Book Review IX: The Air Transport Industry in Africa: A Legal Analysis of the Single African Air Transport Market (Routledge, 2025)

By:

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The book is written by Dr William Kiema. It is premised on the thesis of a Doctor of Philosophy (PhD) in Air Law that the author obtained from the University of Cape Town (UCT) in 2024, which was the second-ever doctorate degree to have been conferred by UCT in the aforesaid field.

Before the publication of Dr Kiema's studies, the literature lacked a comprehensive treatment of this subject. From that vantage point, Dr Kiema filled a considerable gap in the body of knowledge and pushed the frontiers of international aviation law, international economic law and regional integration in Africa. Such a book was even more needed considering the Single African Air Transport Market (SAATM) is a flagship project of the African Union's (AU) Agenda 2063, coupled with the primacy of dovetailing SAATM with cognate

flagship projects of the AU's aforesaid Agenda, aspects more fully set out between the covers of this insightful book.

As precisely borne out by the title, this book focuses on the African air transport industry in general, and the SAATM in particular. Yet it is not presumptuous to claim that the book offers far more than insights into both aspects of its subject-matter: it provides not only an excellent inspiration for those seized with coalescing the African air transport market, enabling them to reflect on optimal pathways to attain this key continental objective, but also provides valuable signposts for every African regional integration enthusiast.

From a holistic perspective, Dr Kiema's book consists of introductory pages, a methodical study of the subject in its various chapters of substance, a bibliography and an index. The introductory pages encompass acknowledgements, abbreviations, a list of legislation and international instruments, a list of tables as well as a table of contents. The substantive component of the book itself is divided into nine chapters, corresponding to a treatment of the subject following a thematic modus operandi, which is not only relevant but also topical.

The author begins with a prologue to air transport in Africa, which is entailed in Chapter 1 of the book. The chapter outlines factors that impinge on development of the African air transport industry. It alludes to centripetal solutions to African air transport problems through regional integration via blueprints such as the AU's Agenda 2063 and highlights the paramountcy of transport-centric projects therein, not least because of two such projects having been accorded the status of flagship projects of the aforesaid AU agenda, i.e., an Integrated High Speed Train Network and establishment of the SAATM. The chapter further sets out the state of air transport in Africa with reference to airlines and domestic markets, including the air cargo market, and also gave its two cents on airport infrastructure. Notably, the import and effect of the Yamoussoukro Decision (YD) and its precursor, i.e., the Yamoussoukro Declaration is also put into perspective. To similar effect is the author's articulation of the SAATM and its spin-off in the form of the SAATM - Pilot Implementation Project.

Chapter 2 chronicles the historical development of air transport in Africa. It traces African air transport in the colonial period between 1919 and 1939 as well as during the cooperation and commercialisation period between 1945 and the 1960s. It further narrates the decolonisation and national pride aspects from the 1960s to the 1980s. The Chapter then delves into liberalization of air transport in Africa and outlines the pathway to the YD from the 1980s to the 2000s. Notable initiatives highlighted by the author during the said periods include the 1961 Yaoundé Treaty on Air Transport in Africa, the first multilateral air law instrument in Africa; the first Pan-African Conference on Air Transport held in Addis Ababa in November 1964; the 1964 Mbabane Declaration on Freedoms of the Air; the 1988 Yamoussoukro Declaration on a New African Air Transport Policy; as well as the 1999 YD. The Chapter also gives an account of further liberalization initiatives and economic benefits associated with same in the 2000 – 2010 period and beyond. These include the 2015 AU Declaration to accelerate implementation of the YD by establishing a SAATM by 2017 and the 2015 Solemn Commitment by eleven African States for the YD's actualization.

