difficulties encountered by airlines in benefiting from traffic rights, notably fifth freedom rights. In the face of this situation, most African airlines find themselves obliged to operate a network that is oriented**

north/south. The restructuring of the intra-African network must be seen in terms of improving intra-African services, while ensuring the development of links with other continents.

8. The low level of inter-State traffic does not always justify the establishment of direct links between States signatory to the air agreement and necessitates turning to fifth freedom traffic.

Resolution of the first Conference of Ministers of Transport, Communications and Planning

9. At their first Conference in May 1979, the Ministers of Transport, Communications and Planning adopted two resolutions (resolution ECA/UNTACDA/79/6 and 79/7) concerning the liberalization of traffic rights and the establishment of an African tariff conference respectively.

Statement of general civil aviation policy

10. A statement of general civil aviation policy was adopted by the Thirty-fifth session of the Council of Ministers (Doc.CM/1069 (XXXV) and approved by the seventeenth session of the Assembly of Heads of State and Government of OAU at Freetown in July 1980. This statement, which concerns all areas of AFCAC activity, comprises the governing principles for individual or collective action by OAU Member States to apply these directives.
11. For optimal development of air services in Africa the OAU policy makers:

Reaffirms the objectives set down in the African Declaration of Economic Co-operation, Development and Independence (Addis Ababa, May 1973) aiming at the best possible development of African international air services in all areas, notably network structure, flight frequency, co-ordination of schedules, co-operation agreements between airlines and the development of an intra-African freight service,

Encourage the completion of studies of an optimal correspondence system for airlines which would be included within the context of planned policy for co-ordinating the schedule of a given number of airports,

Commit themselves to the resolution on air transport policy adopted by the African Ministers of Transport, Communications and Planning (Addis Ababa, 9 to 12 May 1979) which notably stipulates that the notion of coastal traffic and its implications for international air transport in Africa should be studied by AFCAC with a view to fostering the development of intra-African air transport,

Support the principle of establishing a data bank aimed at gathering analyzing and diffusing as soon as reasonably possible the information necessary to applying a co-ordinated policy for the development of air services,

The bases of African policy

Bilateral agreements

12. The policies of African States as regards bilateral agreements is already determined and based on the control of the capacity to be implemented and the frequency of services.

Resolution ECA/UNTACDA/Res.79/7: Establishment of an African Air Tariff Conference

13. The OAU Council of Ministers at Monrovia in July 1979 adopted resolution CM/Res.739 (XXXIII) Rev.1, requesting AFCAC to take, in close co-

- operation with AFRAA, ECA and OAU, the necessary steps to organize and establish an African Air Tariff Conference as a permanent institution for the purpose of determining the fares and freight rates to be applied by the African airlines.
14. In accordance with the terms of this resolution CM/Res.739 (XXXIII), a meeting was held at the headquarters of AFCAC in March 1980 at which representatives of AFCAC, OAU, ECA and AFRAA discussed the principles on which the African Air Traffic Conference would be based. According to all the participants at this meeting, the African Air Tariff Conference is justified by the importance attached by all Member States of OAU to solving the problems which now face the air authorities. These problems arise from the troubled economic situation in the world and the position concerning air transport regulations, which is characterized by the phenomenon of deregulation set off by the United States of America.
 15. The OAU/AFCAC/ECA/AFRAA preparatory meeting noted moreover, that the tariff system established since 1940 on the basis of the bilateral air transport agreement known as the Bermuda I Agreement made in 1946 between the United States and the United Kingdom, whose multilateral nature is illustrated by the IATA tariff conferences, has undergone radical revisions following the remolding of the IATA. These revisions established the principle of two levels of participation in the IATA, one of them representing all the co-ordinated services and the other offering an optional co-ordination of tariffs.
 16. The OAU/AFCAC/ECA/AFRAA preparatory meeting also recognized that one of the basic principles on which the African Air Tariff Conference would be founded is the following: the tariffs to be applied by the air transport companies should be maintained on reasonable levels, taking account of relevant factors, such as operating costs, type of service, reasonable profits, as well as the tariffs of other airlines using the same route, part of that route or similar routes. However, these tariffs shall be agreed on between the

airlines of the States which are parties to the Tariff Agreement through the African Air Tariff Conference. The secretariat services of the latter shall be provided by AFRAA according to rules previously agreed on by the African Governments, on the understanding, however, that the tariff scales established and adopted on the worldwide level shall, if necessary, be taken into consideration.

- 17. Following a report issued by the OAU Council of Ministers at its session in June 1980, in Freetown, resolution CM/Res.805 (XXXV) was adopted, requesting the convening of a Diplomatic Conference on the establishment of an African Air Tariff Conference.**

- 18. The Diplomatic Conference was, in fact, held at Addis Ababa from 5 to 12 December 1980. It adopted a Convention establishing an African Air Tariff Conference. This Convention, which has been signed by the Plenipotentiaries, is now open for ratification. It will come into force on the thirteenth day following the signature of the twenty-fifth instrument of ratification or approval.**