The Arusha Agreement: Origins, Meaning and Future of Association with the E.E.C.

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INTRODUCTION

In order to protect the East African common market and the common external tariff, the three East African States (EAS) jointly decided to solicit an association with the European Economic Community (EEC) in early 1963. The Arusha Agreement signed on 26 July 1968 and immediately renewed on 24 September 1969 was itself a culmination of five years of negotiations. The association thus created was to last for five years and before its expiry on 31 January 1975 the EAS themselves were again active and instrumental in the negotiations for the present association encompassing more than 46 countries of Africa, the Caribbean and the Pacific Islands (AGP) signed on 28 February 1975 also to run for five years to 1st March 1980.

The Arusha Agreement constituted a watershed in the EEC association system. At the time of signing it, the EEC had already concluded association agreements with Greece in 1961 and Turkey in 1963. These, however, were a different type of association as they were a prelude to accession to the Treaty of Rome.[1] The EEC was also dealing with 18 associated African States and Madagascar (AASM) under the Yaounde Convention signed in July 1963 which was itself inherited from the colonial period. Elsewhere, apart from the Lagos Agreement signed in July 1966 which, because of the Nigerian civil war, had not entered into force, the extension of the association had not been realised or, it can be said had failed for various reasons. Whether these were due to a lack of a global policy towards the developing countries, or a deliberate avoidance of disruptive forces within the existing associations or a need for the EEC to consolidate itself internally[2] we can only register here that the EEC had candidates but not associations with them.

The Arusha Agreement also came at a moment when the developing countries through various international organisations were mounting pressures on the developed countries to modify the existing regulation governing international trade. The EAS were therefore the first ones to approach such an organised group of industrialised States like the EEC and to demand that the legal norms newly accepted in international law of trade and development be embodied in their association. In the light of the recent developments that have plagued EAC institutions and almost brought about a stalemate in the running of the EAC the Arusha Agreement can be revisited in its own merits as a demonstration of regional solidarity and strong political ideology.

The subject of association within the framework of a wider field of foreign relations of the European Communities has generated a new form of international relations and consequently given rise to an immense interest among scholars so that the literature on it, especially in European languages is legion. For want of space here, however, it is not possible to give full discussion of our topic. For brevity, therefore, we shall limit this paper to four sections: (1) a brief review of the general notion and difinition of association and then (2) the origins of associating Africa with the EEC and the rejection by the EAS to accede to that association, (3) the Arusha Agreement tracing it from the negotiations and analysing its contents; and (4) finally putting its salient features into relief.

THE SIGNIFICANCE OF ASSOCIATION UNDER THE TREATY

Under the Treaty of Rome there are four methods by which the EEC can deal with third States, namely: accession, cooperation with other international organisations, trade and tariff ogreements and association agreements. Accession, however, is limited to European countries as spelled out in the preamble and in Article 237 of the Treaty.

In Articles 229 — 231 the Treaty prescribes for establishment of appropriate contacts with International Organisations albeit of a universal character, such as the United Nations and GATT and also for suitable cooperation with European Regional Organisations. It is silent on Regional Organisations of other continents. When soliciting association, the EAS had not thought of this silence as being political. Indeed, it was assumed that the EEC would deal directly with EACSO or later, its counterpart EAC. We shall later see how the member States refused to do so and insisted on dealing with the three Partner States.

Trade and tariff agreements as a third method are prescribed in Articles 111 - 116. Consequently a number of agreements were concluded with Iran, Lebanon, and Israel [3] As such agreements have come to deal with a small number of products, hence, in order to conform with GATT rules when concluded, they must be immediately generalised to all other Contracting Parties of GATT. The EAS could have been satisfied with such trade arrangements to deal with coffee In fact, to this effect in 1982 the United Kingdom when negotiating for her accession to Treaty had confided to EAS on establishing such guarantees.[7] The collapse of those negotiations dissipated those hopes. The EAS were not in a position to conclude a trade agreement wherein the most-favoured-nation clause (m.f.n.c.) would apply *erga omnes*: for to

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be of much use a State concluding it must be the world principal supplier of such products.

The fourth method, association, is supposed to be richer in content as it qualifies under GATT rules as an exception to the m.f.n.c. because it liberalises "substantially all trade" between the constituent territories.[5] The EAS constituted one customs territory and therefore believed in concluding one association.

It should be mentioned, however, that when in April 1963 the EEC invited the African Commonwealth countries to seek association they offered three alternatives, namely: trade and tariff agreements, association agreements and accession to the Yaounde Convention. In fact they also tried to persuade the applicants to accede to that association. We shall see later why the EAS rejected the Yaounde Convention and, not being interested in a trade or tariff agreement therefore, chose to see an association *sui generis*.

THE GENERAL NOTION AND DEFINITION OF ASSOCIATION

The Treaty of Rome does not give a precise definition of association. Subsequent efforts to do so have not born fruits.[6] There have been also independent attempts following earlier appraisal by Professor P. Pescatore and other.[7] In fact, some works have emphasised more the principal features of association, for instance, that it permits the associated State to partake in the objectives of the EEC; or that it established an agreement among equal subjects of law (That is, States,); or even that it creates reciprocal rights and obligations etc......[8]

Hence, some have summarised association to be "at the minimum a simple trade agreement plus something or at the maximum an accession minus something"[9] although nobody can make use of this arithmetic.[10] Such vague terminology, therefore, can permit a vast gamut of intermediary situations between a member State and a third State.[11] In the end, therefore, one can call an association accession or even a trade agreement.[12] This, then, is a complex system, "Devised from mere wisps and straws such as vague terms" negotiate, "Conclude" and "association".

By means of this loose term, however, the EEC has dealt with third parties. Thence-forth, writes a prominent jurist professor, there has appeared on the world scene two types of "association mechanism", which permit both to give reduced rights to territorial entities other than States or to let States partially adicted to the organisation's charges and benefits to profit by a demi-appartenance.[13] In this, then half membership? And how can the "half" be measured? It is plain that the Treaty by the use of undefined term created legal, economic and political processes to govern international relations which consequently depend on pragmatism.[14] Whether those relations are qualified by that name or not, association becomes an institution which some have described as a special form of participation in the objectives of the

organisation by non-members, that is, according to a German author "soundernFormen Beteilugung"[15] or a sort of "associate membership"[16] or "*de facto* membership"[17] or "partial members" or "institutional membership" (meaning the association has its own albeit corollary institutions apart from those of the Community). It is obvious that in the light of such fluidity the association forms such we now know are not the only ones conceivable.

It is no less interesting to note that where as the first two associations concluded with Greece and Turkey were founded on creation of customs union, the other type bestowed upon the colonial territories was to bring about a free trade zone.[18] Nor were these two forms limitative; for there can be others based, say on the m.f.n.c. within the framework of Article XXIV of GATT and yet others derived from mere economic cooperation which, as one author comments from the political point of view, may have the advantages of eschewing negative repercussions of trade relations.[19]

In brief, association has no definition. As an institution in society, it is organic and dynamic, this is due to the growth of the Community itself and also due to the interaction of the international society which itself is not static but also dynamic and changing. As we shall see even if the Treaty had given it a precise legal definitions such would not have been immutable for all ages. Indeed, the system of association has been evolutionary and adoptive. To insist, therefore, on giving it any a *priori difinition* by merely abstracting from existing association agreements is as difficult as trying to find reality in all social sciences. It is evident, therefore, that there is no hard and fast rule governing association between EEC and third States. Each one of them establishes its own ties depending on the political and economic situation of the parties as well as the will and motivation inspiring them. With these general theoretical observations we now turn to the origins of associating African overseas territories and countries with the EEC, a study which will lead us to that of the Arusha Agreement.

