

2017

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Vivica Brown

Brakkam Aviation Management, vivica_brown@yahoo.com

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Recommended Citation

Brown, Vivica (2017) "The Road to Yamoussoukro," *Journal of Comparative Urban Law and Policy*: Vol. 1 : Iss. 1 , Article 17.
Available at: <http://readingroom.law.gsu.edu/jculp/vol1/iss1/17>

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THE ROAD TO YAMO USSOUKRO

Vivica Brown*

“In Africa you have space...there is a profound sense of space here, space and sky.”¹

Air transportation plays an important role in any country’s evolution because it accelerates the convergence of goods and people.² Creating a cooperative air transport system could unlock the potential for a long awaited, remarkable economic growth in Africa.³ “The African aviation market is perhaps one that has the most potential for growth out of the global regions, due to it being a comparatively young industry and servicing a large and rapidly developing population.”⁴ Africa is home to 15.96% of the world’s population, over 1.1 billion people, but it still accounts for less than 4% of the global air service market.⁵ This disparity itself seemingly identifies a clear opportunity. So why then might the mechanism for creating a fully cooperative air transport system in Africa be stalled? This article re-examines the history, benefits and obstacles that impact a fully cooperative African air transportation system.

FREEDOMS OF THE AIR

Many of us take for granted an unfettered freedom to travel by aircraft to any place in the world we desire. We do not typically stop to verify whether a desired destination will in fact allow our aircraft within its borders. However, an aircraft registered in another country must have permission to land in another nation through what is commonly referred to as a bilateral agreement between the two

*Vice-President and General Counsel, Brakkam Aviation Management

¹ Thabo Mbeki (former President of South Africa from 1999-2008)

² Megan Van Wyngaart, *Implementation of Yamoussoukro Decision vital to aviation industry*, Creamers Engineering News, January 21, 2015, http://www.engineeringnews.co.za/article/implementation-of-yamoussoukro-decision-vital-to-aviation-industry-2015-01-21/rep_id:4136 citing Dipuo Peters, South African Transport Minister

³ *Id.*

⁴ *Aviation Benefits Beyond Borders*, Air Transport Action Group, July 2016, http://aviationbenefits.org/media/149668/abbb2016_full_a4_web.pdf

⁵ Dr. Adefolake Adeyeye, *Understanding Africa’s slow growth in Intra-Regional Air Transport*, NTU-SBF Centre for African Studies, AfricaBusiness.com, June 1, 2016, <http://africabusiness.com/2016/06/01/africa-intra-regional-air-transport/>

countries. Such is the case between the U.S. and Europe, whereby an Open Skies agreement allows any airline in the U.S. and Europe to fly anywhere in their respective borders. The ultimate goal of “[o]pen [s]kies [is to]... eliminate[e] government interference in the commercial decisions of air carriers about routes, capacity and pricing, freeing carriers to provide more affordable, convenient, and efficient air service for consumers.”⁶ Similar to the U.S. and Europe agreement, other countries have also negotiated bilateral agreements that include more or less restrictive freedoms of the air.⁷

ECONOMIC OVERVIEW

The airline industry recognizes the benefits of the greater connectivity that results from liberalized bilateral air service agreements, such as “Open-Skies” agreements. The International Air Transport Association (IATA) reported that Europe’s air liberalization was not only a coup for the industry but also offered passengers a larger variety of options.⁸ From 1992-2000, there was a significant surge in activity showing an increase in *direct* flights by nearly 75%.⁹ This has

⁶U.S. Department of State, Diplomacy in Action, Open Skies Agreements <https://www.state.gov/e/eb/tr/ata/> See also, Brian Beall, *International aviation agreements: the pursuit of truly open skies, Case studies: US-EU open skies policy*, Virtual Collaboration: Learning from Multiple Perspectives, The George Washington University, American University, May 3, 2005 <http://www1.american.edu/ted/open-skies.htm>.

