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P. Kenneth Kiplagat †

"We are not building a single market in order to turn it over to hungry foreigners." [1]

I. Introduction

By the end of 1992, the twelve member States of the European Community (EC)[2] had resolved to complete the creation of a single European market by removing all remaining barriers to the free flow of goods and services within the EC.[3] In other words, by the end of 1992 the European Common Market was supposed to become truly

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[1] Jacques Delors, EC Commissioner, NEWSWEEK, Oct. 31, 1988.

[2] European integration is now commonly acknowledged to have been the logical culmination of the now famous Quay d'Orsay press conference given by the then French Foreign Minister, Robert Schuman on May 9, 1950. Schuman proposed that the whole of Franco-German coal and steel output be placed under a common High Authority, in an organization open to the participation of the other countries of Europe. *See* PAUL JOAN GEORGE KAPTEYN & P. VERLOREN VAN THEMAAT, INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES 1-16 (Laurence W. Gormley, *et al.* eds., 2d ed. 1989). Technically, the European Economic Community (EEC) is one of three legally definable, treaty-based Communities in Western Europe. *See* D. LASOK & JOHN WILLISM BRIDGE, AN INTRODUCTION TO THE LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES (1982). The other two Communities are the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM). BARRY E. HAWK, 1 UNITED STATES, COMMON MARKET AND INTERNATIONAL ANTI-TRUST: A COMPARATIVE GUIDE 411 (2d ed. 1986). The ECSC was created in 1951. Treaty Instituting the European Coal and Steel Community, April 18, 1951, 261 U.N.T.S. 140. EURATOM was established in 1957. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 167. The EEC was created in 1957. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter Treaty of Rome]. The EEC, ECSC and EURATOM are collectively referred to as the European Communities (EC).

[3] *See* The Single European Act (SEA) of February 28, 1986, OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 1969 O.J. (L 169) 1. Art. 8(a) defines the new dimension of European integration in the following terms:

> The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured in accordance with the provisions of this Treaty.

Id.

common.[4] The magnitude of this quiet revolution may be gleaned from statistical evidence showing that this internal market will comprise some 320 million people, with an annual Gross Domestic Product of $2.7 trillion, annual exports worth $680 billion, and annual imports worth $708 billion.[5] The completion of the single internal market will accentuate the EC's position as the world's leading trading bloc.

Euro-92 will be realized at a time when the world is still recovering from the momentous changes brought about by the collapse of communism[6] and the Gulf War.[7] It is also a time when the ascendancy of economic power[8] has fueled the level of protectionism which, when combined with the general deterioration of the economies of major powers, has led the way towards increased bilateralism, regionalism, and preference systems.[9] Japan and the United States, two of Europe's major trading rivals, were first to make public their anxieties about the implications of 1992 for their trade with the EC.[10] Their respective governments and corporate worlds have since started working out responses to this impending change in the composition of the EC's economic powers.[11]

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[4] The problems generated by the ratification of the Maastricht Treaty of December, 1991, particularly its rejection by Danish voters, have combined to blur the distinction between the Maastricht Treaty and the Single European Act. The latter embodies the second phase of European integration through the commitment to achieve a single internal market by December 31, 1992. The former seeks to move Europe towards the third phase of economic, monetary, and political union. *See* David Cameron, *The 1992 Initiative: Causes and Consequences* (Alberta M. Sbragia ed., 1992), *in EURO-POLITICS: Ways Round That Little Danish Inconvenience*, ECONOMIST, June 13, 1992, at 52.

[5] *See* Andre Sapir, *Does 1992 Come Before or After 1990? On Regional Versus Multilateral Integration*, *in* POLITICAL ECONOMY OF INTERNATIONAL TRADE (Ronald W. Jones & Anne O. Kruger eds., 1990).

[6] For a discussion of the collapse of the Soviet Empire and communism, see LINCOLN GORDON, ERODING EMPIRE (1987); ZBIGNIEW BRZEZINSKI, THE GRAND FAILURE: THE BIRTH AND DEATH OF COMMUNISM IN THE TWENTIETH CENTURY (1989); PAUL M. KENNEDY, THE RISE AND FALL OF THE GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500-2000 (1987).

[7] The events in the Persian Gulf in 1990-91 have somewhat confused the balance between economic power and military power. In the year between the collapse of the Soviet Empire and the invasion of Kuwait, it seemed that economic power would dominate the future, with Japan and Germany being the leading players. Then, in the months of the Gulf crisis and War, it seemed again that military power would dominate the future, with leadership returning to the United States. For a further discussion see James Kurth, *Things to Come: The Shape of the New World Order*, NAT'L INTEREST, Summer 1991, at 3.

[8] For a general discussion see George Kooperman, *Reorganization or Disorganization of the World Economy?*, 24 INTERECONOMICS 8, 11 (1989).

[9] *Infra* note 10 and accompanying text.

[10] Karl M. Meessen has analyzed the expected perspectives of the United States and Japan in his article, *Europe en Route to 1992: The Completion of the Internal Market and Its Impact on Non-Europeans*, 23 INT'L LAW. 359. *See also Report of the Delegation of the European Community: Key Issues in the 1992 Unification Program*, AM. BAR ASS'N SEC. OF INT'L L. AND PRAC. (Laraine L. Landati, Rapporteur, 1990).

[11] Critical aspects of the relationship between the EC on the one hand and the United States and Japan on the other are being fashioned out at the Uruguay Round of the General Agreement on Tariffs and Trade [hereinafter GATT]. GATT, *opened for signature* Oct.

The African response to Euro-92 has largely been addressed within the framework of treaty[12] obligations existing between the EC and African, Caribbean, and Pacific States (ACP).[13] The existence of a treaty has not helped to calm the anxiety of African countries.[14] The widespread belief in Africa and in the rest of the world in general is that the EC's Internal Market will have protectionist tendencies.[15] (A number of scholars have addressed the effects such

30, 1947, 61 Stat. A3. For an authoritative treatise on the institutional structure and the substantive law of the GATT, see JOHN H. JACKSON, WORLD TRADE AND THE LAW OF GATT (1969); KENNETH W. DAM, THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION (1970); and JAGDISH N. BHAGWATI, THE WORLD TRADING SYSTEM AT RISK (1991).

[12] ACP-EEC Convention of Lomé, *done* Feb. 28, 1975, 6 COLLECTION OF THE AGREEMENTS CONCLUDED BY THE EUROPEAN COMMUNITIES 1003 (1976) (OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES), *reprinted in* 14 INT'L LEGAL MATERIALS 595 (1975) [hereinafter Lomé I]. The Treaty was subsequently renegotiated and renewed four times: EEC-ACP: Documents from Lomé II Meeting, Oct. 31, 1979, *reprinted in* 19 INT'L LEGAL MATERIALS 327 (1980) [hereinafter Lomé II]; ACP-EEC Convention of Lomé III, Dec. 8, 1984, ACP-EEC Council of Ministers, the Third ACP-EEC Convention Signed at Lomé on Dec. 8 and Related Documents II (1985), *reprinted in* 24 INT'L LEGAL MATERIALS 571 (1985) [hereinafter Lomé III]; ACP-EEC Convention of Lomé IV, Dec. 15, 1989, 29 INT'L LEGAL MATERIALS 783 (1990) (Lomé IV), *reprinted from* the text appearing in COURIER, Mar.-Apr. 1990 [hereinafter Lomé IV]. Unlike its predecessors, which each lasted five years, except for its financial Protocol, Lomé IV is for a ten-year term. Lomé IV, art. 366(1). Unless otherwise indicated, reference to the Lomé Convention refers to Lomé IV.

[13] ACP countries are classified by the Lomé Convention as follows:

(a) defined as "least-developed"

Antigua and Barbuda, Mali, Belize, Mauritania, Benin, Mozambique, Botswana, Niger, Burkina Faso, Rwanda, Burundi, Saint Christopher (Kitts)—Nevis, Cape Verde, Saint Lucia, Central African Republic, Saint Vincent and the Grenadines, Chad, São Tomé and Principe, Comoros, Seychelles, Djibouti, Sierra Leone, Dominica, Solomon Islands, Equatorial Guinea, Somalia, Ethiopia, Sudan, Gambia, Swaziland, Grenada, Tanzania, Guinea, Togo, Guinea-Bissau, Tonga, Haiti, Tuvalu, Kiribati, Uganda, Lesotho, Vanuatu, Malawi, and Western Samoa.

(b) defined as "landlocked"

Botswana, Mali, Burkina Faso, Niger, Burundi, Rwanda, Central African Republic, Swaziland, Chad, Uganda, Lesotho, Zambia, Malawi, and Zimbabwe.

(c) defined as "island States"

Antigua and Barbuda, Papua New Guinea, Bahamas, Saint Christopher (Kitts)—Nevis, Cape Verde, Saint Vincent and the Grenadines, Comoros, São Tomé and Principe, Dominican Republic, Solomon Islands, Fiji, Tonga, Grenada, Trinidad and Tobago, Haiti, Tuvalu, Jamaica, Vanuatu, Kiribati, Western Samoa, Madagascar, Mauritius.

(d) others

Angola, Liberia, Cameroon, Nigeria, Congo, Senegal, Gabon, Surinam, Guyana, Zaire, Ivory Coast, Zimbabwe, Kenya. Tit. IV, art. 330, 333, 336. In anticipation of Namibia attaining its independence, art. 364 pre-approved its accession to the Convention subject to a formal request by an independent Namibian Government. Namibia subsequently signed the Convention on December 18, 1990. BULL. EC 12-1990. This act brought the total number of ACP States to 69.

[14] James Brook, *Europe's Old Colonies are Getting Anxious as 1992 Nears*, N.Y. TIMES, Jan. 1, 1989, at E4.