HISTORICAL ORIGINS OF ASSOCIATING AFRICA WITH EEC

Historical Background and Main features of association

The idea of uniting Africa with Europe dates from time immemorial and we need not recall it here. However, after World War II it had received a new battle cry in the slogan of "Eurafrica".[20] It was openly advocated after the War by the Council of Europe in 1949 which in its resolutions had affirmed that Europe could not afford to divest itself of colonies.[21] It, therefore, was not surprising when in May 1956 at the Conference of Venice while negotiating for the formation of the EEC,

the French Foreign Minister made it known that his country would not join the hardly born Community unless the colonies were brought into it. At first there were misgivings; for instance, for Belgium, though supporting the idea, there were no immediate gains of associating the mineral-rich Zaire (then Congo) to the EEC; Italy with only Somalia, a U.N. Trustee Territory already destined for independence in 1960 sided with Holland which had still the bitter reminiscences of the Indonesia debacle and therefore was opposed to associatiation so as not to enrage public opinion in the United Nations. Association was very unpopular in its beginnings especially among the developing countries of the Third World. As for the Federal Republic of Germany, the Foreign Minister, Mr. Brentano is quoted as having told his French counterpart that in 1919 his country was liberated from the burdens of colonies and was doing very well; he therefore proposed to his colleague his country's financial generosity to contribute to the development of the African territories provided the European Community, and therefore his country, were not associated with their political evolution.[22]

The solution for the colonies was found in 1957 before signing the Treaty of Rome and this was by bringing the colonies into a larger orbit of the EEC by the use of the same vague term "association." For this Part IV (articles 131 to 136) and an Implementation Convention were drafted to form part of the Treaty. The association was to last for five years up to December 1962. The formulation devised was in fact already the practice under the French colonial system of trade, namely that while the colonies remained outlets for French goods, the colonial power managed to buy their products with a stabilisation fund sometimes higher than world market prices (surprix), it also kept quotas against outsiders and contributed to the budgets of the colonies by a special fund (FIDES). This system with retouches was to be transposed to the Community level.

Four main features characterised that association:

(i) the EEC member States agreed to open their internal markets to products originating in those overseas countries and territories;

(ii) as a reciprocity, the colonial metropolitan powers, mainly France, undertook to admit in their colonial territories' imports from EEC member States duty-free and without discrimination between the member States;

(iii) the member States, upon French demand, agreed to make financial contributions for the social and economic development of those territories for which there was set up a European Development Fund (EDF); and

(iv) the association, unilaterally imposed, was also unilaterally applied by the Community's Commission just as it applied to the entire Community programme.

Beginnings of the Yaounde Convention

The majority of African territories attained national independence in 1960 before the association had expired. It therefore became necessary to end its unilateral character. To this end procedures were employed to involve the young States in the association, for example, by accepting it through the diplomatic *Note Verbale,* accrediting representatives to the Communities in Brussels, holding meetings between the representatives of the EEC and those of the associated States. For this the greatest move was the holding of the Great interparliamentary Conference held in June 1964 at the initiative of the European Assembly. Because of these invitiatives of the "Eurafrica parliament" such contacts have been institutionalized in the Yaounde Convention and in the subsequent association agreements including the Arusha Agreement and the ACP. In short, between December 1961 and December 1962 five ministerial meetings were held and finally a new convention was signed at Yaounde on 20 July 1963.

Further, we should point out that whereas by Article 238 an association is negotiated by the Commission and concluded by the Council, the Yaounde Convention was negotiated by the AASM directly with the Council. In fact, procedures were not simplified further. For, whereas association agreements do mention that they are based on Article 238, the Yaounde Convention dodges this question of juridical basis and simply makes mention of the signatories' "will to maintain their association". Though the question of legal basis has now become "academic", it is mentioned here in as much as the Yaounde Convention became an obstacle in the negotiations for the Arusha Agreement.

The Contents of the Yaounde Convention

The Convention contains five titles dealing with:

1. trade exchanges between ASM and EEC,
2 financial and technical cooperations,
3 the freedom of establishment, services, payments and capital movements,
4 institutions and
5 general provisions partaining to entry into force, association of the States, duration of Convention etc.

As to the AASM—EEC trade flow the Convention created a preferential area which is protected by the EEC's common external tariff. This trade is divided into two parts, namely the AASN exports and imports. These are reciprocal obligations as defined in Articles 2 and 3 of the Convention. In respect of AASM exports to the EEC, the latter undertook to admit such goods under two types of entry. The first was a duty-free entry consisting of a list of nine tropical products annexed to

the Convention. These were unroasted coffee, tea, pineapples, desicated coconut, uncrushed pepper, vanilla, cloves (uncrushed and unground) nutmegs (uncrushed and unground) and cocoa beans. This list constituted the paramount interests of the AASM in the parlance of EEC and, as we shall later see, the Arusha Agreement had to suffer because of a *parti pris*. The rest of products belonged to a regime which was based on the rate of tariff disarmament going on among the EEC member States themselves.

In reciprocity the AASM were to accord progressive elimination of customs duties, quantitative restrictions as well as taxes of equivalent effect on all products originating in EEC member States. They were also required to observe the principle of non-discrimination between the EEC member States.

In the field of financial and technical cooperation the Yaounde Convention also carried forward the principle already laid down in the first association. Thus the financial aid through EDF which formarly stood as 581.2 millions was raised to 730 million dollars. Whereas the first had consisted of grants earmarked solely for social and economic development utilized in the capital investment infrastructures the second was divided into grants and loans and extended to such fields like technical assistance, price stabilization schemes for tropical products and aid to production and diversification of economies. It should be noted that although efforts had been made to end the unilateral character of the association, the Commission retained a "grip" on the EDF[23] in the field of finance to the extent of itself running enterprises in the territories of the Associated States. In fact this was facilitated by the fact that the projects aided by the EEC for production and diversification put on emphasis on meeting competition in EEC internal market, that is assuring the Community's supplies in raw material and agricultural products. It was, therefore, because of the Commission's financial supervision requirement that the EAS considered the title on financial and technical cooperation as fraught with an onerous element of reciprocity that smacked of neo-colonialism. The EAS, therefore, did not wish to include it in the Arusha Agreement. They supported its inclusion in the ACP association ostensibly because they had already consolidated themselves and the EEC itself had also gained credibility.

The Convention also provides for freedom of establishment, services and movement of payments and capital. It should be recalled that in their endeavour to reach a footing of equality with the metropolitan powers having "special relations with colonies", the EEC member States had also to extend the Community lay (droit communaitaire) in these fields.[24] Equally the EEC insisted on extending them to the African Commonwealth countries and therefore they figure in the Arusha Agreement and in ACP association. We shall later see their significance.

In the field of institutions the Convention created three of them,

namely the Association Council, the Parliamentary Conference, and the arbitration tribunal. Right from the outset the EEC advised on their adoption into the Arusha Agreement on the ground that they offered an opportunity to the associated States to participate in the functioning of the association.

Lastly, the title on the general provisions touches on many points such as ratification by the national governments on both sides as well as the EEC, consultations within the Association Council in case of request for association by a third State of similar economic structures as those of the AASM, duration of the Convention which was five years and renewable etc.

THE SIGNIFICANCE OF THE MOST-FAVOURED-NATION-CLAUSE AND RECIPROCITY IN THE YAOUNDE CONVENTION

The most-favoured-nation clause is an ancient technique by which two or more parties A and B enter into a trade treaty and agree that if later one of them should conclude another trade treaty giving more advantages to a third party Y, then those advantages should *ipso facto* be extended to all the initial parties without there being renegotiations.[25] In the connection it should be recalled that GATT has generalised this clause so that it applies to all its member states. This, however, does not apply when there is created a customs union or a free trade zone. An association with the EEC is supposed to do either of these two and therefore falls as an exception to the generalised or multilateralised m.f.n.c.