After introducing the reader to air transport in Africa and tracing the historical evolution thereof, Chapter 3 outlines the legal framework for air transport liberalization in Africa. In so doing, it also sets out the international legal framework for air transport liberalization and referred to key instruments in this regard. These include the Convention on International Civil Aviation adopted at Chicago on 7 December 1944 (Chicago Convention), the *magna carta* of international civil air navigation, the International Air Services Transit Agreement and the International Air Transport Agreement, both of which were adopted together with the Chicago Convention in light of the attending States' inability to agree on a multilateral approach for the exchange of international freedoms of the air, particularly vis-à-vis commercial air traffic rights. The author elucidated the pre-eminence of Article 1 (complete and exclusive sovereignty of States over the airspace above their territory) and Article 6 (prior authorization to operate scheduled international air services) of the Chicago Convention on access to air transport markets, aspects of cardinal importance to the YD and SAATM, as well as substantial ownership and effective control clauses in Bilateral Air Service Agreements (BASAs). Reference was also made to the General Agreement on Trade in Services (GATS), which aims to facilitate liberalization of services markets under the auspices of the World Trade

Organization (WTO). The Chapter also draws on regional legal frameworks for air transport liberalization, which include the seminal Abuja Treaty Establishing the African Economic Community; Constitutive Act of the AU; Constitution of the African Civil Aviation Commission (AFCAC); YD; Decision Establishing the SAATM; Agreement Establishing the African Continental Free Trade Area (AfCFTA) and the African Civil Aviation Policy (AFCAP). The Chapter also alludes to air transport liberalization initiatives of regional economic communities and guidelines for negotiation of air service agreements between AU member States and other States. The author also provided a perspective on the domestication of relevant international instruments via national legislation.

Building upon the statutory architecture explicated in the preceding chapter, Chapter 4 sets out the institutional framework for the implementation of the SAATM. Reference is made to relevant international institutions, *inter alia*, the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations (UN) on international civil aviation, which has been established by the Chicago Convention to develop guidance on regulation of international civil aviation with competencies in formulation of Standards and Recommended Practices (SARPs) in respect of safety, security, ancillary technical air navigation matters as well as environmental concerns. Dr Kiema highlighted ICAO's limited competency with regard to the economic regulation of international air transport as a consequence of Articles 1 and 6 of the Chicago Convention, read with Article 44 thereof - which outlines ICAO's objectives. In addition to ICAO, other international institutions referred to in the Chapter include the WTO, Internationational Air Transport Association (IATA) and the UN World Tourism Organization (UNWTO). Regional institutions for aforesaid purposes include the AU and its constituent bodies as well as institutions of relevance to the SAATM; the United Nations Economic Commission for Africa (UNECA); Regional Economic Communities (RECs); African Airlines Association (AFRAA); Airlines Association of Southern Africa (AASA); Airports Council International Africa (ACI Africa); as well as Air Navigation Service Providers (ANSPs). An indication is given as to how the mandates of the respective institutions alluded to above facilitate the SAATM. National level institutions in the form of civil aviation authorities, airport authorities and relevant Government ministries as well as development partners such as the World Bank Group, the African Development Bank and the AU Development Agency – New

Partnership for Africa's Development (AUDA-NEPAD) and other stakeholders in the African civil aviation industry have also been drawn on for reasons set out above.

In Chapter 5, Dr Kiema provides a commentary on the YD. The grant of the first five freedoms of the air in Article 3 of the YD is highlighted as transformative, while acknowledging limitations on cabotage traffic rights in Article 10.6 thereof. The YD's gradual approach to liberalisation of access to African air transport markets as opposed to seeking the object thereof with immediate effect across the spectrum is further laid bare. Principles of the YD are also outlined. In addition to the aforesaid five freedoms of the air, these include relaxation of restrictions on Governmental control and approval of tariffs; elimination on restrictions on capacity and frequency; multiple designation as opposed to single designation of airlines, including designation of a carrier of another State party to the YD; eligibility criteria; aviation security and facilitation; dispute settlement; competition regulations; consumer protection regulations and co-operation among African airlines. The author also presents an assessment of implementation of the YD viewed through the prism of its operational principles. This was done with reference to a 2021 IATA continental study on benefits of the SAATM which had regard to 607 BASAs between 55 African States and unearthed disparities between African States in respect of YD implementation, with West African nations having a higher compliance with YD operational principles.