[15] *See 1992 Under Construction: A Survey*, ECONOMIST, July 8-14, 1989, at 48. The article concludes that Euro-92 is a defensive strategy calculated at fending off U.S. and Japanese competition in the automobile, electronics, banking, and telecommunications industries. *See also* Katherine Langley, Comment, *The Fortress Faces East: Protecting Europe's Auto Industry*, 1991 WIS. L. REV. 1043 (1991).

perceived protectionism would have on Africa.[16]) The EC has, naturally, denied that the inception of an internal market will in any way prejudice EC obligations under GATT.[17] This article will not engage in analyzing the veracity of these protectionist perceptions.[18] For purposes of stressing the main thesis of this article, it will suffice to note that pre-1992 EC cannot be described as having been pro-free trade.[19] In as far as Euro-92 does not advocate a fundamental rethinking of EC perceptions on free trade, it only recasts a new coating on its protectionist stance.[20] This article argues that the most significant impact of Euro-92 on the rest of the world is that by coming at a time when the world economy is in a recession, it has given fresh ammunition to advocates of global free-trade to attack EC trade policies.[21] The question this article poses for Africa and other ACP States is whether they should continue to negotiate for better terms within the framework of the Lomé Convention or join EC rivals in advocating for global free trade.[22] The article will arrive at the conclusion that the philosophy of preferential trade, which has long been advocated by ACP States, should be discarded and free trade should take its place.[23] (The argument is akin to the debate

[16] *See, e.g.*, ALFRED TOVIAS, THE EUROPEAN COMMUNITIES' SINGLE MARKET: THE CHALLENGE OF 1992 FOR SUB-SAHARAN AFRICA (1990).

[17] *See* Michael Rocard, *We Must Join Forces...*, COURIER, no. 120, 1990, at 5. It may be useful to note here that the current Uruguay Round of the GATT negotiations are deadlocked over EC's intransigence in its Common Agricultural Policy (CAP). *See infra* notes 277-304 and accompanying text.

[18] It suffices to say here that given the trend towards the creation of economic blocs in most regions of the world, there is a danger of pre-1945 trade wars being revived. However, the frailty of most economies and growing global interdependence will combine to frustrate such an outcome. *See* Bela Balassa, *The "New Protectionism" and the International Economy*, 12 J. WORLD TRADE L. 409, 414 (1978). Balassa argues that protectionism will take on a more sophisticated outlook mainly in the form of voluntary export restrictions, government price support, and employment subsidies to depressed sectors. *Id.* at 414-20.

[19] During negotiations culminating in the signing of Lomé I, the EC blocked all attempts by ACP countries to introduce free trade as the pillar of EC-ACP relations. *See* I. WILLIAM ZARTMAN, THE POLITICS OF TRADE NEGOTIATIONS BETWEEN AFRICA AND THE EUROPEAN ECONOMIC COMMUNITY (1971).

[20] *Id.* The EC has insisted that the creation of an internal market is a domestic affair and does not change EC external relations. *Id. See also* Rocard, *supra* note 17.

[21] Put another way, the EC was bound to come under attack with or without the creation of the internal market. Trade practices that were considered of little consequence in times of economic boom have now been magnified by global recession.

[22] The United States, Japan, and the GATT have so far been the staunchest critics of EC protectionism. *See supra* note 11 and accompanying text.

[23] The argument in favor of an international free trade market philosophy should not be confused with the corollary argument favoring the free market model as opposed to the command economy model in the domestic sphere. The international free-trade argument advanced in this article does not discriminate between countries that adhere to free market principles domestically and those that do not. For a stimulating discussion of domestic economic and political philosophies in the above context, see Robin Broad et al., *Development: The Market Is Not Enough*, FOREIGN POL'Y, Winter 1990-91, at 144. The authors point out that exaggerations have distorted this debate and that "a more complex truth than that purveyed by free-market ideologues: command economies may propel societies through the first stages of development, but further growth into a more sophisticated economy

now raging in American Civil Rights circles: has Affirmative Action run its full course and must it now be replaced by Equal Treatment?[24]) After seventeen years of cooperation under the Lomé Convention, extensive data is now available showing that no significant progress was made by ACP States during this period and that ACP States are worse off now than they were before the signing of the Lomé Convention.[25] However, this is not to suggest that some ACP States will not be devastated by the severing of EC-ACP ties.[26] The narrow point this article seeks to make is that current philosophies of trade and economic ties have failed ACP States over the last three decades and that it is time to risk other options.[27] It may be that the harsh consequences of free trade may spur development and integrity within the ACP group of States.[28]

This article will examine the critical provisions[29] of the Lomé Convention and how these have perpetuated economic stagnation in Africa. It will then urge the adoption of free trade as the quintessential economic philosophy to assure real development. This should be completed in two phases. First, the various sizes of African political entities, both in terms of population and economies of scale, dictate that greater value will be generated through regional integration.[30] Second, Africa should strengthen ties with those

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necessitates a greater role for market mechanism." *Id.* at 148-49. *See also* P. Kenneth Kiplagat, Into the Twilight Zone: A Comparative Analysis of Legal Aspects of Political and Economic Reforms in Eastern Europe and in Africa (June 30, 1992) (unpublished manuscript, on file with author); Cypher, *The Crisis and the Restructuring of Capitalism in the Periphery*, *in* RESEARCH IN POLITICAL ECONOMY 72 (Paul Zarembka ed., 1988).

24 *See, e.g.*, Peter Finkle & Torsten H. Strom, *Affirmative Action, Natural Law and Justice*, 10 WINDSOR Y.B. ACCESS TO JUST. 79 (1990); David Chang, *Discriminatory Impact, Affirmative Action, and Innocent Victims: Judicial Conservatism or Conservative Justices?*, 91 COLUM. L. REV. 790 (1991).

25 In judging the success or otherwise of interstate cooperation, two aspects are critical. First, such cooperation may be deemed to have failed if any party to the agreement should, after many years, exhibit no benefits from the implementation of the agreement. Secondly, it would have failed if the gap between the rich and the poor among the contracting States should widen rather than narrow. The fact that both of the above are true with respect to Lomé IV reinforces the belief that Lomé IV has not had a positive impact on ACP States.

26 Some ACP States produce practically nothing that they can export to any other country either within regional blocs or to other countries. *See* Dr. Zachary Onyonka, *Matching Resources with the Population: The Battle Is Not Yet Won*, COURIER, no. 130, 1991, at 18, 21.

27 The argument is somewhat different from that advanced by advocates of a New International Economic Order (NIEO). The NIEO is essentially a preference-based argument. *See infra* notes 80-82 and accompanying text.

28 *See* ZARTMAN, *supra* note 19, at 66. Zartman contends that "the shock of total independence—economic as well as political—is the only effective pressure for national integrity and self-improvement." *Id.*

29 Including STABEX, SYSMIN, rules of origin, and industrial cooperation.

30 Regional integration in Africa has had a rather checkered history, with disintegration and decay being as common as regional initiatives and successes. *See, e.g.*, Agippah T. Mugomba, *Regional Organizations and African Underdevelopment: The Collapse of the East African Community*, 16 J. MODERN AFR. STUD. 261 (1978); REGIONAL ORGANIZATIONS: A THIRD

economies or regional blocs whose success is dependent on free trade.[31] Given the intimate connection between EurAfrican colonial ties and the inception of the Lomé Convention, any serious consideration of the Convention must begin from this historical perspective.

II. Historical Perspective of EC-ACP Relations

A number of commentators trace EC-ACP relations to 1885.[32] They argue that the Lomé Convention is a manifestation of continuing imperial tendencies by European nations.[33] According to this school of thought, European States sought to ensure that an interdependency relationship existed between their economies and the African continent.[34] Africa was to provide raw materials for European industries and consume manufactured products. This dynamic worked well for European States while colonialism lasted.[35] The advent of independence movements in the late 1950s and early 1960s posed a threat to this settled practice.[36] Given decades of dependence on African raw materials, European industries would have been devastated if a sudden break in supply were to occur.[37] To guard against this eventuality, European States sought to ensure that

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WORLD PERSPECTIVE (Rana S. Melkote ed., 1990). For a discussion of a new theoretical model for Third World integration processes, see P. Kenneth Kiplagat, Dynamics of Regional Integration in the New World Order: Legal Aspects of Integration Processes in Developing Countries With Particular Reference to the Preferential Trade Area for Eastern and Southern Africa PTA (Forthcoming J.S.D. dissertation, Yale Law School, 1995).

[31] Necessitating the severance of colonial-based ties and a stronger focus on the East and the United States.

[32] European zeal for colonies reached its zenith at the Berlin Conference of 1885. *See* WOODRUFF D. SMITH, EUROPEAN IMPERIALISM IN THE NINETEENTH AND TWENTIETH CENTURIES 119-20 (1982). The Berlin Conference ratified in a formal manner the African interests of the various powers. It established a *modus vivendi* to govern their future relations in respect of territorial interests in Africa. *See* WALTER L. ARNSTEIN, BRITAIN YESTERDAY AND TODAY: 1830 TO THE PRESENT 164, n.2 (3d ed. 1976). *See generally* R.F. BETTS, THE SCRAMBLE FOR AFRICA (2d ed. 1972); FRANCIS AGBODEKA, THE RISE OF THE NATION STATES: A HISTORY OF THE WEST AFRICAN PEOPLES 1800-1964 (1965); ALBERT ADU BOAHEN, TOPICS IN WEST AFRICAN HISTORY (1966).

[33] *See* Amoa, *Relations Between Africa and Europe in Historic Perspective*, 13 U. GHANA L.J. 7, 26-27 (1976).

[34] The dependency theory has caused controversy. Its opponents dismiss it as an approach which confuses cause and effect. *See* Reginald H. Green, *The Child of Lomé: Messiah, Monster or Mouse?*, *in* THE POLITICAL ECONOMY OF EEC RELATIONS WITH AFRICAN, CARIBBEAN, AND PACIFIC STATES 3 (Frank Long ed., 1980). *See also* I. William Zartman, *Europe and Africa: Decolonization or Dependency?*, 54 FOREIGN AFFAIRS 325 (1976). In this article interdependence is used to describe the mere quantitative flow of goods from one entity to another without making reference to the equities of the relationship.