In the Yaounde Convention the EEC is the beneficiary of the m.f.n.c. Thus, for imports, the treatment the AASM accord to products originating in the EEC must not be less favourable than accorded to similar products originating in the m.f.n.[26] Similarly, should there be taxes or subsidies on exports such impositions must not be higher than those on goods destined to the m.f.n.[27] In the same way though customs unions and free trade zones with third States are authorised, they must not be incompatible with the Convention,[28] Lastly, in the field of establishment the principle of non-discrimination extends to third States so that if nationals or companies of such outsiders are accorded better treatment than that given to those of the EEC, then the latter has the right to claim a similar treatment.[29] In this connection, it is interesting to note, as Professor Pescatore does, this m.f.n.c. has no reciprocity.[30] In other words the significance of this clause is for the EEC to take a privileged position and in order to arrive at that it has to prevent the possibility of the associated States from concluding more favourable agreements elsewhere which might render its own position less favourable.[31]

The Yaounde Convention also contained the old form of reciprocity. It should be recalled that going on simultaneously with the negotiations

for the renewal of that association was a world-wide movement which sought to abolish the exchange of reciprocal concessions between the industrialised States and the developing countries. To this end a new chapter entitled Trade and Development was added to GATT in May 1963; it came into force in July 1966. This trend was strengthened by recommendations of UNCTAD adopted March — June 1964 whereby the m.f.n.c. was modifed to include the granting of concessions by the developed countries to developing countries without reciprocity and without expecting to receive in return equivalent concessions and without extending those concessions with other developed countries.[32] In spite of efforts by the EAS for circumstances we shall relate later, the EEC managed to extend this outdated form of m.f.n.c. and reciprocity into the Arusha Greement. The EAS were, however, ever determined to get rid of it sooner or later, the occasion came with the ACP which has now reversed this reactionary trend.

THE REJECTION TO ACCEDE TO YAOUNDE CONVENTION

Because of the principle of unmodified m.f.n.c. and reciprocity the EAS rejected the offer to accede to the Yaounde Convention. In their negotiations this was at first veiled so that they voiced the possibility of retaliation by other GATT Contraction Parties whose interests would be damaged by an association entailing discrimination, a point that might have been apparently overstated. Actually the EAS wanted to achieve three objectives:

(a) access to the European Common Market without reverse preferences,

(b) retaining their traditional freedom of trade which also would mean freedom to conclude more favourable agreements with third States like the Americas or socialist States. Naturally such a position would have generated more trade advantages.

The rejection to accede to the Yaounde Convention unleashed unexpected forces against concluding the Arusha Agreement. Not only were delaying tactics deployed but also certain member States committed to the interests of the AASM made sure that the Arusha Agreement was not richer in content than theirs.[33] Further, as another tactic to prevent EAS from parting too much from the Yaounde Convention provision, the EEC voiced fears of proliferation of associations in Africa and therefore as early as 1964 they began to contemplate of "harmonizing" them.[34] To this end it was advised that certain provisions in that Convention were to be adopted as such till such a date of harmonization.

In summary, we have seen in brief the significance of association under the Treaty, the general notion and definition of assocication, the origins of associating Africa and Europe, the contents of the Yaounde Convention as well the decision by the EAS not to accede to that Convention. It is now possible to proceed to the narration of the conduct of negotiations that culminated in the Arusha Agreement and then to analyse its contents.

THE CONDUCT OF NEGOTIATIONS

The European Problems

Before we give a narration of negotiations of the Arusha Agreement, it is pertinent to review briefly the general rules partinent to the conduct of negotiations according to Treaty provisions and practice. In Article 228 the Treaty spells out the separation of powers among the four organs of the EEC in respect of establishing association agreements between the Community and third parties. Thus, while the Commission negotiates, the European Assembly is supposed to give its opinion on the agreement envisaged, the Council to conclude the agreement and the European Court of Justice to give its opinion as to the compatibility of the agreement envisaged within the context of the Treaty. Article 228 should be read in conjuction with Articles 4 of the Treaty which requires each organ to remain within the limits of its attributes. This then completes the separation of authority among them.

It should be remembered, however, that although this demarcation of authority has so far functioned well, it has nonetheless known difficulties in its evolution. It should always be borne in mind that the term "association", was left without clear definition. In the light of negotating for such a nebulous system the procedures themselves have been no less confused. Thus the greatest and earliest demonstrations of this confusion that has so much the more beclouded the subject was raised immediately after signing the association with Greece in 1961. The Agreement was negotiated evidently in conformity with the Treaty stipulations by the Commission to be concluded by the Council. Nonetheless the Agreement came at the verge of being rejected by the member States who argued that the Commission had exceded its powers especially in the provisions dealing with financial aid. Subsequent interpretation by the national governments range provisions dealing with establishment, services and capital as beyond the powers of the Community. The Athens Agreement was, therefore, accepted but only to save the Community's face which, after all had acted in good faith. From that time on, therefore, there has emerged checks and balances encumbered upon the EEC Treaty-making powers. For these reasons practice nowadays seems to take the upper hand over the provisions of the Treaty.

Before opening up formal negotiations the Commission holds "exploratory talks", with the applying third party. The aim of these talks is for the Commission itself to get fully informed so that it can in turn fully inform the Council on the extent and scope of the third party's intentions. They also have a feed back effect in that they also indicate to the interested third party the existing possibilities as well as the obstacles to encounter in the path to association with the EEC as the lat-

ter may have already outstanding obligations. Further, internally procedures have consolidated themselves in the following four ways of succession. First, by virtue of Article 151 of the Treaty the Council creates a Committee of Permanent Representatives (CPR), an intergovernmental body formed out of the national permanent representatives at Brussels. This, of course, may be in apparent conflict with the Commission which, as the EEC's executive is supposed to do a more independent job. The CPR deals with all sorts of subjects such as atomic energy, general affairs, policy, trade, association etc... To do its work well the CPF creates technical working groups consisting of expert civil servants from national governments.[35] In its deliberations it includes a member of the Commission. The working group that deals with the questions of negotiations seeking trade or association agreements is called the Overseas Questions Working Party (OQ). What happens is that the CPR is to help the Council to decide;[36] hence, the latter sends questions to the OQ for technical analysis. After receiving the OQ's report the CPR prepares work for the Council. In other words, the CPR's mission as one has observed, "is to disentangle the political options from the political cocoon which envelopes most Community problems.[37]

Second, in all the deliberations the member States do send national observers who, though have no right to vote, have to be present all the same in order to report back home directly to their governments. Third, it is now the practice to form "mixed delegations" consisting of Commission members and representatives from the national governments. And lastly, while agreements reached between the Commission and the third party should be concluded by the Council, it has now become the practice to have them ratified by the various national parliaments regardless of their contents. The combination of all these procedures is what is known as "mixed association", that is concluded jointly by both the EEC and member States.

In short, this resume should demonstrate why negotiations with the EEC take so long. They took five years for the Arusha Agrement, three for the Lagos and eighteen months for the Lome Convention. For the EEC, such negotiations are conducted at many levels. At bottom there are hidden national rivalries among the member States; these get reflected through institutional frictions among the various EEC organs and a tug-of-war ensures wherein the member States are trying to renegue and wrench from the Community which they obviously have given it in law, namely treaty-making powers.