⁷ ICAO, Uniting Aviation, A United Nations Specialized Agency, Freedoms of the Air, <http://www.icao.int/Pages/freedomsAir.aspx> , See also

First Freedom generally covers the right to fly across another territory without landing.

Second Freedom generally covers the right to land in another territory.

Third Freedom generally covers the right to land and deliver passengers in another territory.

Fourth Freedom generally covers the right to pick up passengers and return to the original territory.

Fifth Freedom generally covers the right to pick up and deliver passengers from the original and second territory, to a third territory.

⁸ Raphael Kuuchi, Africa’s potential is sky high-and the airline industry is key, World Economic Forum May 11, 2016, <https://www.weforum.org/agenda/2016/05/africa-s-potential-is-sky-high-and-the-airline-industry-is-key/>

⁹ *Id.*

resulted in passengers having many more options, upwards of 88% more, while doubling the aircraft seat capacity.¹⁰ In addition, air fares decreased by 15%.¹¹

This growth is not limited to well developed nations like the U.S. and Europe, but air transport has triggered global economic development for developing nations as well. In the past twenty years, tourist arrivals were up by 400%, while the number of airlines were up by 300% in Chile and Costa Rica after the introduction of air liberalization.¹²

Tremendous benefits are projected for developing and the least developed nations in Africa. "...[IATA] forecasts that if just 12 of Africa's economies opened their skies to each [other], fares would drop by 35% and an extra 5 million Africans could afford to fly. An additional 155,000 new jobs would be created and 1.3 billion added to the GDP. These are impressive numbers for an industry that currently supports around 7 million jobs and more than 80 billion in GDP across the continent."¹³ The statistics would seem to sell themselves, making the drive to Open Skies an obvious ultimate objective; however, the execution of traditional restrictive bilateral agreements is often part of the process of moving toward a true Open Skies policy.

INITIAL STEPS

Clearly, there are key differences between traditional bilateral air transport agreements and Open Skies agreements. Bilateral agreements restrict which airlines can participate, the cities that can be served and the number of flights allowed to serve the participating markets.¹⁴ There are also restrictions on pricing and operations to and from additional countries.¹⁵ The U.S. and UK entered into a bilateral agreement in 1946, which was the first of thousands of bilaterals in existence today.¹⁶ This agreement established the framework of subsequent agreements, and the restrictive experience lead to the U.S. entering into its first true

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* See also, *The Yamoussoukro Indecision. Why African aviation needs to be set free.* The Economist December 4, 2015

¹⁴ Beall, *supra*, note 5.

¹⁵ *Id.*

¹⁶ *Id.*

Open Skies agreement with the Netherlands in 1992.¹⁷ The U.S. now has well over 100 Open Skies agreements with countries around the world, including several African countries such as Ghana, Rwanda, Senegal and Uganda.¹⁸

Although the United States has Open Skies agreements with several African countries, and African countries readily sign open air transport agreements with the Middle East and European countries, Africa now has a tangible opportunity for Open Skies among fellow countries on the same continent.¹⁹ A solid Open Skies agreement could mitigate transportation issues faced by sixteen landlocked African countries and allow the continent to leverage its size and resources to grow as a world power in the global economy.²⁰

INTRA-AFRICA AIR TRANSPORTATION

In the early 1960's, newly independent African countries created national airlines which are government owned and typically government subsidized air carriers. This history is similar to the air transportation history in the United States and Europe.²¹ Governments protected the airlines by eliminating competition resulting in poor air safety records, inflated airfares, and limited traffic growth.²² Airlines like Air Afrique, Egypt Air, Wilson Airways, and South African Airways, two of which operate today, were part of early aviation in Africa.²³ Unlike most national African airlines, only two, Ethiopian Airways and Royal Air Maroc, are currently profitable.²⁴ To augment its geographical advantages, Ethiopian Airways

¹⁷ *Id.*

¹⁸ U.S. Department of State, Diplomacy in Action, Open Skies Partners <https://www.state.gov/e/eb/rls/othr/ata/114805.htm>

¹⁹Wynngaart, *supra*, note 2.