[35] The captive markets boosted business for merchants and investors from the colonizing States. Colonies were incorporated into the economies of the metropoles with common currency, judicial system, and economic policies. Peter Duignan & Lewis H. Gann, *Economic Achievements of the Colonizers*, *in* 4 COLONIALISM IN AFRICA 1870-1960 at 673, 679 (Peter Duignan & Lewis H. Gann eds., 1975).

[36] For a general discussion of the history of independence movements in Africa, see KWAME NKRUMAH, THE STRUGGLE CONTINUES (1973); TOM MBOYA, KENYA FACES THE FUTURE (1959); JENNIFER DAVIS ET AL., NO ONE CAN STOP THE RAIN (1989).

[37] Caution should be exercised not to exaggerate the importance of African territo-

ties on the same old terms would be continued with the newly independent States. A new term was coined by African States to describe this latter relationship: neo-colonialism.[38]

A. *EC and Africa Under the Treaty of Rome*

Looking at the present economic power of the EC and the sophistication of its institutions, one would be surprised to learn that Africa might have frustrated its creation.[39] In negotiations leading to the signing of the Treaty of Rome[40], France insisted that its colonial territories had to be given "Associate" status in the new arrangement.[41] To understand why France threatened not to join the effort to set up the EC unless its overseas territories were somewhat incorporated, one has to understand French colonial philosophy.[42]

France adopted the philosophy of assimilation in its foreign dealings with external territories under its control. This involved intimate contact with the territories with a high level of centralization and autarchy, which in turn resulted in a network of complete control of the territories and their total dependence on France.[43] French colonies in Africa were grouped together to form a Franc Zone[44] in which a uniform economic and monetary system was instituted.[45] Trade was essentially in the form of barter within a heavily protective and preferential regime. French manufactured goods

ries to European colonialism. *See* MARJORIE LISTER, THE EUROPEAN COMMUNITY AND THE DEVELOPING WORLD 14-16 (1988).

38 Nkrumah described neo-colonialism in the following terms:

> The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside. . . . Neo-colonialism is also the worst form of imperialism. For those who practice it, it means power without responsibility and for those who suffer from it, it means exploitation without redress.

KWAME NKRUMAH, NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM ix, xi (1965).

39 *See infra* notes 50-53 and accompanying text.

40 *See supra* note 2 and accompanying text.

41 For a discussion of the negotiation process, see G. Van Benthem van den Bergh, *The New Convention of Association with African States*, 1 COMMON MKT. L. REV. 156, 156-60 (1963-64) [hereinafter Bergh].

42 *See infra* note 43 and accompanying text.

43 Unlike the English, who practiced the divide-and-rule political system, the French sought to literally create black Frenchmen through its assimilation policy. French colonial territories suffered from a heavy dose of French cultural indoctrination the purpose of which was to ensure that the colonized peoples understood that by following and adopting French culture, they could be made bona fide French nationals. *See generally* RAYMOND F. BETTS, ASSIMILATION AND ASSOCIATION IN FRENCH COLONIAL THEORY 1890-1914 (1960); WILLIAM B. COHEN, THE FRENCH ENCOUNTER WITH AFRICANS (1980); DOROTHY S. WHITE, BLACK AFRICA AND DEGAULLE (1979).

44 A majority of former French colonies have adopted the French Franc as their currency or have pegged the value of their currency to it. West and Central African French-speaking states have a unitary monetary policy supervised by Paris in what is called the "Franc Zone". *See* AFRICA SOUTH OF THE SAHARA 1978-79 107 (8th ed. 1978); *The CFA System*, 10 IMF STAFF PAPERS 845 (1963).

45 *Id.*

were exchanged for African raw materials at prices in excess of prevailing world prices on both sides.[46] However, as the African territories became more efficient, France found itself unable to absorb the excess raw materials generated by this efficiency.[47] At the same time, administrative costs were rising and consuming an even larger portion of the French budget.[48]

When it came to negotiating European integration, France had three major worries. First, French industries relied heavily on raw materials from its colonies more than any of the other negotiating States.[49] Second, France felt that surplus production from its colonies would find a market in the wider market that was being proposed. Third, a number of commentators have hinted that the French were also motivated by a desire to dump some of the costs of administering its colonies on the other European States.[50] As will be argued below, the latter two reasons certainly could not have been strong enough to tempt France to forgo the advantages of European integration.[51]

However, French reliance on raw materials from its colonies was critical to its continued industrial development. French insistence eventually prevailed over the objections of the other[52] negotiating States. The fact that the other European States acceded to French demands also illustrates that they did not consider incorporation as a potential drain on their own economies. The Treaty of Rome[53] was

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46 France, for example, paid 15% above world market prices for African agricultural products, while it charged a premium on French goods imported by Africans. Wilfred A. Ndongko, *The Economic Origins of the Association of Some African States with the European Economic Community*, 16 AFR. STUD. REV. 219, 226 (1973). This premium price varied from product to product: wheat was sold at 80% above the market price and French trucks cost 100% more than comparable American ones. *Id.*

47 Bergh, *supra* note 41, at 156.

48 *Id.*

49 These included West Germany, Belgium, Netherlands, Italy, and Luxembourg.

50 *See generally* Lynn Krieger Mytelka & M. B. Dolan, *The Political Economy of EEC-ACP Relations in a Changing International Division of Labor*, *in* INTEGRATION AND UNEQUAL DEVELOPMENT: THE EXPERIENCE OF WESTERN EUROPE (Dudley Seers & Marja Liisa Kiljunen eds., 1980).

51 *See infra* note 63 and accompanying text.

52 Germany in particular saw this as a French maneuver to maintain her colonial status. In the midst of accusations and counter-accusations, President Charles de Gaulle was caricatured in European newspapers as a masquerader seeking to give the impression that he was a third world spokesman in order to deflect attention from his real interests: to ensure European access to African minerals. *See* Simon Serfaty, *The United States, Western Europe, and the Third World: Allies and Adversaries*, *in* WORLD TRADE COMPETITION, WESTERN COUNTRIES AND THIRD WORLD MARKETS 18-19 (Center for Strategic and International Studies ed., 1981). *See also* ELLEN FREY-WOUTERS, THE EUROPEAN COMMUNITY AND THE THIRD WORLD: THE LOMÉ CONVENTION AND ITS IMPACT 13 (1980). It was even suggested that the French were seeking assistance from the EC to be channelled to French colonies so that French resources could be freed for prosecuting the war in Algeria. CAROL C. TWITCHETT, EUROPE AND AFRICA: FROM ASSOCIATION TO PARTNERSHIP 14 (1978).

53 *See supra* note 2 and accompanying text.

signed incorporating a provision[54] granting Associate status to colonies of the contracting states. This provision was quickly attacked as an attempt to continue the economic subjugation of Africa and a confirmation of the practice of neo-colonialism by European States.[55] This attack was not surprising when considered in the context of heightened efforts to achieve self-determination which were beginning to succeed.[56]

In any event, the Treaty of Rome[57] and its Associate regime soon reached a dead-end street. The Treaty was premised on the understanding that the Associate territories would continue to be colonies of EC member states.[58] In fairly short order, however, many of these territories gained independence. Independence was inconsistent with the Treaty, and a new basis of association had to be quickly thought out.[59] A solution was finally found under the First Yaounde Convention.[60] The fact that EC members initiated[61] the creation of this relationship supports the argument that EurAfrican association has always been a European prerogative calculated to ensure that association was on terms consistent with EC interests.[62]

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54 *See* Treaty of Rome, *supra* note 2, arts. 131-36. The Treaty designated the following group as Associates:

> Senegal, Sudan, Guinea, Ivory Coast, Dahomey, Mauritania, the Niger and the Middle Congo, Ubangi-Shari, Chad and Gabon, St. Pierre and Miquelon, the Comoro Archipelago, Madagascar and dependencies, French Somali Coast, New Caledonia and dependencies, French Settlements in Oceania, Togoland, the Southern Antarctic Territories, the French Trusteeship Territory in the Cameroons, Belgian Congo and Rwanda-Urundi, the Italian Trusteeship Territory in Somaliland and the Netherlands New Guinea. Annex IV.

55 Kwame Nkrumah opposed "Association" status under the 1957 Treaty of Rome, *supra* note 2, calling it a "European imperialist scheme, a hindrance to an independent neutral policy, an obstacle to intra-African economic ties and a guarantee of cheap raw materials for imperialist powers." *See* ARNOLD RIVKIN, AFRICA AND THE EUROPEAN COMMON MARKET 41 (1966). To some the Treaty was to neo-colonialism what the Berlin Treaty of 1885 was to colonialism. *See* COLIN LEGUM, PAN-AFRICANISM 120 (2d ed. 1965). *See also* ALI MAZRUI, TOWARDS A PAX AFRICANA 63, 75-76, 89 (1967).

56 *See supra* note 36 and accompanying text.

57 Treaty of Rome, *supra* note 2.

58 *Id.* art 131.

59 *Id.*

60 Convention of Association Between the European Economic Community and the African and Associated African States, with Related Agreements, July 20, 1963, 2 INT'L LEGAL MATERIALS 971 (entered into force Jan. 6, 1964) [hereinafter Yaounde I]. Convention of Association Between the European Economic Community and the African and Malagasy States Associated with the Community, July 29, 1969, 9 INT'L LEGAL MATERIALS 484 (1970) [hereinafter Yaounde II].

61 France continued to be the strongest proponent of EurAfrican Association. Support also came from Belgium and the EEC Commission. The Germans and the Dutch, though they were eventually won over, were initially opposed to the continuation of the Association and would have preferred a temporary agreement. For a discussion of this point, see C. Dodoo & Robert Kuster, *The Road to Lomé*, *in* THE LOMÉ CONVENTION AND A NEW INTERNATIONAL ECONOMIC ORDER 15 (Franz Alting von Geusen ed., 1977).