East Africa Problems

At the Commonwealth Conference of September 1962 in London ideology had dictated to reject association with the EEC. This rejection, however, was more against form than a principle. For, this issue in London was dominated by British accession to the Rome Treaty and since African problems were looked at through the British insular glasses association could have been only by using U.K. as the Trojan horse to introduce the African countries of the Commonwelath into the European Common Market. At that time no other possibilities existed apart from Part IV of the Treaty,that is an association colonial in origins and content which itself was evolving into new forms. Thus in April 1963 the member States published their Declaration of Intent and in July they signed the Yaounde Convention which they had initiated in December 1962. These become new avenues for the rest of African Countries to seek formal trade relations with the EEC.

The failure of British negotiations to accede to the Treaty of Rome in January 1963 made the African countries as a whole and the EAS in particular to re-examine their foreign trade positions. For the EAS, it will be recalled that there had been a study group set up in the Secretariat of the EA High Commission ever since the first abortive British negotiations for accession in 1958. The study group was continued under EACSO Secretariat. From its study three reasons stood out urging the EAS to conclude association as soon as possible in order to eschew the damaging effects that would imminently arise from:

i the installation of a common external tariff in EEC,

ii the consolidation of the free trade zone as projected in Yaounde Convention.

iii the conclusion of association agreement between EEC and other African countries that might cut off the EAS products.

Under these arguments it was concluded that an association would maintain the existing trade or assure the existing trade or assure the expansion of future commerce and also promote African unity. The last argument became so much the more convincing as the 1963 Yaounde Convention had permitted African regional integration.

Having taken the decision to apply for association the EAS instructed EACSO to contact EEC; after all the the EA governments in Civil Aviation in ICAO, had already represented EA governments in serveral international organisations.[38] To this procedure, however, the EEC objected under the plea that EACSO had not demonstrated legal capacity and international personality to conclude international treaties[39] and that for the security of the agreement they would open formal negotiations only with Partner States, that Kenya, Tanganyika and Uganda. While still using EACSO Secretariat for correspondence and coordination of their positions the EAS devised an expedient method of *ad hoc* diplomacy by delegation.[40] These were presided by rotating spokesmen from each of the Partner States. Formal negotiations were opened in March 1965. Much hope, however, was staked in the fact that the EAC, to be established in the Treaty of 1917, would be associated with its EEC counterpart. As a matter of fact, as if to arouse this belief the EAC had borrowed much vocabulary from the European Community including "High Authority", freedom of movement for payments, capital, services and the term "Community" itself. This, however, was not forthcoming. On the contrary, as if to for-

malise their stand in Brussels only a single article 93 in the Kampala Treaty was devoted to external negotiations stipulating that "Partner States may together negotiate with any foreign country with a view to the association of that country with the Community ..... etc...." Whether this two-word phrase "negotiate together" is interpreted to include the situation where EAS are applying for association with a third international body, like the EEC, the problem was not eased off by that article as no procedures were indicated save to "negotiate together." Hence, even after the Treaty establishing the EAC had entered into force in January 1968, the negotiations in Brussels did not change their course, therefore the same "state of affairs still continue."[41] Whereas the EEC had the Commission as their negotiator, the EAS negotiated only jointly and the Agreement was concluded by each Partner State according to its own procedures. It can be said, nonetheless that the negotiations constituted a "real test of regional solidarity."[42]

NEGOTIATING FOR THE ARUSHA AGREEMENT.

Following up their decision to apply for association with the EEC, the EAS governments in early 1963 sent a mission to the EEC for a familiarisation trip. During these contacts the EA delegation took the occasion to explain to the Europeans why they felt they had need to establish formal economic relations with the EEC countries. After all a quarter of their exports was already entering the European Common Market while also over one-fifth of their imports originated in there.

It was a successful mission. In fact immediatedly after these contacts the EEC member States, for motivations of their own, published their Declaration of Intent indicating the three alternative conditions under which they purported to open negotiations and establish trade relations with african countries of the Commowealth, namely

a accession to the Yaounde Conventions,

b association agreements establishing reciprocal rights and obligations, and

c trade agreements. We have already indicated how the EAS chose the second alternative, that is, to establish an association *Sui generis*. It can be ascertained retroactively, however, that their concept or notion of association differed a great deal from that of the EEC itself. Thus, they asked first of all that the EEC should accord to their commodities the same treatment as the one already projected in the Yaounde Convention for the AASM on the condition that their own association was not to contain the m.f.n. clause or the reciprocity principle as we have already indicated; they also wanted to maintain their traditional trade policy of non-discrimination and therefore concede no reverse preferences to the EEC. In this regard they would afford certain trade advantages by way of reducing customs duties on a certain number of EEC products. Lastly, they wished to secure a simple trade mechanism that would be operative at the same time as the Yaounde Convention signed

in July 1963; it entered into force on 1 June 1964.

As for the EEC such propostions could satisfy the creation of a trade and tariff agreement but not that of a free trade zone which was the subject of an association. They therefore stuck to the idea of "rights and obligations." During this time GATT accepted the Yaounde convention in April and in July 1966. Nigeria concluded an agreement containing reciprocity and the M.F.N.C. though of limited scope. The East African arguments were weakened. With those successes the EEC just demanded the EAS to adopt the m.f.n.c. and reciprocity similar to those in the Yaounde Convention and to abandon their traditional non-discrimination single column policy as practised till then by virtue of the 1884 Berlin Act. Thus the denouncement boiled down to a pound of flesh! In accepting the principle of reciprocity the EAS sought to attenuate its scope and minimise its adverse effects on their economies. This was done, following the example already established in the Lagos Agreement by the reduction of products for imports. We shall come back to this when examining the importation regime.

THE CONTENTS OF THE ARUSHA AGREEMENT

The Arusha Agreement contains five titles as follows:

1 trade,

2 freedom of establishment and services,

4 movements of capital and payments

4 institutions and

5 general and final provisions dealing with validity of the Agreement, association of third States etc.... As for trade, this spelled out in articles 2 to 15 for the two regimes, exports and imports. The EEC importation regime of products originating in EAS in contained in Articale 2 para 1. In accordance with the provisions of this articles EAS products should enter nil-duty into the EEC and without taxes of equivalent effect with the proviso that the treatment accorded to them is not more favourable than that applying among the member States themselves, Similarly, quantitative restrictions were to be eliminated at the rhythm being followed within the Community. This franchise of entry into the EEC, however, was limited by two factors intended to protect the interests of both the AASM and the EEC. We shall briefly examine these limitations.

Protection of AASM Interest

As we have seen the EEC had already committed themselves to the AASM and therefore it became paramount both to protect their interests and also to dilute the later association agreements.[43] To this end during the negotiations with Nigeria in June France had made an ultimatum stand which resulted in the imposition of tariff quotas to certain Nigerian products similar to those from the AASM. The same

technique was then revived in regard to negotiations with the EAS so that in the Arusha Agreement coffee, cloves and tinned pineapples were to be governed by tariff quotas. This meant that below certain minima the products would enter nil-duty into the EEC but beyond such amounts the latter would apply its common external tariff etc applicable to third world countries. The regime thus adopted did not go beyond advantages prescribed in the International Coffee Agreement of 1962 where there is a relation between the quatities sold and the world market price obtaining. For situations may arise where one may sell more or less quantitites without earning the same income. In the Arusha Agreement the quotas appear to be merely quantitative and automatic.