²⁰ *Id.*

²¹ Charles Schlumberger, *The Implementation of the Yamoussoukro Decision*, Institute of Air and Space Law, Faculty of Law, McGill University, Montreal, February 2009. http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1483947504606~704

²² Charles Schlumberger, *Open Skies for Africa-Implementing the Yamoussoukro Decision*, World Bank Study 2010. www.worldbank.org/en/topic/transport/publication/open-skies-for-africa

²³ *Id.*

²⁴ *African airlines Well-connected, Why one national airline is bucking a continent-wide trend*, The Economist, October 22, 2016. <http://www.economist.com/news/business/21709075-why-one-national-airline-bucking-continent-wide-trend-well-connected>.

now seeks to increase its profitability by becoming the continent's first pan-African airline.²⁵

Given the bilateral restrictions impacting routes, inflated pricing and limited seats rule the sky in Africa. Ethiopian Airways, much like the global economic and aviation community, has set its sights on implementation of the Yamoussoukro Decision ("YD" or the "Decision"). In 1988, sharing the opinion that liberalization of the skies would address the referenced concerns, African ministers of transportation met in the capital city of Yamoussoukro, Cote d'Ivoire to declare their common view and agree in principle to liberalize African skies.²⁶ The Yamoussoukro Declaration was adopted by 44 African countries in 1999, who agreed to deregulate African air service and thereby promote transnational air transportation as part of the new Yamoussoukro Decision. The Decision suggested that implementation would form a single air transport market by 2002.²⁷

CONNECTING AFRICAN PEOPLE

The implementation of the Decision is not only economically beneficial, but will also connect the African people. As such, the Yamoussoukro Decision held great promise for unifying a continent. Africa is the second largest continent by land size and population. It is comprised of 54 countries, upwards of 2,138 spoken languages and over twenty official languages on the continent.²⁸ It is believed that

²⁵ *Id.*

²⁶ Schlumberger, *supra*, note 21.

²⁷ *Id.* See also, *The Yamoussoukro Indecision Why African aviation needs to be set free*, The Economist December 4, 2015 <http://www.economist.com/blogs/gulliver/2015/12/yamoussoukro-indecision>; See also, *Yamoussoukro Decision gains altitude*, Daily Southern African Tourism Update, August 19, 2016 <http://www.tourismupdate.co.za/article/112703/Yamoussoukro-Decision-gains-altitude>. Director Tefera Nekonnen suggests that the 1999 Decision established the *gradual* liberalization of scheduled and non-scheduled intra-Africa air transport services and not full implementation by 2002.

²⁸ Rick Noack and Lazaro Gamio, *The world's languages, in 7 maps and charts*, The Washington Post WorldViews April 23, 2015 https://www.washingtonpost.com/news/worldviews/wp/2015/04/23/the-worlds-languages-in-7-maps-and-charts/?utm_term=.0b153216c12 See also, Forum on China-Africa Cooperation, October 12, 2009 <http://www.focac.org/eng/zjz/fzzl/t619829.htm>. In addition to national colonial languages of English, French, Portuguese and Spanish, there are 5 categories of national languages recognized, including over 20 separate languages, 10 of which are national languages are spoken only in South Africa.

there are more than 3,000 ethnic groups.²⁹ We cannot treat it or assume it to be a homogenous group of people; the countries are at different stages of economic development and political stability.³⁰ This is ever more evident when compared with Europe, with a population of 65% of the total African population, 35% of the land mass, and although 24 official languages, only two, English and French, are widespread.³¹

Greater air connectivity could create opportunities to unite disparate ethnicities and languages across the continent.³² Further, the connection should be led by Africa within its borders. In accordance with South African Transport Minister, Elizabeth Dupuo Peters, the tendency of African countries to readily sign agreements with non-African countries “erodes the spirit of African liberalization as advocated by the Yamoussoukro Declaration.”³³ African countries should first link with their own neighboring countries before forging links with transcontinental countries.³⁴ Instead, “[m]iddle eastern rivals, including Qatar Airways, are currently expanding across the continent.”³⁵