62 *See infra* note 91 and accompanying text.

B. *From Yaounde to Lomé*

In real terms, Yaounde I guaranteed its African signatories the same status as that enjoyed by Associate members of the EC under Article 131 of the Treaty of Rome.[63] Associate membership was crafted by the four original members of the Treaty of Rome[64] without any consultation with the inhabitants of the Associate territories, whereas Yaounde I was a bilateral agreement. In studying Yaounde I some commentators have tended to highlight the fact that the Yaounde I association was the product of negotiations between two blocs of soverign nations.[65] However, such commentators fail to give an adequate explanation of how sovereign African States could willingly have embraced terms similar to those that applied to them in their prior state of colonialism.[66] In this context, the only meaningful aspect of the sovereignty of African States is that it was illusory.[67] The eighteen[68] Associates who signed the Yaounde I agreement in 1963 and who were officially constituted as the *Etats Africains et Malagache Associés* (Association of African and Malagasy States or AAMS) had little bargaining power. Most were former French colonies whose economies, as shown above[69], were intricately meshed with the French economy and who could not survive

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63 *See supra* note 2 and accompanying text.

64 *Id.*

65 John Ravenhill, for example, contends that there has always been a posturing by sovereign African states in EurAfrican negotiations with African States coming together and presenting their common positions as a bloc. JOHN RAVENHILL, COLLECTIVE CLIENTELISM: THE LOMÉ CONVENTIONS AND NORTH-SOUTH RELATIONS 5-34 (1985). Ravenhill categorizes this as an example of "collective clientelism." In dismissing the dependency theory, Ravenhill argues that even strong economic powers find their economic development conditioned by external forces. As an example, he quotes an old adage that "when the United States sneezes, Europe catches a cold" to illustrate American "conditioning" of European economies in the postwar period. *Id.* at 6.

This analysis, to say the least, is simplistic. It ignores the philosophical difference between EurAmerican postwar relations on the one hand and EurAfrican relations on the other. The former relationship was conditioned by genuine friendship (or how else can the Marshall Plan be explained) and an attempt was made to strengthen Western Europe so that it could be a strong United States ally in its efforts to repel Soviet imperial designs. There was no aspect of reciprocity in the relationship requiring Western Europe to pay back the favor. The latter relationship was not *bona fide*, in the sense that there existed a mutuality of benefits. It was a one-sided affair from its very inception.

66 To be sure, there were new provisions in the Yaounde Convention that distinguished it from the Associate regime of art. 131 of the Treaty of Rome, *supra* note 2. For example, "cultural progress," "economic diversification," and "industrialization" were new concepts in EurAfrican relations. However, the Yaounde Convention was clearly modelled on pre-existing notions held by members of the EC, and in practical terms, the introduction of seemingly new ideas was a sham.

67 Kojo Yelpaala, *The Lomé Conventions and the Political Economy of the African-Caribbean-Pacific Countries: A Critical Analysis of the Trade Provisions*, 13 N.Y.U. J. INT'L L. & POL. 807, 817 (1983).

68 Burundi, Cameroon, the Central African Republic, Chad, Congo (Leopoldville), Congo (Brazaville), Dahomey, Gabon, Upper Volta, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, and Togo.

69 *See supra* note 43 and accompanying text.

without some association with France.[70] Viewed from this perspective, Yaounde I neatly fits the definition of neo-colonialism.[71]

Yaounde I was succeeded by Yaounde II, which was signed in 1969 and sought to continue EurAfrican relations on the same terms as Yaounde I. No new initiatives were incorporated and the ambivalence of some EC members was obvious.[72] British accession to membership in the EC also complicated matters.[73] Hoping to expand its influence over a wider area and recognizing the hostility of English-speaking Africa towards the Yaounde Conventions, the EC declared its intention to collaborate with States economically comparable to the AAMS.[74] The Lagos Convention[75] was perhaps the most significant arrangement that followed this declaration. Nigeria was the leading African economy and the EC was eager to develop links to take advantage of opportunities presented by Nigerian economic wealth. However, the expectations did not materialize and the Lagos Convention was never ratified.[76] In East Africa, the EC was

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[70] Guinea is an example of such a colony. In 1958, Guinea, under Ahmed Sekou Toure, became the only French African colony to vote against the proposed French Community which was supposed to coordinate issues of foreign policy, defence, currency, economic and financial policy, supervision of justice, higher education, transport, and telecommunications. Guinea instead opted for independence from France. The French under De Gaulle proceeded to "punish" Guinea for this apparent snub. The French "stopped all bank credits, prevented technicians and supply ships from arriving, withdrew administrative personnel, light bulbs and telephone wires, offered aid to enemies of the regime, and refused to recognize the new State." LISTER, *supra* note 37, at 8. *See also* GEORGE CHAFFARD, 2 LES CARNETTS SECRETS DE LA DECOLONISATION 167 (1967).

[71] R.H. Green has concluded that:

> Yaounde II and its predecessors were unabashedly neo-colonial. There was no pretence of equality—suppliants met masters. Nor was structural change on the agenda. The EEC saw the geopolitics of EurAfrica in terms of reductionist, virtually static comparative advantage—their primary products, our manufactured exports, overseas investors and export personnel.

Green, *supra* note 34, at 5.

[72] Belgium, Germany, and the Netherlands made no attempt to hide their growing lack of enthusiasm. *See* LISTER, *supra* note 37, at 45.

[73] Treaty Concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and European Atomic Energy Community, Brussels, Jan. 22, 1972. The United Kingdom, like France before it, conditioned her membership to the granting of Associate status to Commonwealth countries. *See* WALL, THE EUROPEAN COMMUNITY'S LOMÉ CONVENTION 5 (1975). The EC admitted the United Kingdom on its terms but rejected any association with Asian Commonwealth countries. *See* Dharam P. Ghai, *Asian Commonwealth Countries and the EEC*, London, Commonwealth Secretariat, Commonwealth Economic Papers, No. 2, 1973.

[74] *See* Arnold Rivkin, *Africa and the EEC-New Interregional Associations*, 2 J.L. & ECON. DEV. 56, 58 (1967). Unlike AAMS association, which was concluded under Part IV of the Treaty of Rome, *supra* note 2, however, the new associations were to be created under art. 238, which is the same legal provision by which countries such as Greece are associated with the EC.

[75] Agreement Establishing an Association Between the EEC and the Republic of Nigeria, July 16, 1966, *reprinted in* 5 INT'L LEGAL MATERIALS 828 (1966) [hereinafter Lagos Convention].

[76] The Nigerian civil war (Biafra War of 1966) frustrated the ratification of the

able to conclude the Arusha Convention[77] bringing together the countries of Kenya, Tanzania and Uganda. These arrangements had little impact on trade and economic relations between the EC and the Associated States.

In the meantime, a majority of developing countries were beginning to realize that trade and economic interactions between developing and developed countries were skewed in favor of the latter group of nations. After the euphoria of independence[78] had died down, the realities of international economic and political maneuvering by the rich nations of the North began to dawn on the new states. This frustration was articulated under the general banner of a New International Economic Order (NIEO).[79]

This new philosophy received international prominence at the Non-Aligned Summit Conference in Algeria in 1973.[80] President Houari Boumedienne of Algeria subsequently took the debate to the United Nations Special Session on Raw Materials.[81] A concurrent

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Treaty. France openly sided with Biafra in its attempts to secede, which brought upon France the wrath of Nigerians. *See* R. COLLINS, NIGERIA IN CONFLICT 157 (1970).

[77] Agreement Establishing an Association Between the EEC and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya, July 26, 1968, *reprinted in* 8 INT'L LEGAL MATERIALS 741 (1968).

[78] *See supra* note 36 and accompanying text.

[79] The NIEO is a concept strongly supported by developing countries which seeks to introduce equitable principles in trade and economic relations between developed and developing countries. The origin of this concept, at least in its popular form, is credited to the Bandung Conference of Asian-African States of 1955. *See Asian-African Conference Communique*, Bandung, April 24, 1955, *in* A NEW INTERNATIONAL ECONOMIC ORDER: SELECTED DOCUMENTS 1945-75 1:2-3 (Alfred George Moss and Harry N.M. Winton compilers, 1975). For a general discussion of NIEO, see T. FRANK & M. MANUANSANGU, THE NEW INTERNATIONAL ECONOMIC ORDER: INTERNATIONAL LAW IN THE MAKING? (1982); Karl P. Sauvant, *The NIEO Program: Reasons, Proposals, and Progress*, *in* CHANGING PRIORITIES ON THE INTERNATIONAL AGENDA 78-138 (K. Sauvant ed., 1981).

[80] In its original conception, the non-aligned movement comprised 77 developing countries which considered themselves non-aligned. It was a creature of the Cold war. The number has since expanded and presently includes almost all developing countries. With the ending of the Cold War, the group has had to adjust, de-emphasizing its political role and highlighting the common economic problems facing its members. The Malaysian Conference in May, 1992, confirmed the economic bias of the organization. *See* Yelpaala, *supra* note 67, at 807. *See also* Karl P. Sauvant, *Organizational Infrastructure for Self-Reliance: The Non-Aligned Countries and the Group of 7*, *in* THE CHALLENGE OF NORTH-SOUTH COOPERATION 32-72 (B. Pavlic ed., 1983).

[81] In his address, President Boumedienne stated, *inter alia*, that:

> The will to gain and cling to their position of dominance over world resources has been the guiding principle in the behavior of the major imperialist powers of the world. Under multifarious historical guises the colonialist and neo-colonialists phenomenon has at all times involved control of world resources by the strong powers to the detriment of the weaker. In fact, the colonial and imperialist powers accepted the principle of the right of peoples to self-determination only when they had already succeeded in setting up the institutions and the machinery that would perpetuate the pillage established in the colonial era.