The Arusha Agreement also contracts with the Yaounde Convention which, through financial and technical cooperation, sought to assure the associated States of price stabilisation whenever there would be a downward trend in the world market prices for products of major interests to them. It is this notion of association which has been carried forward into the ACP where, realising the necessity of maintaining the export earnings a stabilisation scheme has been set up combining both fluctuations of world market prices of twelve products and the degree of dependency on those products by an associated State. The same concept was adopted by UNCTAD in Nairobi in May 1976 in an Integrated Programme governing sixteen products.[44] It is therefore evident that in the light of these developements in the law to govern international trade some provisions of the Arusha Agreement, while under the impulsion of ideaology trying to eschew the negative repercussions of financial aid, were nonetheless retardatory. It should be observed also that in terms of Protocol No. 1 the quotas pertaining to these productc were to be divided among the EEC m.s. by a decision of the Council. It is not indicated how the EAC Partner States intended to divide their own supplies, an ommission which again puts us at the mercy of international corporations in the name of free trade a fear which has been voiced by S.M. Mbilinyi.[45]

In Defense of EEC Interests

In Addition the Arusha Agreement had to bow before products of EEC origin. Consequently, in accordance with the Community's common agricultural policy (CAP) such products as are competitive with products of European origin are imposed a counter-vailing duty. CAP itself, which is based on minimum price guarantee schemes in implemented by way of buffer stocks, restitutions, orientation prices and intervention on the internal market. It will be recalled that in early 1962 there was created a European Agricultural Guidance and Guarantee Fund (in French abbreviated FEOGA) to which like the EIB or EDF member states contribute directly and whose mission was to finance all those activities, that is guarantees of intra-Community minimum

prices. However, should resultant prices rise this does not give right to associated States to claim similar advantages. FEOGA, too, through subsidies, while reinforcing the policy of self-sufficiency at home at any cost, assures also exports abroad where they may compete with those of associated States.

In actual implementation by 1968 CAP was covering more than 90 per cent of the agricultural products in Annex II of the Treaty of Rome. In addition, the EEC in the search of self-reliance in agricultural supplies could claim 90 per cent success in this venture.[46] This meant that imports of agricultural commodities into EEC would be admitted only in so far as there were shortages of them. This included even those from associated States, although these would be given a preference over those from non-associated States. EEC tried in vain to defend CAP in GATT.[47] In the face of such ambiguities the association agreement *per se* becomes no longer a guide. It may be pointed out, for instance, that elsewhere it makes it mandatory for EAS to notify the Association Council of their foreign trade regulations as well as any changes in those regulations applicable to the member States.[48] It is strange, as an author has observed, that the EAS did not require réciprocity on this particular point.[49]

Moreover, it may be of interest to note that Arusha II was supposed to be an improvement over Arusha I which was a replica of Yaounde Convention and Lagos Agreement. Indeed, the earlier agreements used to merely mention that while framing its CAP the EEC would, after consulting the Association Council, take the interests of the Associated States into consideration as regards products similar to and competitive with European products.[50] This vague formulating amounted to a unilateral commitment. Indeed, as an author has commented, although it demonstrated a certain good will on the part of EEC, yet the latter assumed only moral obligation subject to a simple procedure of consulting the Association Council but leaving its decisionmaking Powers intact.[51] In Arusha II, however, an improvement was made in that EEC agreed to apply a third-party standard so that the EAS became beneficiary of the m.f.n.c. in which case the EEC would, after consulting the Association Council, fix, case by case, the importation regime, that is in regard to products originating in EAS. This regime, it was provided, would be more favourable than the general regime which is applicable to the same products when they originate in third States.[52]

No sooner, however, had the Arusha Agreement entered into force in January 1971 than the EEC in July 1971 as was expectd[53] adopted the Generalised System of Preferences under GATT and UNCTAD recommendations, that is thereby liberalising in favour of all the developing countries in the Group of 77 most of the concessions originally granted to the Associated States.[54] In fixing the GSP, however, the EEC has tried to retain the elements of preferences for the associated States.[55] It should be remembered in this connection that other industrialised members of GATT like the USA, Canada, Japan

etc. have also adopted their own GSP. Thus the benefits of association will in the ultimate depend on two factors; on how the developing countries can sell their products either to the EEC itself or elsewhere and on how much the EEC needs the associated States for its own internal supplies. In short, the association itself is still in search of its own place in international relations. It could for that matter get eroded, or like the Imperial preferences and the Franc zone area permitted in 1948 to continue as exceptions under GATT, association, a nebulous system in its beginnings, but now enlarged wihin the enlarged Community, could also perpetuate itself as a pattern of international trade. With this observation of a general nature we now turn to the regime fixed by the **Arusha Agreement** in regard to EAS importation of products originating in EEC member States.

The Importation Regime

The importation regime completes the reciprocity arrangement under the Arusha Agreement. As we have pointed out the EAS having refused to accept the reciprocity clause they sought to limit the concessions entailing reverse preferences to be granted to the EEC. The seat of this reciprocity was located in the importation regime.[56] This is contained in Articles 3 and 6, Protocol No. 3 and Annex VI. As a general principle the EAS undertook to eliminate customs duties, taxes of equivalent effect as well as quantitative restrictions on imports originating in the EEC member States. This elimination was to apply with immediate effect from the date the Agreement entered into force. It may be of interest to note that the Yaounde Convention had prescribed moratoria ranging from six months, three years to four years and that the Lagos Agreement had allowed a delay of two years of 50 per cent and 25 per cent each year.

This general principle, however, is considerably limited by the fact that unlike the AASM the EAS would not accept a whole barrage of imports originating in EEC member States. Thus, such reverse preferences as they agreed to grant to the EEC would be contained in only 59 products according to the 1968 Agreement which number was reduced to about 40 in the definitive 1969 Agreement. This meant these forty products would enter at nil-duty into the EA common market while similar products originating in third world States would be imposed customs duties.

Another pertinent observation worth mentioning is that although their number was small the legal and economic significance of these products was great. First because their adoption meant that the EAS were to abandon their traditonal single column tariff which was based on the *ad valorem* rate regardless of the country of origin. In the new tariff administration the EAS would adopt three columns. One column would contain fiscal charges and would apply *erga ownes,* that is to all imports irrespective of origin (including the 40 products.) The legal

significance of this is that the arrangement satisfies the GATT rules which require that a free trade area should eliminate customs duties and quantitative restrictions on "substantially all trade", among the constituent territories.[57] Similarly the new tariff meets the non-discrimination rules of GATT in that all the Contracting Parties would encounter a similar, if unequal disfavourable treatment. The economic significance of the new arrangement is that these internal revenue charges would supplement national budgets and help in the economic industrialisation and development. It is interesting to note that they go as high as 25 per cent and even to 70 per cent *ad valorem.*

The second column would contain customs duties. These range between 1 and 9 per cent. The EEC is exempt from paying customs duties on the 40 products. Hence, the third column consists of this exemption which lands these 40 products at zero duty. It is therefore these two columns which constitute the reverse preferences that the EAS granted to the EEC in relations to third States. In addition, it should be noted that EAS were permitted to use quantitative restrictions on imports in case of meeting exigencies of economic development and balance of payments. This derogation, however, is not permitted to touch the forty products[58] However few, these products were nonetheless important in the East African economy. Thus in 1966 when 25 per cent of the East African imports originated in the EEC they accounted for 14.6 per cent of the total imports.[59] This compares well with the Lagos Agreement where the twenty-six products also singled out for the same purpose formed 10 per cent of the total imports of Nigeria. It is significant to note also two factors in the selection of these products. Firstly, the EEC was already the principal supplier of them to the EEC common market in relation to third world countries. Secondly, the EEC also made equitable distribution of them so as to avoid future discrimination or unfair competition among the member States. It is upon such criteria that the Agreement came to include such stuff like wines, vermouth, spirits etc. alongside hard gadget like machinery, typewrites, motor vehicles etc. As for the EAS, the consumer States, in the same way as in respect of their exports which were subjected to tariff quotas, there was no distribution of these products among the partner states. Whatever were the reasons for this ommission, whether a reliance on their common external tariff as a corrective measure, or a fragile unity which needed to handle with care, or even an erroneous belief in a collective association, now that the EAC is breaking down the end result could be a *de facto* discrimination of an associated States by import-export agencies. We shall examine this issue when commenting on the provisions regarding freedom of establishment.