Chapter 5 seamlessly flows into Chapter 6, with the latter delving into implementation of the former's subject-matter in RECs. The Chapter pigeonholes RECs into four African zones, with the Arab Maghreb Union (AMU) constituting North Africa; whereas the Western Africa Region entails the Economic Community of West African States (ECOWAS), West Africa Economic and Monetary Union (WAEMU) and the Banjul Accord Group (BAG); with the Central African Region comprising the Economic and Monetary Community of Central Africa (CEMAC) and the Econonic Community of Central African States (ECCAS); while the East African Community (EAC), Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) make up the Southern African Region. The book found that West and Central Africa lead in the exercise of fifth freedom traffic rights. Save for BAG and COMESA where pre-authorization of tariffs is required,

all other RECs have free tariff regimes. The author underscored the significance of RECs as catalysts for operationalization of the YD at regional level, thereby facilitating the YD Executive Agency's implementation thereof at continental level.

Correspondingly, Chapter 7 picks up the baton from the prequel chapter implementation-wise, albeit with a different focus, viz. implementation of the SAATM, coupled with an indication of benefits and challenges vis-à-vis same. Dr Kiema lists benefits of the SAATM, i.e., increased air traffic, economic impact and job creation. He also indicated challenges in implementing the SAATM, viz. fragmentation; protectionism and discriminatory practices in African civil aviation; aviation safety challenges; the challenge of blocked funds; high taxes, fees and charges; navigation charges; the brain drain and climate change. While acknowledging progress made thus far, the author implores the need for consistent collaboration among African States, with a view to collectively navigating remnant structural and market obstacles that stifle full realization of the SAATM and its accompanying benefits.

Befittingly, a comparative analysis is undertaken in Chapter 8 in respect of lessons from the EU, ASEAN and other regional open skies agreements. Dr Kiema chronicled creation of the EU Single Aviation Market (SAM) through three progressive packages of gradual liberalization of the EU market in 1987, 1990 and 1992 respectively, with the liberalization initiative holistically coming to full fruition in 1997. The author also highlighted how the EU brought its SAM economies of scale to bear on its external aviation policy via negotiating ASAs en masse with non-EU countries. In undertaking a comparative analysis of the EU SAM and SAATM, Dr Kiema indicated how the former spurred on the latter, at the same time acknowledging the pioneering effect of the US 1978 Deregulation Act on both. The author juxtaposes the EU SAM and SAATM, accentuating commonalities and disparities, notably vis-à-vis initial resistance of the liberalization juggernaut by individual member States of the respective continents and adoption of gradualism as the modus operandi, exchange of all nine freedoms of the air in the EU SAM compared to capping same to the first five traffic rights in the SAATM, lack of a linear fight-plan for attainment of the SAATM as opposed to the apt trilogy of packages of the EU in this regard, coupled with the AU member States' besottedness with State sovereignty - which is inimical to actualization of the SAATM as ceding requisite State

competencies to the Executing Agency of YD remains a challenge.