See U.N. GAOR, 29th Sess., 2208th mtg., U.N. Doc. A/PV 2208 (1974). The campaign by developing countries resulted in the adoption of the Charter of Economic Rights and Duties of States on December 12, 1974. *See* G.A. Res. 3281, U.N. GAOR, 29th Sess., Supp.

development which would have a devastating impact on the world economy was also taking shape: the 1973-74 oil crisis.[82] The Organization of Oil Exporting Countries (OPEC)[83] was able to demonstrate how a relatively small number of Third World countries could, through joint action, wreak havoc on international economics and finance.[84] The combination of these two developments suddenly brought to the forefront the importance of raw material producers, particularly to the economies of Western countries. For a while, developed nations sought to pacify the "rebellion" by developing countries through gestures holding out the possibility of genuine reform in the international economic order. The Lomé Convention of 1975 was a product of this process.

C. *The Lomé Conventions: New Initiative or Continuation of an Old Order*

The factors[85] that prompted negotiations[86] that eventually pro-

No. 31 at 50, U.N. Doc. A/9631 (1974). This resolution was, however, adopted with some reservations by the United States, West Germany, France, Japan and the United Kingdom, which ensured that its implementation could not succeed. For a further discussion, see R. MEAGHER, AN INTERNATIONAL REDRISTRIBUTION OF WEALTH AND POWER: A STUDY OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES (1979).

82 As a consequence of United States' support for Israel, Arab countries in league with other third world oil exporters, unilaterally increased the price of oil and also cut back on its production. The effects on Western economies was devastating with oil prices increasing by as much as 400%. See Edith Penrose, *The Development of Crisis*, *in* THE OIL CRISIS 39 (Raymond Vernon ed., 1976).

83 OPEC still continues to influence oil prices with Saudi Arabia as its leader.

84 Care should be exercised not to exaggerate the possible replication of this kind of action in respect of other primary products. Energy resources are products *sui generis*. The extent of reliance on energy resources and the scarcity of such resources are characteristics that few other commodities can claim. *See* PETER R. ODELL, OIL AND WORLD POWER: BACKGROUND TO THE OIL CRISIS 200 (1974). Even though oil as an energy resource still possesses the above qualities, political developments at the world stage have since ensured that OPEC cannot exercise the same power it possessed in the early 1970s. In 1980 the United States, in what subsequently has come to be known as the Carter Doctrine, made the following declaration:

> Let our position be absolutely clear: An attempt by any outside force to gain control of the Persian Gulf will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force.

16 WKLY. COMP. PRES. DOC. 197 (Jan. 23, 1980). President Reagan even went further and stated that no change of government could take place in certain Gulf States without the prior sanctioning of such act by the United States. In effect, the major oil producing countries of the Persian Gulf are U.S. surrogates and cannot, therefore, prejudice U.S. interests.

The irony of the 1973-74 oil crisis is that, though the immediate intention was to disrupt Western economies, the action has had its most significant effect on non-oil producing countries of the Third World, creating balance of payments problems due to the high oil prices prevailing in the world market.

85 Akilagpa Sawyer maintains that the oil shock coupled with the full effect of raw material blackmail by developing countries explains EC anxiety to forge links with developing countries. *See* Akilagpa Sawyer, *The ACP-EEC Convention of Lomé: An Aid to the Eradication of Underdevelopment or to the Consolidation of Dependence?*, 14 MELANESIAN L.J. 19, 24 (1986). If this was the case,

duced the Lomé Convention may be debatable, but there is little doubt that the new arrangement produced great excitement on both sides. The euphoria[87] at the signing of the Treaty tempted many a diplomat into uttering unguarded statements. The then EC President, Francois Xavier Ortolli, remarked that "the event in which we are taking part today constitutes a major turning point in the international economic relations in the second half of the twentieth century—in fact, in history itself."[88] Baba Ca, the Senegalese Finance Minister and Chairman of the ACP Council of Ministers, described the agreement as "revolutionary."[89] There was a general sense that this agreement was unique and a great accomplishment. ACP States were persuaded that the agreement was, in effect, the beginning of the NIEO. However, the EC's rejection of "new order" and its preference for "new model" phraseology should have indicated to ACP States what lay ahead.[90]

The EC congratulated itself for having fashioned out a treaty within a rather hostile international political climate.[91] However, even in this early phase, and notwithstanding the euphoria surrounding its launching, some minds[92] were already considering the Lomé Convention a temporary arrangement which should not tie down

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> the North as a whole has reassessed the Southern challenge and found that except for oil it has a nuisance danger and a very low priority in comparison to domestic and North-North employment, inflation, government deficit and external payments problems.

R.H. Green, *EEC Enlargement and EEC/South Trade Prospects and Portents*, *in* CIIR, THE RENEGOTIATION OF THE LOMÉ CONVENTION: A COLLECTION OF PAPERS (CIIR/Trocaire, London, 1978).

86 The negotiation process was intense. It comprised, *inter alia*, 46 ACP countries, 18 months of negotiations, 183 negotiation sessions, 350 joint ACP-EC documents and 493 coordinating meetings among ACP countries. OLU SANU, THE LOMÉ CONVENTION AND THE NEW INTERNATIONAL ECONOMIC ORDER 1 (The Nigerian Institute of International Affairs, Lecture Series No. 18).

87 The stage for the signing of the Convention was an African showcase of pomp and lavishness. *Id.* at 2.

88 COURIER, Mar.-Apr. 1975, at 19.

89 *Id.* at 7.

90 SANU, *supra* note 86, at 31.

91 EC Commissioner Cheysson remarked that:

> it is at a time when too many countries and too many people, in the industrial countries and in the Third World, are talking in terms of confrontation, that we have firmly committed ourselves to the dynamics of cooperation.

COURIER, *supra* note 88, at 13. Mr. Cheysson was clearly referring to the NIEO debate and it must be said that the EC regarded the Lomé Convention as a successful device in repelling the drive for a NIEO. *See* Green, *supra* note 34, at 4.

92 Olu Sanu, the chief ACP negotiator, stated, in reference to Nigerian membership, that:

> The truth of the matter is that it will not be in our [Nigerian] national interest to be a part of the Lomé Convention beyond 1985. To do so will mean that we will tighten the vertical relations between ACP States and the Community far more extensively than in the past and create enclaves that may well have the result of strengthening the pattern of foreign multi-nationals in the economies of ACP States.

SANU, *supra* note 86, at 35.

ACP States indefinitely. In a short while, ACP States soon realized that what promised to be the foundation of a new relationship was in fact the basis for the perpetuation of the old order of EurAfrican relations, albeit under different nomenclature. The Lomé Convention certainly represented a significant improvement over, for example, the Yaounde Conventions.[93] It contained new features[94] and created a fund[95] to help ACP States. These improvements were, however, engulfed by the consequences of huge imbalances that existed between the two entities and which the Lomé Convention in fact entrenched.

III. The Unmasking of the Facade

Whereas a number of ACP delegates[96] who negotiated the first Lomé Convention were quick to realize that no real breakthrough had been achieved, a majority of ACP governments genuinely believed that a new epoch in EurAfrican relations was in the making.[97] With the benefit of hindsight, it is easy to criticize ACP reaction as naive and a misreading of the then prevailing international economic and political perceptions. For how could ACP States contemplate such a fundamental change in EC conduct towards developing countries when for more than a century the EC and its constituent members had maintained a steady philosophy even in the face of determined protestations by developing countries? Yet the situation was such that the declining and impoverished ACP economies were willing to accept simple gestures of help as major achievements, and Lomé should be viewed in this context.[98]

Painting with broad strokes, a major criticism of Lomé has been that substantial aid has not been directed to ACP States. This criticism presupposes either that the EC was altruistically committed to this flow of aid or that treaty obligations under Lomé and the spirit of the negotiations required such action. The fact that neither of the above is true indicates that there has been a flaw in the appreciation

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93 Some commentators have judged Lomé to have been a success simply because it represented a marked improvement over the Yaounde Conventions. *See* RAVENHILL, *supra* note 65, at 94-95.

94 For example, STABEX and SYSMIN. *See infra* notes 103-125 and accompanying text.

95 European Development Fund (EDF), art. 224(i).

96 *See* SANU, *supra* note 86, at 35.

97 *Id.* at 2.

98 Zartman asserts that the expectations of ACP members,

> turned into the horns of dilemma because in economics, as in security, no state is an island and because co-operation always poses the problems of domination. Thus, between an independence that is impossible and an interdependence that is dangerous, middle solutions have to be found.

Quoted in James A. MacMahon, *The Renegotiation of Lomé: Inventing the Future?*, 14 EUR. L. REV. 140 (1989).

of basic concepts of cooperation by such critics.[99] Cooperation does not entail a one-way flow of resources nor does it normatively require a paternalistic approach by the rich towards the poor.[100] Sadly, cooperation in this flawed sense has been the dominant perception in developing countries and has frustrated meaningful cooperation among developing countries and with developed countries.[101] Developing countries have so often confused the consequences of a bad treaty with *mala fides* on the part of the other contracting party.

Conversely, cooperation has increasingly been used as a device by developed countries to ensure dominance over developing countries. As one writer has indicated,

> it has become a common supposition in many quarters that many developed countries employ the guise of such cooperation arrangements to ensure continuous supply of needed raw materials from the developing countries. It is, therefore, not improbable that even after a scholarly theoretical design of a good-spirited system of cooperation between developed and developing countries, the former may not make any genuine efforts to contribute to the meaningful development of the latter; rather each body may seek ways to outwit the other.[102]

ACP countries may have construed cooperation in a rather simplistic, if not erroneous, manner, but there can be no doubting that the EC was aware of the ACP expectations and deliberately worked out an arrangement that doused these expectations while retaining a facade of genuine cooperation.