Lastly, it is necessary to observe two other things which gave rise to problems in functioning of the Arusha Agreement, namely the defininition of the "goods originating in...." and the concept of the m.f.n. clause. As for the latter, we have seen at the end of negotiations, the EAS had to take it by imposition from EEC as embodied in the Yaounde

Convention. They were, however, determinned to reverse it and this they did in the ACP association. In regard to the definition of "originating goods", the Agreement had empowered the Association Council to lay down that definition on the basis of a draft to be presented by the Commission. The latter had in 1964 and with a few modifications in 1966 already restricted the definition of "products originating in AASM" mainly to those produced from the soil which hardly include manufactured or semi-manufactured goods especially when their raw materials or part of there-of, were imported from third world countries. Throughout the years no understanding intervened to bring the two sides together. It is encouraging to note that the ACP association has given a fairly large *a priori* definitio to this term.[60]

SAFEGUARDS OR EXCEPTIONS UNDER THE ARUSHA AGREEMENT

As safeguards are now accepted in all international organisations,[61] the Arusha Agreement simply registers this right for the signatories to protect their own particular interests. There are two categories of these derogations. On the one hand there are some for the EAS and on the other hand for the EEC. Thus, the EAS are permitted to take safeguard measures in order to meet

i the necessity of economic development, industrialisation or contribution to national budgets,[62] and

ii the protection of the East African common market where agricultural products are concerned.[63]

iii Similarly, after excepting frontier trade the Agreement also derogates the establishment of customs unions, free trade zones and African regional integrations between the EAS and third States provided such establishments are not incompatible with the provisions of the Agreement itself.[64]

Whereas the above escape clauses are permitted to the EAS because of their economic underdevelopment, the Agreement adds two more derogations which are reciprocated with the EEC, namely

i the necessity of meeting foreign exchange in case of difficulties of balance of payments and

ii the occurence of any serious distrurbance or jeopardisation of financial stability or difficulties causing deterioration in the economic situation of the signatories.[65] Other derogations of a universal nature are permitted for the purposes of morality, public order and security, protection of human, animal and plant life and health as well as protection of national treasures having artistic, historic and archeological value and, lastly, protection of industrial and commercial property.[66]

As to the procedures to be followed a Partner State may take the necessary measures and then notify the Association Council. As for the

EEC such procedure is only allowed in case of emergency, otherwise a member State normally has to have authorisation of the Commission and confirmation from the Council as provided in the International Accord pertaining to the Arusha Agreement. In other words, these derogations as stipulated in that Accord are assimilated under those permitted in the framework of the Treaty of Rome.

THE RIGHT OF ESTABLISHMENT AND SERVICES AND FREEDOM OF MOVEMENT FOR PAYMENTS AND CAPITAL.

In respect to establishment the Arusha Agreement gives as its definition "the right to engage in and carry on non-wage-earning activities; to set up and manage undertakings and, in particular, companies; and set up agencies, branches or subsidiaries."[67] Elsewhere the right of establishment extends to all sectors of economic life, industry, trade, agriculture, finance and liberal professions. In simpler terms this means the conduct of business in the associated States. The Arusha Agreement, however, like the Yaounde Convention before it, reciprocates this right so that the associated States, too, can seek establishment for their nationals and companies in the EEC member States. The immediate benefits of these reciprocity provisions are not clear.[68]

While on this subject it may be useful to have a look at the origins of these so-called rights. It should be recalled that these "rights" together with that of free movement for labour are important factors of production for which the Treaty was "the most explicit and least qualified."[69] These rights productive factors were embodied in the first association agreements with Greece and Turkey, themselves meant to be a prelude to accession. They were later extended to the Yaounde Convention ostensibly so as to place nationals and companies of all member States on equal footing as those of the colonial metropolitan powers, notably France whose nationals were already entrenched in the associated States. However, the Yaounde Convention added another innovation in that with national independence for the colonies the EEC aimed at becoming the most-favoured nation so that if nationals and companies of third States were accorded a better treatment by the associated States then the EEC would have the right to claim such a treatment. This concept, on the demand of the EEC was transferred to the Arusha Agreement.

It appears to us, however, that these are not "rights", fundamental and essential to human life, but mere freedom and therefore cannot be imputed unto a State which may not even recognise them as rights to its own nationals. With nationalisations international jurisprudence has already established this assertion. It therefore appears to us that the obligations under the Agreement would be met in so far as the standard required is equal treatment of all States with the EEC as the M.F.N. Further, it may be noted that the ACP association has now em-

phasied EEC—ACP reciprocity and dropped the m.f.n.c. which is now restricted to the injunction to avoid discriminatory measures between both associated partners and third States in respect to foreign exchange transactions linked with investments and current payments.[70]

INSTITUTIONS

The EEC had persuaded the EAS right from the outset of negotiations to accept institutions so as to allow them to participate in the functioning of the association. Consequently the Arusha Agreement created three organs, namely the Association Council, the Association Committee and the Parliamentary Contacts. These are the same as those in the Yaounde Convention. The Association Council is composed of the EEC Council members and members of the EEC Commission on the one hand and members of the EAS governments as well as representatives of the EAC on the other hand. In voting the EEC has one vote and the EAS has one vote. Note, however, that in case of a quorum for a meeting at ministerial level the representative of the EAC is not required; this places the Association Council on governmental level.[71] All the members have the right to be represented. The powers attributed to the Association Council are in four grades in accordance with the echelon established in the Treaty of Rome, namely, decisions, consultations, information and recommendations.

In actual practice the Agreement enjoins the Association Council to take decisions in two cases, that is at the expiry of the Agreement when it has to take transitional measures required until a new agreement enters into force,[72] and in defining the term "goods originating in".[73] Other powers of this body are restricted to consultations for which there are nine stipulations throughout the agreement.[74] The right for the Association Council to be informed is mentioned eight times in the agreement.[75] As for recommendations, though mentioned once in the agreement,[76] nowhere does the agreement prescribe in what circumstances the Association Council shall take them. All in all, the Association Council is evidently a forum for consultations without any veritable decision-making powers which are vested in the signatories themselves.

The Association Council has powers to create an Association Committee which, in final analysis came to consist of permanent representatives or Ambassadors at Brussels who periodically have to examine the implementation of the Agreement. The Committee has no decision powers save to report to the Association Council.

The Arusha Agreement also creates Parliamentary Contacts which have to be encouraged between members of the European Assembly and members of the EAS Parliaments as well as members of the East African Central Legislative Assembly. Note that in the abortive 1968 Agreement these "contacts" were called a Parliamentary Commission. The change for the vague term, therefore, coincides with the absence of

powers the body enjoys. This could have been due to the fact that EAS were not keen in creating institutions.[77] Thus, unlike in the Yaounde Convention where the Parliamentary Conference has to meet once a year and discuss the activity of the Association presented annually by the Association Council, the "contacts" inthe Arusha Agreement are just "discussion about matters of the association." This drafting seems to be deliberately vague. On the contrary, ACP has now deepened and articulated those same institutions with even such bold titles like Council of Ministers, Committee of Ambassadors and Consultative Assembly to which it has added, above all, a permanent Secretariat. This may suggest, as R.H. Green observes, a "lasting ACP commitment".[78]

Lastly, we should mention the settlement of disputes for which the Agreement provides three modes, that is one diplomatic, through good offices, another political, through the Association Council and a third juridical, by arbitration. In procedures, the parties to disputes concerning the interpretation or implementation of the Agreement, have the right, before bringing the dispute to the Association Council to avail themselves of good offices provided they inform the Association Council in advance. It is to be noted in this connection that good offices as a mode of settlement of disputes did not figure in the 1968 Agreement; it also appears for the first time in Yaounde Convention II as renewed in 1969. It is probably worth mentioning that according to the First and Second Hague Conventions of 1899 and 1907 good offices are "simple" advices without binding force offered by a State not a party to the controversy in order to bring the parties in direct negotiation without that third State participating in the negotiations.[79] It is plain that the "utility of such procedures is conditioned by the particular circumstance."[80]

Normally, however, the disputes are handled by the Association Council. If, however, the latter fails to do so, a party to a dispute notified the other party of nominating an arbitrator. Within a delay of two months the second party also nominates a second arbitrator and the Association Council nominates a third one. Arbitration decision is given by majority vote. It should be observed that in this regard the EEC and all the member States gang up together as one single party to the dispute against one forlorn Partner State. It can be remembered that this formulation was already inserted in the Athens Agreement where it was vehemently attacked by Greek jurists.[81] Thereon it did not appear inthe Ankara Agreement and in the Yaounde Convention. Its reappearance in the Arusha Agreement therefore marked another edge among the EAS who had negotiated together. It has again disappeared in ACP.