The gist of the ASEAN SAM is also presented with reference to its labyrinth of liberalization initiatives, *inter alia*, the 1995 ASEAN Framework Agreement on Services; the Open Skies Policy entailed in the 1995 Agenda for Greater Economic Integration; the 2004 ASEAN Action Plan for Air Transport Integration and Liberalisation 2005 – 2015 with the objective of attaining an ASEAN SAM by 2015 and the complementary Roadmap for Integration of the Air Travel Sector (RIATS); as well as three multilateral agreements to similar effect: the 2009 Multilateral Agreement on Air Services; the 2009 Multilateral Agreement on Full Liberalization of Air Freight Services; and the 2010 Multilateral Agreement on Full Liberalization of Passenger Air Services. The author likewise analogized the SAATM with the ASEAN SAM, highlighting instances of convergence and divergence. Albeit SAATM has plenty to learn from the ASEAN SAM experience, the absence of a supranational institution; inadequacies of the makeshift 'ASEAN Way' *modus operandi*; a Neanderthal approach to substantial ownership and effective control of airlines; disjointed negotiation with and benefits from non-ASEAN States; as well as limitation to fifth freedom rights in the latter make same less than a perfect sounding board for the SAATM. A primer on other regional open skies arrangements is provided at the end of the Chapter, particularly in respect of air transport liberalization initiatives in North and Central America, Latin America, as well as the Middle East, for a 360□ perspective on the subject.

To bring it full circle, Dr Kiema proffers findings and recommendations in Chapter 9, which is ultimately capped by a conclusion. The book's findings commence with those on the development of air transport in Africa, in essence opining that regard be had to colonial and post-colonial extrinsic and intrinsic factors that have a bearing on relevant African States' and regions' political, economic as well as institutional readiness and agility to give effect to the SAATM. These are followed by findings on the legal and institutional framework for implementation of the YD and operationalization of the SAATM. While acknowledging the aforesaid framework, the author highlights challenges in the form of slow implementation, adherence to ICAO SARPs on safety and security, infrastructural inadequacies and inconsistent regulatory practices. With regard to implementation of the YD in RECs, the book found varying vantage points, results and areas of improvement. It is, however, heartening that the

momentousness of air transport liberalization and regulatory compliance are acknowledged across all RECs. The upshot of findings in relation to lessons from the EU and ASEAN is that same mirror the outcome of the comparative analysis undertaken by the author in the preceding chapter.

Dr Kiema presents workable recommendations aimed at inculcating a principled approach to implementation of the SAATM, beginning with placing it within the context of the AU's Agenda 2063 and demonstrates how SAATM contributes to the aforesaid Agenda's 7 aspirations, which trickle down to the continental initiative's 20 goals and 39 priority areas. Considering the SAATM is one of the 15 flagship projects of Agenda 2063 whose implementation was prioritized in the first decade of the said agenda, the book further provides recommendations regarding SAATM's facilitation of 3 other priority flagship projects with close proximity to SAATM, viz. the AfCFTA, the African Passport and Free Movement of People, as well as the African Outer Space Strategy. The author further propagates for holistic implementation of YD through ratification and domestication of key international air law treaties, chief amongst which are the 2001 Cape Town Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment; the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air; as well as the 2014 Montréal Protocol to amend the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, with the aforesaid legal instruments sequentially regulating asset-based financing and secured lending of the subject-matter thereof, airlines' contractual liability for international carriage of passengers, air cargo and mail, as well as unruly and disruptive passengers respectively, as the ratification advocated for conduces to enhanced operationalization of SAATM that transcends market provisions of the YD.

The book further recommends that operationalization of YD and SAATM be catapulted via application of the principle of variable geometry regarding the timing and sequencing of implementing the said initiatives, in a manner such that individual States and/or RECs that are ready to actualize same do so forthwith as so doing will incentivize others to also do the needful and follow suit - thereby achieving a phased implementation of the SAATM, as opposed to unrealistically seeking en masse attainment thereof by AU member States. The author also advances recommendations on the need to rein in aviation safety

and security gaps across the African civil aviation sector by matching or exceeding applicable minimum ICAO effective implementation thresholds via, inter alia, adherence to the 2012 Abuja Safety Targets and attaining IATA Operational Safety Audit (IOSA) certification in respect of the former, as well as realizing targets of the 2016 Windhoek Declaration on Aviation Security and Facilitation in respect of the latter. The complementary effect of establishing the Single African Sky was also posited. Other recommendations pertain to cultivation of a competitive aircraft leasing industry in Africa; collaborative efforts to close civil aviation infrastructure gaps; closing policy gaps with regard to protectionism of flag carriers; optimal implementation of the YD and SAATM at multilateral level; as well as continuous review of the said initiatives' accomplishment through the Monitoring Body of YD, as augmented by the African Peer Review Mechanism (APRM) to similar effect.