A. Stabilization of Export Earnings

Hailed as the major innovation of the Lomé Convention,[103] the Stabilization of Export Earnings from Agricultural Commodities (STABEX)[104] has presided over the collapse in prices of those commodities it was supposed to support. As originally conceived,[105] STABEX was to act as a compensatory financing scheme to help ACP States stabilize their export earnings with respect to certain com-

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99 *See* Joshua C. Anyiwo, *Industrial Cooperation in the Lomé Convention*, *in* THE LOMÉ CONVENTION AND A NEW INTERNATIONAL ECONOMIC ORDER 91, 91-92 (Frans A.M. Alting von Geusau ed., 1977).

100 *Id.*

101 *Id.* As an example, the East African Community collapsed partly because of the perception by Tanzania and Uganda that Kenya was reaping more benefits because of her sophisticated and well advanced economy. This example writ-large, fits into the perception exhibited by supporters of the one-way-flow theory. *See* Agrippah T. Mugomba, *Regional Organizations and the African Underdevelopment: The Collapse of the East African Community*, 16 J. MODERN AFR. STUD. 261, 261-272 (1978).

102 Anyiwo, *supra* note 99, at 92.

103 Lome IV, *supra* note 12, art. 186.

104 *See* Gerrit Faber, *The Economics of STABEX*, 18 J. WORLD TRADE L. 52 (1984).

105 STABEX was first promulgated under articles 16-19 of Lomé I. *See* Lome I, *supra* note 12, arts. 16-19.

modities.[106] Under this scheme, a transfer of funds to an ACP Member State would take place if that member experienced anything below a 7.5% shortfall in earnings from a listed product.[107] As a system, it was a new device representing a significant shift from conventional forms of economic cooperation, such as preferential market access.[108] It was also a system that caused great optimism but which in practice had little success for ACP States.

There are major problems with the structuring of STABEX which have frustrated the expectations of ACP States. STABEX only applies to a group of listed products.[109] This group of products is narrow in scope and is composed of a majority of products that are of little consequence to ACP economies.[110] An ACP member may not qualify for a transfer of funds unless such member's actual earnings from a product in question represents 7.5% or more of its total export earnings,[111] and the price for that product falls 7.5% below the reference level established by STABEX.[112] A gradual deterioration in earnings from a listed product will go uncompensated, as will the decreased purchasing power of the ACP exports.[113]

Another feature of STABEX which has exposed its limited impact on ACP economies is its treatment of manufactured and semimanufactured products.[114] Such products are not the listed com-

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106 STABEX is similar to a scheme operated by the IMF called the Compensatory Financing Facility (CCF). *See* J.D.A. Cuddy, *Compensatory Financing in the North-South Dialogue: The IMF and STABEX Schemes*, 13 J. WORLD TRADE L. 66, 66-75 (1979); J.M. Fingers & Dean A. Derusa, *The Compensatory Financing Facility and Export Instability*, 14 J. WORLD TRADE L. 14 (1980); UNCTAD V, *Compensatory Financing: Issues and Proposals for Further Action*, Agenda Item 10(a), U.N. Doc. TD/229/Supp. 1, at 17 n.9 (1979) [hereinafter UNCTAD V, *Compensatory Financing*].

107 Faber, *supra* note 104, at 54.

108 *See* Hamisi S. Kibola, *STABEX and Lomé III*, 18 J. WORLD TRADE L. 32 (1984). *See generally* CAROL C. TWITCHETT, A FRAMEWORK FOR DEVELOPMENT: THE EEC AND ACP (1981).

109 Lomé I, *supra* note 12, art. 17.

110 For example, the list of products contained in Lomé I includes only seven of the eighteen products covered by the Integrated Program for Commodities (IPC). *See* UNCTAD V, *Compensatory Financing*, *supra* note 106, at 17.

111 Lomé I, *supra* note 12, art. 17(2). The 7.5% threshold requirement does not apply to the least developed ACP States which only need to show that the product represents 2.5% of its total earnings from exports. *Id.*

112 The reference level established by STABEX reflects the average of the product's earnings during the four years prior to the application. *Id.* art. 19(1)-(2). Other restrictions also applied, for example, shortfalls that have been induced by an internal government policy are not considered. *Id.* art. 19(4)(a). Nor will funds be transferred if the shortfall is a result of significant changes in the general export patterns of the ACP State. *Id.* art. 19(4)(b).

113 A common feature of ACP experience with STABEX is that almost all members have been adversely affected by deterioration in commodity prices and the collapse of commodity agreements. *See* OECD, WORLD ECONOMIC INTERDEPENDENCE AND THE EVOLVING NORTH-SOUTH RELATIONSHIP 47 (1983); Stevens, *Commodity Prices in the 1980s: A Decade of Decline for the ACPs*, COURIER, July-Aug. 1989, at 60.

114 Lomé I, *supra* note 12, art. 17.

modities under Article 17.[115] This has prompted some commentators[116] to conclude that the EC "was not as interested in stabilizing ACP export earnings as it was interested in stabilizing the quantities of certain raw material imports that were of particular importance to its own interests."[117] As will be discussed below,[118] this aspect of STABEX conforms with the overall design of the EC to ensure that ACP States remained producers of primary products and importers of EC manufactured goods.

With the exception of iron ore, STABEX covered only agricultural products.[119] Because a major criticism of STABEX was its failure to include minerals, which were the basic exports of some ACP States, a mineral compensatory financing scheme (SYSMIN)[120] was included in Lomé II.[121] In actuality, SYSMIN did not operate as an earnings stabilizer, but rather as an aid project geared towards mineral production and export to EC mineral consumers.[122] This, coupled with the fact that disbursements of funds under the program was at the discretion of the EC,[123] stifled any meaningful benefit that ACP States might have derived. In addition, SYSMIN suffered from the same shortcomings that Stabex exhibited.[124] The incorporation

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[115] *Id.*

[116] *See* Yelpaala, *supra* note 67, at 856.

[117] *Id.*

[118] *See infra* note 132 and accompanying text. Suffice it to say that RAVENHILL, *supra* note 65, maintains that STABEX was a proposal put forward in "tempore non suspecto"—without consideration of OPEC's successful action in October 1973. He further states that STABEX has often been misperceived as the EEC's response to growing fears regarding future security of supply of raw materials brought about by the oil crisis of 1973. RAVENHILL, *supra* note 65, at 99. This is not a persuasive analysis considering that the EC ensured that most of the raw material products that it absorbed from ACP States were not covered by STABEX. The inference to be drawn from this omission is that the EC wished to encourage the fall in price of those commodities it considered vital to its interests. *See also supra* note 117 and accompanying text.

[119] Lomé I, *supra* note 12, art. 17.

[120] Sometimes also referred to as MINEX.

[121] Lomé II, *supra* note 12, arts. 49-56. The incorporation of SYSMIN was facilitated by the personal lobbying of Chancellor Helmut Kohl of Germany. *See* Sawyer, *supra* note 85, at 34. It has been hailed as a great innovation and as an indication of Lomé II's superiority over Lomé I. *See* K.R. Simmonds, *The Second Lomé Convention: The Innovative Features*, 17 COMMON MKT. L. REV. 415, 421-23 (1980); C.N. Kirkpatrick, *Lomé II*, 14 J. WORLD TRADE L. 352, 357 (1980). Lomé II, *supra* note 12, however "was regarded as a disappointment because it did not radically differ from Lomé I and it did not seem to promise any fundamental re-structuring of relations between developed and developing countries." LISTER, *supra* note 37, at 156. Another commentator has stated that, "while Lomé I had been seen as a part of the road to a new international economic order (NIEO), its successor, Lomé II was widely perceived as the end of that road." Remarks quoted from a Seminar of the University Association for Contemporary European Studies, Nov. 24, 1979. *See also* Nabudere, *Stabilization of Export Earnings (STABEX) in the Lomé Convention*, 13 U. GHANA L.J. 59 (1976).

[122] LISTER, *supra* note 37, at 159.

[123] Sawyer, *supra* note 85, at 35. Another feature of SYSMIN that distinguished it from STABEX was that unlike in the latter arrangement, SYSMIN transfers were regarded, *stricto sensu*, as loans which had to be repaid. *Id.*

[124] *See* Yelpaala, *supra* note 67, at 860. SYSMIN was in fact so skewed in favor of the

of SYSMIN into the Lomé framework coincided with the rapid deterioration of prices for mineral exports from ACP States and the collapse of commodity agreements.[125]

B. Rules of Origin and Safeguard Clauses

"Rules of origin" are traceable to Lomé I[126] which provided that "products originating in the ACP States shall be imported in the community free of custom duties and charges having equivalent effects."[127] Originating products referred to those products which were "wholly obtained in one or more ACP countries"[128] and a product did "not qualify for trade preferences . . . if the value of materials obtained outside the ACP exceeded forty or fifty percent of the value of the finished product."[129] The effect of this restriction was that ACP States[130] with budding manufacturing sectors were deprived of EC market access. This fostered an asymmetry requiring these States to concentrate on raw material production if they hoped to benefit from the Lomé arrangement.[131] The poor performance of ACP exports to the EC can largely be explained by policies in the Lomé arrangement which have fostered restrictive trade coupled with the limited capacity of ACP States to export processed primary products and manufactured goods.[132]

When, on the rare occasion, ACP exports were able to escape

EC that incorporation into the Treaty was only possible through EC pressure. *See* Martin, *ACP-EEC Cooperation in Mining, Energy and Investment*, COURIER, May-June 1982, at 25. *See also* Jürgen Voss, *Protection and Promotion of European Private Investment in Developing Countries—An Approach Towards a Concept For a European Policy on Foreign Investment: A German Contribution*, 18 COMMON MKT. L. REV. 363, 381 (1981).

125 For a discussion of the operation of commodity markets and the role played by multi-national corporations in fixing commodity prices, see UNCTAD V, *Marketing and Distribution of Primary Commodities: Areas for Further International Cooperation*, Prov. Agenda Item 10(a), U.N. Doc. TD/229/Supp. 3, at 13 (1979); Faber, *supra* note 104, at 53.

126 *See supra* note 12 and accompanying text.