PRACTICAL ROUTES AND LOWER FARES

Currently, complicated and convoluted air service routes are commonplace across Africa. A flight from Algeria to Cameroon would require a passenger to board an aircraft and leave North Africa heading east to Istanbul, Turkey and then return to West Africa. Because there is no direct flight, the fastest route takes 24 hours.³⁶ A direct flight would take 3.5 hours, the same distance as going from Atlanta, Georgia to Phoenix, Arizona, or a trip from London, England to Athens, Greece.³⁷ One would expect to take a direct flight, but if not a direct flight, then

²⁹ <https://www.reference.com/world-view/many-tribes-africa-76e13fe8abde3edf>, See also <https://www.africaguide.com/culture/tribes.htm>; <http://www.gateway-africa.com/tribe/Tribesofafrica.html>

³⁰ Norton Rose Fulbright, *Africa-Is it a major untapped market for the airline industry?* December 2015 <http://www.nortonrosefulbright.com/knowledge/publications/134084/africa-is-it-a-major-untapped-market-for-the-airline-industry>

³¹ http://ec.europa.eu/dgs/translation/translating/officiallanguages/index_en.htm

³² Kuuchi, *supra*, note 7.

³³ Wyngaart, *supra*, note 2.

³⁴ *Id.*

³⁵ African airlines Well-connected, *supra*, note 23.

³⁶ Kuuchi, *supra*, note 7.

³⁷ *Id.*

certainly a passenger would not expect to go from Atlanta to Europe to double-back to Phoenix, or to travel from London to Athens via Moscow!³⁸

Similar protracted itineraries are common when traveling across Africa.³⁹ To make matters worse, the airfare from Algeria to Cameroon is 80% higher than the trip from London to Athens.⁴⁰ In a bizarre twist, longer less convenient trips are more costly to passengers, unfortunately mostly African passengers who can least afford it. When South Africa allowed Kenyan and Zambian airlines to enter its market (through a bilateral agreement), there was a 70% and 40% increase in the number of passengers, respectively, and 40% decrease in airfare.⁴¹

TRADE AND TOURISM

“The African Economic Outlook 2014 notes that tourism is among the three service sectors...in Africa that have massive potential for upgrading in both regional and global value chains.”⁴² Exorbitant air fares resulting from limited supply, or limited flights, and convoluted routes benefitting foreign airlines significantly impact tourism and trade.⁴³ A moderate opening of routes could lead to a 25% increase in the number of flights.⁴⁴ The Yamoussoukro Decision would make it easier for intra-Africa and foreign tourists and goods to travel across the continent, which is essential to the growth of both industries. An increase in exports and imports, both perishables and high tech, respectively, could occur with more frequent flights, direct routes and lower costs.

³⁸ *Id.*

³⁹ *AU Passport, Yamoussoukro decision and Open Skies in Africa*, August 17, 2016, Ruthaine.com. An interesting blog of a passenger’s account of her travel to Banjul, The Gambia from Uganda. The trip took 30 hours. The return was far longer because it included a 24 hour layover in Senegal.

⁴⁰ Kuuchi, *supra*, note 7.

⁴¹ *Id.*

⁴² Memory Dube, *Unlocking the Potential of the Tourism Industry in Africa*, allAfrica September 27, 2016. <http://allafrica.com/stories/201610020308.html>. The existing growth in the tourism sector is attributed to the graduation of countries like Botswana and Cape Verde from the Least Developed Country (LDC) roster to recognition as a developing country.

⁴³ *Id.*

⁴⁴ *Id.*

Aviation facilitates the flow of physical, financial, and human capital across borders.⁴⁵ However, Africa must prioritize its economic development initiatives to achieve a consistent and harmonious approach to tourism and trade. Without a regional strategic approach, unrealized economic development will remain and will be nothing more than lost opportunities.