As it resulted therefore the Arusha Agreement, like the Yaounde Convention, was also based on "bilateralism," that is between two parties comprising of the EEC and member States on the one hand and each of the EAS on the other hand. I[illegible] it was not a group of European States with another group of African States. On

the contrary, EAC, like AASM[82] was not a party to the Agreement to which the EA Treaty was only *acta inter alios.* In simpler terms, with the breakup of the EAC a country like Uganda would still be obliged to make customs duties discrimination between say Belgian and Italian products as well as to give equal establishment right to EEC nationals, but the same. Uganda could legally impose duties on goods originating in Tanzania and not in Kenya or issue trade licences to Tanzanians while refusing them to Kenyans. This observation was strengthened by the provisions stating that the Agreement could be terminated by the EEC in respect of each of the EAC Partner State or by each of the Partner State in respect of the EEC.[83] The same concept has been carried forward into the a ACP association. Association therefore has been likened to collective conventions of labour unions.[84] That is, though there appear several participants on either side, yet it is not a multilateral but a bilateral convention in which each has its own and divergent interests.

CONCLUSIONS

This rapid exploration of the association system in its theoretical and historical context as well as the cursory analysis of the Arusha Agreement can allow us to make some pertinent conclusions. In the trade flow, the Agreement curbs down the export facilities otherwise afforded in principle to the EAS. This is done on two pleas: Firstly, for the protection of earlier associates, the AASM and because of this certain EAS products were subjected to automatic tariff quotas, and secondly, for the defense of EEC agriculture. For the latter has three facets, namely, protection vis-a-vis outsiders, internal financial support in guidance and guarantees and lastly, minimum price schemes which aim at Community uniform prices. In addition, there are also fears that the resultant higher production will generate exports causing competition in third States. Importation, therefore, in such a system will depend largely on shortages inside and sometimes on sheer political good will of the EEC.

Further, association benefits seem to be eroded by the adoption of GSP by the EEC itself and other industrialised States as well as the adoption of commodity programmes in international organisations like UNCTAD. Due to these processes there is still fluidity in international society in which association itself is also still looking for a place of its own.[85] While, therefore it stands as a new forum and a new center of reforms for immediate gains, it seems, however, the overall interests of industrialising countries lie in two courses: Firstly, the adoption of industries that favour horizontal trade among themselves, secondly, the establishment of a New Economic Order. Whether this is in enlarging the existing organisations like GATT, IMF etc... or creating new ones having more comprehensive multilateral trade code, certainly there is need to develop further public economic and social international law.[86]

In the importation regime the Arusha Agreement also created the principle of franchise. To this effect it circumvented GATT rules and introduced a different but equally non-discriminatory tariff. This franchise, however, was limited to only forty products which were exempt from customs duties in favour of the EEC but dutiable for revenue charges which strike *orga omnes.*

To sum up, the EAS managed to tailor their association to their own interests and to make the EEC association system as a whole more flexible. It has now come to light among the scholars what such agreements like in Arusha and Lagos accords should not have been called "association agreements" as such. Such a term should be reserved to those in the Athens and Ankara accords while the former ones should have been called "cooperation agreements". These have also been recommended for the developing countries in the Third World. ACP has also drawn a great deal from the Arusha Agreement.[87]

Lastly, the breakup of the EAC imposes new exigencies of filling up the gaps within the existing association agreements. The association system as originally constituted was to maintain the liberal or market economy, that is capitalism. This is evident in the provisions regarding the right of establishment, services and the freedom of movement for (private) capital and payments. These provisions went beyond the conventional guarantees normally seeking to assure to foreigners in countries other than their own admission and stay, enjoyment of civil rights as well as judiciary and administrative protection. The new provisions sought to extend those guarantees in order to cover also the right to exercise lucrative activities. It is plain that association was to apply in newly independent States adopting capitalism as a system. Now this same association has also apply to States practising State economy with a monopoly over foreign trade. Two problems may arise. Firstly, the EEC itself interprets association as both economic and political so that it can choose to block its benefits as it did in case of the Greek coup d'Etat. Secondly, while it is easier for an associated State having monopoly over foreign trade to execute import agreement even those specifying quantities to be bought it is not at all easy to guarantee exports which very often have to be sold through hostile international corporations. The situation needs juridical and commercial formulae especially dressed up for the circumstances in order to avoid injurious *de facto* discrimination. We cannot go into details here, however, reduced to its simplest expression, the situation needs planning which may begin with establishment of State-owned import-export corporation in EEC member States. In addition, while taking the association agreements as a sort of loi-cadre it is necessary to have also safety-valve accords entailing quantitative guarantees and specifying periodic supplies and future sales of our tropical products and manufactures. Faced with this permanent war of trade it is usual for socialist countries to have fully fledged ministries responsible for foreign tra[illegible] [illegible]not afford such strictures at least there should be arti[illegible] [illegible]tion among

all "Authorities" responsible for cash crops and export manufactures so that is it possible to set up periodic working programmes of exportation. With such a background, at least in data, there can be bilateral agreements on governmental level or real commercial contracts among sellers and buyers. Indeed, these bye-accords could fill up the legal lacunae in the Association Agreements in which the Association States so many times had to pledge equal treatment and non-discrimination to the EEC member States without being promised reciprocity in the matter.