127 Lomé I, art. 2(1).

128 Ndiva Kofele-Kale, Comment, *Title V of the 2nd Lomé Convention Between the EEC and ACP States: A Critical Assessment of the Industrial Cooperation Regime as it Relates to Africa*, 5 NW. J. INT'L L. & BUS. 352, 367 (1983).

129 *Id. See also* Matthew McQueen, *Trade Co-operation in the Lomé Convention: The Need for Reform*, *in* THE RENEGOTIATION OF THE LOMÉ CONVENTION 45 (1978).

130 Kofele-Kale, *supra* note 128, at 367.

131 *See* Madeley, *Lomé 2 Falls Way Short*, 100 AFRICA 52, 53 (1979). In response to ACP protestations on the unfairness of the "rules of origin" arrangement, the EC has adopted a two-pronged line of defense. Firstly, it has asserted that each individual case has always been analyzed individually. In support of this contention the EC points to the fact that all five requests seeking waiver of applicability of the rules were granted after the showing of sufficient evidence that the rules impaired the development and expansion of industrial capacity in the ACP State in question. McQueen, *supra* note 129, at 45. Secondly, the EC supports these rules on the basis that they pre-empt the establishment of "foot-loose off-shore assembly industries . . . which do not contribute to the development" of ACP States. *Id.*

132 *See* Mathew McQueen, *Lomé and Industrial Co-operation: The Need for Reform*, 17 J. WORLD TRADE L. 524 (1983).

capture by "rules of origin," the application of the "safeguard" clause[133] acted as a back-up defense to ensure that EC producers were safe from any turbulent ACP action. In its current formulation, the safeguard clause is triggered by ACP exports which potentially cause serious disturbances to the EC economy or the economy of any of the constituent member States.[134] Thus, although the EC-ACP relationship has as one of its aims the development of ACP economies, if such action were to be successful the clause would be brought into effect.[135] The loose terminology employed by the clause[136] further gives the EC an added advantage in unilaterally determining when, and under what circumstances, the clause will be activated.[137] The clause has never been used by the EC and the EC has pledged not to use it unless it absolutely must.[138] However, the presence of the clause has been used as a threat against ACP States to reduce their exports to the EC and has in this sense been effectively used as a device to impose quotas on ACP exports.[139]

C. *Industrial Cooperation*

Industrial cooperation under the Lomé I convention[140] was regarded as one of the most significant innovations of the Convention.[141] Under Lomé I[142] a Center for Industrial Development

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[133] Lomé I, *supra* note 12, art. 10.

[134] *Id.* art. 10(a).

[135] Theresa Yard, Note, *Promises, Promises: A Critical Analysis of Lomé III's Private Investment Provisions*, 9 FORDHAM INT'L L.J. 634, 676 (1985)

[136] Lomé I, *supra* note 12, art. 10(1) states that:

> If, as a result of applying the provisions of this chapter, serious disturbances occur in a sector of the economy of the Community or of one or more of its Member States, or jeopardize their external financial stability, or if difficulties arise which may result in a deterioration in a sector of the economy of a region of the Community, the latter may take, or may authorize the Member State concerned to take, necessary safeguard measures.

No definition of such terms as "serious disturbance" or "necessary safeguard measures" is provided. Such an omission was, no doubt, deliberately encouraged by the EC so that the discretion would remain with the Community.

[137] *Id.*

[138] *See* Yard, *supra* note 135, at 676.

[139] Faced with increased competition in its textile industries, the EC in 1979 demanded the imposition of quotas on textile exports from Ivory Coast, Madagascar and Mauritius. *See* CAROL C. TWITCHETT, ACP FOREIGN TRADE 108 (1978). *See also* Gerald K. Helleiner, *Lomé: Market Access and Industrial Cooperation* 13 J. WORLD TRADE L. 181, 182-86 (1979); Joanna Moss & John Ravenhill, *Trade Development During the First Lomé Convention*, 10 WORLD DEV. 841, 850 (1982). The clause has been used as a blackmail device to obtain results that could not be achieved under the provisions of the Treaty. Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, 25 U.S.T. 1001. General Agreement on Tariffs and Trade, Basic Instruments and Selected Documents (21st Supp. 1975) now allows the EC to set levels for textiles and clothes from ACP States.

The EC action explains its objection to the admission of Asian Commonwealth countries to Associate status fearing the flood of cheap imports. *See* ARNOLD SMITH, STITCHES IN TIME: THE COMMONWEALTH IN WORLD POLITICS 185 (1981).

[140] Lomé I, *supra* note 12.

[141] *See* Katarina Focke, *From Lomé I Towards Lomé II, Text of the Report and Resolution*

(CID) was established. The Center's role was to gather and disseminate industrial information and related activities.[143] The thrust of the industrial regime of the Convention was concentrated on the participation of the EC private sector in the industrial development of ACP States.[144] The regime did not have its own funds but depended on the European Development Fund (EDF)[145] and the European Investment Bank (EIB)[146] to finance its projects.

Even after an elaborate basis of cooperation had been put in place and supporting structures instituted, the industrial cooperation regime degenerated into chaos. The praise that had accompanied the institution of the regime was soon reduced to pronouncements of expectation.[147] The EC discovered that it had made promises it could not, or was unwilling, to keep. This was perhaps the only regime established under the Lomé Convention in which the EC had apparently not covered its flanks well enough and, in the end, was forced to admit its unwillingness to discharge its obligations.

The EC's retreat from its initial enthusiasm for industrial cooperation was a result of cumulative factors. The major vehicle for attaining the goals of the regime was the EC private sector. This sector was unwilling to engage in investment in ACP States unless a proper framework was in place to protect private investment.[148]

Adopted on Sept. 26, 1980 by the ACP-EEC Consultative Assembly, Industrial Cooperation, (Focke Report). The EC has held out the industrial cooperation regime under the Lomé Convention as the most detailed and most elaborate system of such cooperation between industrialized and developing countries. *See Industrial Cooperation*, COURIER, Mar.-Apr. 1975, at 31.

[142] *See* Lome I, *supra* note 12, art. 36.

[143] These included the carrying out of studies on industrial development opportunities in ACP States; organizing meetings between EC and ACP firms, personnel, and financial institutions; and identifying opportunities for industrial training and research. *Id.*

[144] *Industrial Cooperation, supra* note 141. For a discussion of private sector participation in the EC-ACP arrangement, see *infra* text accompanying notes 181-190.

[145] *See Lomé IV: Internal Financial Agreement*, COURIER, Nov.-Dec. 1990, at 6, 7.

[146] Although initially set up by the Treaty of Rome, *supra* note 2, to finance long-term investment in EC Member States, EIB has expanded its scope since the signing of the Lomé Convention to include investments in ACP States. *See, EIB Financing Arrangements in the ACP States*, COURIER, July-Aug. 1988, at 7; *The European Investment Bank and the SMEs in the ACPs*, COURIER, May-June 1989, at 66.

[147] In admitting that the regime, as operated under Lomé I, *supra* note 12, was hollow, EC Commissioner Cheysson stated that:

> We have inscribed a principle in the Lomé Convention, such that the European countries undertook to support the efforts for industrialization of their partners: a very beautiful declaration! When it had been made, we, in any case, underlined that it was a hollow declaration; we didn't know what it meant. Because no one ever, in the history of the world, engaged in a systematic effort to support the industrialization of a partner whose economic, social and political structures are totally different. No one has ever done it but the declaration is there.

Quoted in G. Hoyos, *De Lomé I à Lomé II*, AFRIQUE, (Brussels), Spring 1981, at 55. By 1980 the industrial cooperation regime had become "more of a long-term target program." COURIER, May-June 1980, at 11.

[148] Attempts at formulating an investment protection regime within the Lomé Convention were opposed by ACP States on the ground that this, in effect, would amount to surrender of sovereignty. *See generally* E.I. NWOGUGU, THE LEGAL PROBLEMS OF FOREIGN

Other problems included the inadequacy of financial resources[149], structural problems,[150]lack of political will for cooperation, and protectionism on the part of the EC.[151] It is doubtful whether industrial cooperation would have succeeded in any case, as export-oriented growth in consumer manufactures, which industrialization would have triggered, "came to be perceived by the EEC States as a threat not a common interest."[152]

IV. Euro-92 and Africa in the Perspective of Current International and Political Realities: Need for Major Rethinking and Exploration of New Opportunities

As the EC internal market becomes a reality, the rest of the world still remains skeptical of the impact this development will have on international trade and finance. Citizens of the EC, who initially felt flattered by the international attention that Euro-92 had excited, find themselves increasingly on the defensive as charges of protectionism rise.[153] There are few aspects of Euro-92 that have an external dimension different from pre-92 EC external law. Quotas, rules of origin, and other external trade measures will remain fairly constant in the internal market.[154] In all fairness, Euro-92 is predominantly an internal scheme seeking to harmonize intra-EC trade by

INVESTMENT IN DEVELOPING COUNTRIES 33 (1965). The United Nations General Assembly adoption of the Resolution on Permanent Sovereignty Over Natural Resources, G.A. Res. 1803, U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217 (1962), had in the 1960s and 1970s prompted State expropriation and nationalization. EC investors were, therefore, apprehensive of the security of any investment in ACP States. *See generally* F.N. Burton & Hisashi Inoue, *Expropriations of Foreign-owned Firms in Developing Countries: A Cross-National Analysis*, 18 J. WORLD TRADE L. 396 (1984).

149 *See* ELLEN FREY-WOULTERS, THE EUROPEAN COMMUNITY AND THE THIRD WORLD 61 (1980).

150 Lack of cooperation by the various institutions—EIB, CIC, EDF, and CID—characterized the process. *See* Kofele-Kale, *supra* note 128, at 363.