INFRASTRUCTURE, SAFETY AND LABOR INVESTMENT

By most accounts, the Yamoussoukro Decision has not been implemented to date despite being fully executed many years ago; however, the Director of Air Transport for the African Civil Aviation Commission recently reported that Nigeria is in fact the first African country to fully implement the Decision.⁴⁶ Nigeria and 22 other countries recommitted to the YD by signing the Declaration of Solemn Commitment for full implementation of African Open Skies by July 2017.⁴⁷ Nigeria has taken a substantial step toward expanding Africa's position in the global economy and rejecting obstacles to implementation, presumably to include protectionism policies.

Protectionism policies contribute to national carriers monopolizing a country's route access; the carriers survive on "a combination of state bailouts and restrictive bilateral agreements that shield them from competition."⁴⁸ If governments do not execute and enforce these detrimental restrictions, the national carriers would likely collapse. The limited routes and high prices just could not support the airline. Ultimately, the protectionism perpetuates the limited air transportation available in the country.⁴⁹ The YD, however, will facilitate intra-African partnerships that will allow for new demand driven destinations and routes,

⁴⁵ *Aviation Benefits Beyond Borders*, Air Transport Action Group, April 2014; http://aviationbenefits.org/media/26786/ATAG_AviationBenefits2014_FULL_LowRes.pdf

⁴⁶ Darise Foster, *Yamousoukkro Decision gains altitude*. The Daily Southern African Tourism Update, August 19, 2016. www.tourismupdate.co.za/article/112703/Yamousoukkro-Decision-gains-altitude

⁴⁷ SATOA, *Africa to open its skies by year-end*, August 18, 2016 <https://www.satoa.com/news/1209-africa-to-open-its-skies-by-year-end>

⁴⁸ M.R., *The Yamousoukkro Indecision. Why African aviation needs to be set free*. The Economist, December 4, 2015.

⁴⁹ *Aviation Benefits Beyond Borders*, *supra*, note 4. It also important to note that, "[i]n Africa it's not just protectionism of state airlines that is restraining the growth of regional travel; travel bureaucracy is highly restrictive too. Currently Africans need visas to enter 55% of the states on the continent."

strengthening the region's air service and strong national carriers that will be able to compete in the open market, as expected from Ethiopian Airways.

The success of African Open Skies also depends heavily on investment in airport and equipment infrastructure and safety improvements. Labor availability will be critical as well. Presently, the continent lacks sufficient infrastructure to support necessary air traffic. Much of the air traffic control and navigation equipment is "dilapidated, deficient and not coping with the growing airline industry."⁵⁰ The radar equipment is often non-existent and radio communication is spotty in large areas of the continent.⁵¹ Weather forecasting is also challenging while notices to airmen (and women) are usually unavailable at smaller airports on the continent.⁵²

Finally, safety issues are pervasive. IATA reports that aircraft hull losses are six (6) times higher in Africa than Asia or Latin America and twelve times higher than in the U.S. and Europe.⁵³ There are anticipated human resource needs of qualified aviation workers. In fact, over 30,000 skilled workers will be needed by 2022.⁵⁴

ACTION FORWARD

The recent execution of the Declaration of Solemn Commitment expresses a renewal of Africa's allegiance to its rightful place in the global economy. Time will demonstrate whether travel throughout Africa becomes as available as intra-continent travel in South America. Time is the operative concept.

⁵⁰ *Airport investment in Africa-overlooked by airport and other infrastructure investors*, CAPA Centre for Aviation, August 7, 2014, <https://centreforaviation.com/analysis/airport-investment-in-africa---overlooked-by-airport-and-other-infrastructure-investors-181092> citing the secretary general of African Airlines Association.

⁵¹ David Esler, *Assessing Africa's Infrastructure*, Business and Commercial Aviation, Aviation Week, October 26, 2015, <http://aviationweek.com/bca/assessing-africa-s-aviation-infrastructure>

⁵² *Id.*

⁵³ Schlumberger, *supra*, note 21.

⁵⁴ Aviation Benefits Beyond Borders, *supra*, note 45