FOOTNOTES

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41. Horst Schmidt-Ohlendorf, "L'Association avec les Etats de l'Affrique de l'Est," in *Theses at Travaux* etc....op. cit. p. 323.
42. Dusan Sidjanski, *Current Problems of Economic Integration: The Role of Institutions in Regional Integration among Developing Countries,* UNCTAD, Doc. TD/B422, 1974 p. 47.
43. J. Costinis, "The Association with Nigeria," in *Theses at Travaux* etc... op. cit. pp. 244 et passim.
44. ABP Association Agreement Articles 16-24. Also UNCTAD Resolution 93 (IV) on Integrated Programme for Commodities (adopted without dissent) Doc. TD/217, 12 July 1976.
45. S.M. Mbilinyi, "East African Export Commodities and the Enlarged E.E.C." in *The African Review,* Vol. No. 1, 1973, pp. 109.
46. Plan Mansholt: Le Rapport Vedel, Saclaf, Paris, 1969, para. 7. These percentages were relative according to the three categories of products. For the first category, wheat (European tender), milk, and sugar the EEC was self-sufficient; for the second, pork, eggs and poultry self-sufficiency was almost attained and promised to remain constant, and for the third category, coffee, tea, tobacco, oil products, animal feed, cereals and beef there was still need for imports. The EEC had therefore undertaken to assist AASM with EDF in "production and diversification" provisions of Yaounde Convention (Art. 17 (3) to grow certain of these typically tropical products.
47. Khussid Hyder, *Equality of Treatment and Trade Discrimination in International Law,* Martinus Nijhoff, The Hague, 1968, pp. 112-115.
48. Arusha Agreement, Article 6, para 5.
49. H. Schmid-Ohlendorf, op. cit. p. 337.
50. Arusha I Art. 11, Lagos Art. 10 and Yaounde I Art. 11.
51. H. Schmidt-Ohlendorf, op. cit. p. 331.
52. Arusha Agreement II, Protocol No. 1, Art. 1. para 1.
53. Protocol No. 5.
54. See complaint, "What benefits under Lome Convention," in *East African Community Monthly Magazine,* November, 1976.
55. See analyses in UNCTAD docs. *Operation and Effects of the Generalised System of Preferences,* TD/B/C.5/3; TD/B/C.5/15; T/B/C.5/42 Chapters III in each.
56. Reciprocity in Yaounde Convention is spread throughout, See *Ananiades,* op. cit., pp. 314 et seq.
57. For rationalisation see Okigbo, op. cit. p. 127.
58. Arusha Agreement, Annex V.
59. H. Schmidt-Chlendorf, op. cit. p. 333.
60. ACP Protocol No. 1.
61. See analysis in Irving B. Kravis, *Domestic Interests and International Obligations: Safeguards in International Trade Organisations,* University of Pennysylvania Press, 1963. Under GATT escape clauses are provided in Articles XIX: XX(a); XXI; XXV para 5; XVIII; XXIV; and XXXVI to XXXVIII. See Th. Flory, *Le GATT,* Paris 1968, pp. 79-99. In EEC exceptions are granted in Articles 17 (para 4) 25, 26, 37, 44, 46. 89 (para 2), 91 (para 2), 107, 108 (para 3), 109, 115 (para 2), 133 (para 3) and 226 (para 4).
62. Articles 3, Protocol No. 3, Art. 1.
63. Article 6 para 2.
64. Articles 8. 9 and 10.
65. Article 14.
66. Article 12.
67. Article 18.
68. Okigbo op. cit. p. 67.
69. I.B. Kravis, op. cit., p. 278.
70. Article 66.
71. Compare Francois Luchaire, "L'Association du Nigeria a la C.E.C." in *Review Trimetrielle du Droit Europeen,* No. 1, January-April 1966, pp. 593-610.
72. Articles 36 para 2.
73. Protocol No. 4, Article 1.
74. Articles 2 (para 3); 3 (para 4); 5 (para 3); 6 (para 3); 13; Protocol No. 7, Art. 3 (para 2); Protocol No. 2; Protocol No. 3 articles 3, 4 & 5); and lastly Annex II.
75. Articles 6 (para 4); 6 (para 5); Protocol No. 3 articles 4 & 5; articles 9, 10; 11; 13; 14 (para. 2-2); 32; lastly Annex IV.
76. Article 23 (para 1-2).
77. H. Schmidt-Ohlendorf, op. cit., p. 347.

78. Regionald Herbold Green, "The Lome Convention: Updated Dependence or Departure Toward Collective Self-Reliance?" in *The African Review,* Vol. 6 No. 1, 1976, p. 47.
79. Bishop, W.W., *International Law: Cases and Materials,* Little, Brown & Co., 2nd edn. 1962, p. 58
80. Marx Sorensen, *Manual of Public International Law,* Macmillan, New York, 1968, p. 682.
81. W. Alexander, "L'Association entre la C.E.E. et la Grece," in *Revue Hellenique de Droit International,* January-June 1982, pp. 10-50; Dionyssios Paulantzas, "Une Disposition Malencontreuse de l'Accord d'Association de la Grece a la C.E.E." in *Renue Hellenique de Droit* International, January-June 1962, pp. 10-50; Dionyssios Paulantzas, "Une Disposition Malencontreuse de l'Accord d'Association de la Grece a la C.E.E." in *Revenue Hellenique de Droit International,* July-December 1963, pp. 246-257.
82. The expression "AASM" (after the French abbreviation EAMS) is used only for convenience of language; for unlike EAC the AASM were never juridically constituted, of R.J. Dupuy, "Du Caractere unitaire de la C.E.E. dans ses relations exterieures," in *A.F.D.I.,* 1963, p. 487.
83. Arusha Agreement, Article 35 para 2.
84. P. Pescatore, *La Clause de la Nation la Plus Favourisee,* op cit. p. 73 (para 76).
85. See Richard Bailey for simplified account, *The European Community in the World,* Hutschinson & Co., London, 1973.
86. There is consensus that the international legal and economic framework into which were born the newly independent States were too narrow to contain their aspirations. Before then, in 1948, there had been hope in the Havana Charter which would have established an International Trade Organisation. The ITO never entered into force as the USA, a major trading nation, failed to ratify it. Since then such endeavours in GATT, UNCTAD etc... have confronted the task only piece-meal and at the initiative and pressure of poor states when the major trading nations have remained aloof or even actively against them. After the Arusha Agreement, the EEC association system has now turned against its creators to become one of these centres of demands. It is such *travail de termites* that it is hoped to gnaw the lumber and erect new lulwarks! But, when will the task be accomplished? See Pierre Vellas, *Droit International Economique et Social,* Sirey, Paris, 1966; W. Friedman, *The Changing Structure of International Law,* Columbia University Press, 1964; and S. Prakash Sinha, New Nations and the Law of Nations, W.A.W. Sijthoff Leyden, 1967 and bibliography therein.
87. Torrelli, op.cit., p. 30, especially footnote no. 31; also J.Costinis, op. çit. p. 229 and footnote no. 49.

D. Anglin, T. Shaw, C. Widstrand (Eds)
Canada Scandinavia and Southern Africa,
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Canada and Scandinavian Countries have often times seemed to take a 'neutral' position in world 'power politics' and they have appeared to have some sympathy with the oppressed masses of the world. Presumably, this was instrumental in organizing the International Seminar on apartheid as a token service to the UN's declared International Apartheid Year of 1978. This book comprises of some of the papers presented to the conference reflecting divergencies which exist in interpretation of the problem of Apartheid; the relationship which exists between South Africa and Canada/Scandinavian countries; the gap which exists between foreign policy objectives and implementation of the objectives with regard to Southern African problem; the role which Canada/Scandinavian Countries ought to pursue, and a critique of previous policies. A summary of the general observations is given by T. Shaw in the concluding chapter.

In analyzing the economic links between Canada and South Africa, Steven Longdon suggests that economic ties that exist is a result of the relationship which exists between Canadian economy with the powerful imperialist countries; a relationship instrumental in creating structural problems within Canadian domestic economy. Implicitly, Canada/Southern African economic ties cannot fundamentally be altered before resolving such contradictions. This same analysis seems to be the main thesis advanced by Robert Mathews and Cranfort Pratt in Chapter IV when they trace the evolution of Canadian policy towards Southern Africa. Mathews and Pratt have argued that while Canada is interested in painting a liberal image internationally by verbally supporting progressive forces that condemn the racist regime, Canada is more sensitive to its traditional allies i.e. U.S.A. and Britain. This explains why Canada has been rather reluctant to intervene to prevent trade and investment linkages and also why Canadian policy has basically remained persuasive and moralistic, lacking any concrete policies.

The implementation of arms Embargo by Canada and Scandinavia is greatly influenced by military ties with major Western powers. This is illustrated by Mitiny's paper.

Saul J. dismisses the notion of isolating Canada and Scandinavia from the capitalist allies. He analyzes how the Canadian Banks are intrinsically linked with the Multinational firms of the European — American Banking Corporation all of which have since 1970 been involved in direct loans to Southern African governments and agencies.

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