As indicated at the outset, the book emanates from the author's PhD thesis at UCT. Like all good theses, it asked the right amount of questions and provided a sufficient number of pragmatic answers and viable solutions. It is thorough in its research and cannot be faulted in this regard. No wonder Dr Kiema is meritoriously and stellarly ensconced in the annals of the UCT air law academic programme for his concerted efforts, and he should be congratulated on an excellent work indeed.

This book combines two virtues that seldom come together in such an impeccable way: it is an excellent and thorough study and it is published with perfect timing. Dr Kiema invites readers of this book to an expedition through the SAATM as one of the foremost African regional integration initiatives. With *The Air Transport Industry In Africa – A Legal Analysis of the Single African Air Transport Market (SAATM)*, Dr Kiema wrote an extensive monograph about the SAATM, which not only provides a comprehensive overview, but at the same time an in-depth analysis of the subject-matter thereof. It is a must-read and helpful tool for everyone seeking enhanced insight into the transformative effect that the SAATM has on the air transport industry in Africa, in addition to being a catalyst of regional integration.

The most impressive feature of this book is its comprehensive nature. It covers virtually every issue its target audience will confront on its focal area. The book is a good read and provides a comprehensive overview of the major legal and

policy issues in respect of multilateral liberalization of the African air transport industry. It enlightens students, industry professionals and researchers on Afrocentric legal and regulatory issues pertaining to liberalization of access to air transport markets and regional integration. It will be very useful for the academia, policy makers and others involved in or seeking to understand the relevant field. The book is thoughtfully organized and full of germane material, questions, and insightful commentary to help steer the reader toward a better understanding of air transport industry liberalization and continental integration initiatives.

The author has brought his expertise to bear and produced a thorough analysis of the SAATM, African regional integration imperatives and analogous principles of international aviation law and economic law. Reading the book from beginning to end is highly recommended, as the chapters ascendingly build upon each other. As prefaced, Dr Kiema’s work is the first comprehensive book dedicated to this specialized subject; and from this perspective, a collection of relevant texts and legal instruments in one book - coupled with an in-depth examination thereof in the respective chapters with apposite topical sequencing, provides a valuable source of information.

All findings in the book are not mere speculations or assumptions about a distant future, they are rather well-substantiated observations based on the author's meticulous legal analysis of the African air transport industry in general and the SAATM in particular. It is hoped that the book’s well considered and aptly formulated recommendations will provide highly nutritious food for thought to relevant role-players and institutions tasked with effectuating the SAATM and complementary flagship projects of the AU’s Agenda 2063.

It bears foregrounding that the book under review furnishes a historical and state of play account of the subject, which had hitherto not been treated as comprehensively as the author has done. Considering both the topicality of this subject and the lacunae in the international aviation law, economic law and African regional integration literature that it pointedly addresses, Dr Kiema’s book invites further attention to these particular fields.

The book is of consequence. It deserves to be read and discussed at all relevant platforms in the academia and industry, with a view to accentuating the

immense value it brings to the field of public international aviation law in general, and the African air transport industry in particular, as well as its import and effect on African regional integration initiatives as viewed through the additional prism of international economic law. All are implored to take keen interest in Dr Kiema's bailiwick by digesting the monograph and further advance scholarship on the book's focal area.

Dr Kiema, a researcher of reputable note, is presently a partner at PMAK Law Africa and Head of Aviation Law, Corporate Governance, Data Protection, Climate Change & Sustainability and Projects & Consultancies Departments. He has carved out a niche in international aviation law, economic law and regional integration fields, and centripetally so in respect of the African continent - particularly with regard to the SAATM, as lent credence to by this book.

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