151 LISTER, *supra* note 37, at 94.

152 Green, *supra* note 34, at 11.

153 Karl M. Meessen, *Europe en Route to 1992: The Completion of the Internal Market and its Impact on Non-Europeans*, 23 INT'L LAW. 359, 359 (1989). In an apparent response to these charges the EC issued a press release in 1989 disclaiming charges that it was building a "Fortress Europe." *Europe 1992: Europe World Partner*, Commission Information 177 (Oct. 9, 1988). The statement stated, *inter alia*, that:

> The internal market should not close in on itself. In conformity with the provisions of GATT, the Community should be open to third countries, and where necessary, must negotiate with those countries to ensure access to their markets for Community exports. It will seek to preserve the balance of advantages accorded while respecting the unity of the internal market of the Community.

Id.

154 For a discussion of external trade policies in the internal market, see JACQUES BUHART & DENNIS BURTON, LEGAL ASPECTS OF THE SINGLE EUROPEAN MARKET: A WORKING GUIDE TO 1992, at 158-74 (1989). *See also* Meinhard Hilf, *The Single European Act and 1992: Legal Implications for Third Countries*, 1 EUR. J. INT'L L. 89 (1990).

abolishing barriers[155] and does not formulate the treatment of EC external trade policies. Suggestions of EC protectionism are basically psychological intuitions by those outside the EC who, realizing the consequences of bloc-trading on their already weak domestic economies, seek to campaign for the elimination of international trade barriers.[156] A major development such as the creation of an internal market has focused attention on EC trade practices which have long been the subject of much discomfort to many trading partners of the EC.[157] For Japan and the United States, two important factors have helped bring Euro-92 implications into sharp focus: the huge Japanese trade surplus with the rest of the world and the corresponding budget problems in the United States coupled with a long recession. For Africa, Euro-92 has also initiated debate on contemporary economic and political realities facing the continent.

A. *New Protectionism and Marginalization of Africa*

As a philosophy, free trade is increasingly being replaced by "managed" trade,[158] especially by developed nations. Stagnating economies, lack of new resources, and growing unemployment have combined to produce intense political pressure on governments, with the result that domestic interest groups now wield enormous power in the formulation of trade policies.[159] In fashioning out trade arrangements, governments take great care to ensure that there exist "safety valves" which will enable them to protect their own interests without appearing to breach the arrangement. Such arrangements, therefore, become interesting to study not for what they say but what they omit, the exemptions they provide and the lexical interpretation they receive.[160]

Another shift that has occurred has been that from tariffs to non-tariff barriers(NTBs).[161] New terms such as "fair trade," "orderly marketing," and "voluntary restraints" are now employed to camouflage otherwise blatant acts of protectionism.[162] Even more problematic is the increasing bilateral negotiation of voluntary export

155 *See generally* Clause-Dieter Ehlermann, *The "1992 Project": Stages, Structures, Results and Prospects*, 11 MICH. J. INT'L L. 1097 (1990).

156 *See supra* note 11 and accompanying text.

157 *Id.*

158 *See UNCTAD V, Implications for Developing Countries of the New Protectionism in Developed Countries*, Prov. Agenda Item 9(a), at 4-6, U.N. Doc. TD/226 (1970).

159 *See* Pincus, *Pressure Groups and the Pattern of Tariffs*, 83 J. POL'Y ECON. 757 (1975); ROBERT BALDWIN, THE POLITICAL ECONOMY OF POSTWAR U.S. TRADE POLICY (1976); MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION (1968); John H. Cheh, *United States Concessions in the Kennedy Round and Short-Run Labor Adjustment Costs*, 4 J. INT'L ECON. 323 (1974); Edward J. Ray & Howard P. Marvel, *The Pattern of Protection in the Industrialized World*, 66 REV. ECON. & STAT. 452 (1984).

160 Yelpaala, *supra* note 67, at 843.

161 *See* Carl J. Green, *The New Protectionism*, 3 NW. J. INT'L L. & BUS. 1, 2 (1981).

162 *Id.*

restraints (VER)[163] arrangements. Though they are negotiated, and thus give an impression that they are mutually beneficial, they are a product of reactionary protectionism. They are, in fact, a "bribe" offered by the importing State in proportion to tariff revenue.[164]

In the context of ACP-EC relations, protectionism has been a dominant theme ever since the inception of EurAfrican interaction. Even when the rest of the world seemed to have embraced basic concepts of free trade, the EC was busy ensuring that its African "partners" in no way posed a threat to the *status quo* which had benefited the EC members for more than a century.[165] Looking to the future, Africa needs to identify which international trading philosophy best realizes higher gains for African economies. There is little doubt that a basic phenomenon that will dominate international trade perspectives for decades to come will be the cost of production and in particular the cost of labor.[166] As standards of living in the industrialized countries rose over the past fifty years, so did the wages paid out to industrial workers. In a global and interdependent economic system the cost of production easily reflects demand and supply dynamics. For example, the proposed North American Free Trade Area (NAFTA)[167] has become a political issue as many Americans become fearful of the possible migration of industries to Mexico whose labor costs are much lower.[168] Germany, a traditionally conservative industrial nation, has begun shifting its car manufacturing plants overseas.[169] Because of its abundant labor,[170] Africa clearly stands to gain from a global liberal trading policy.

The growing fear of regionalism[171] and the threat of the world

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[163] Voluntary export restraints are sometimes also referred to as voluntary restraint agreements (VRAs).

[164] *See* Edward J. Ray, *Changing Patterns of Protectionism: The Fall in Tariffs and the Rise in Non-Tariff Barriers*, 8 NW. J. INT'L L. & BUS. 285, 307 (1987).

[165] *See supra* note 91 and accompanying text.

[166] The growth of industries in Taiwan, Korea, the Philippines, Indonesia, Hong Kong, Singapore, and Malaysia actively illustrates the power that cheap labor can command.

[167] For a general understanding of NAFTA, see Carl Beigie, *The Anticipated Economic Effect of a North American Free Trade Area on Business in the North American Context*, 12 CANADA-U.S. L.J. 83 (1987); Dean C. Alexander, *The North American Free Trade Area: Potential Framework of an Agreement*, 14 HOUS. J. INT'L L. 85 (1991); Anne E. Brunsdale, *An Overview of the International Trade Commission and its Role in a Possible North American Free Trade Area*, 12 CANADA-U.S. L.J. 187 (1987).

[168] Mr. Ross Perot, while he was actively considering joining the 1992 presidential race for the first time, concentrated his attacks on this issue. *See Perot, Texas and Free Trade: The Bogeyman*, ECONOMIST, July 4, 1992, at 27.

[169] Volkswagen has been producing vehicles in Mexico and BMW is setting up a plant in the United States where costs are lower than in Germany. *See BMW's American Affair*, ECONOMIST, June 27, 1992, at 80.

[170] Abundant labor, *per se*, is not the sole criteria that attracts industries. Literacy also is an important factor. It may be said that African labor is not well adapted to work in sophisticated industrial plants because of the low level of literacy.

[171] *See The Trouble With Regionalism*, ECONOMIST, June 27, 1992, at 79.

breaking down into trading blocs such as an American-dominated NAFTA bloc, a Japan-centered Asian bloc or an EC-African bloc are eroding international confidence.[172] These developments, negative as they may be to the international community, are a happenstance whose benefit to Africa may not yet be appreciated. For the first time in post-war history there is a major rivalry among the major economic powers of the world. For the past half-century, these powers have acted in concert, first through the Organization for Economic Cooperation and Development (OECD)[173] and lately, in a much smaller number, as the G7.[174] The Cold War fostered this unity, for the economic powers of the West were simultaneously military allies. The end of the Cold War has reduced the adhesion that the military threat of the Soviet Union used to necessitate. The "war" has now shifted to the economic arena.[175] However, these powers are well aware that a "war" on this front will result in economic collapse and a grim replay of the 1930s.

The Uruguay Round of the GATT negotiations[176]has produced two discernible camps: a conservative, protectionist EC and an American-led free trade bloc.[177] There are two ways in which Africa ought to react to the above developments. First, the development of economic blocs is beneficial to developing countries in much the same way small political parties have a pivotal role in any political setup in which the major parties are in a stalemate. There is bound to be increased competition for new markets as the world economy continues to stagnate. No one can seriously dispute that "robust international trade is a key to prosperity for all nations of the world."[178] Increases in exports by developing countries and expansion of their economies will generate an increased demand for products from developed countries.[179] Second, African States should foster greater alignment with proponents of free trade. In this regard it may be may useful to identify more with the newly industrialized countries (NICs) of Asia whose economies are strong and whose

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[172] *See* Green, *supra* note 34, at 2.

[173] For an overview of the OECD, see ACTIVITIES OF THE OECD (multiple volumes).

[174] *See supra* note 7 and accompanying text.

[175] *Id.*

[176] *See infra* text accompanying notes 276-303.

[177] This is not to suggest that the changing patterns of protectionism in the United States should be ignored. The rapid deterioration in the merchandise export position of the United States over the last two decades has created a hostile climate between the government on the one hand and particular industries on the other. *See generally* Robert E. Baldwin, *Determinants of the Commodity Structure of U.S. Trade*, 61 AM. ECON. REV. 126 (1971); Hufbauer, *The Impact of National Characteristics and Technology on the Commodity Composition of Trade in Manufactured Goods*, *in* THE TECHNOLOGY FACTOR IN INTERNATIONAL TRADE (R. Vernon ed., 1970).

[178] James V. Hackney & Kim L. Shafer, *Protectionism and Developing Countries: The Impact on Trade and Debt*, 23 STAN. J. INT'L L. 203, 231 (1987).

[179] *Id.* at 203.

survival and progress are dependent on the continued adoption of free trade by the international community.[180] The EC is the wrong partner to have in the current international political and economic climate.

B. *Private Sector as the Economic Mover*

EC history plainly shows that the success of European integration owes much to the dynamic nature of European companies working in the private sector.[181] European governments have merely provided the climate necessary for the optimal operation of private sector initiatives. Among the economic giants of Europe are Siemens, ICL, GEC, Fiat, and Volvo. Mergers and acquisitions have created huge conglomerates extending beyond European shores.[182] With the exception of France[183] and Italy, EC members burdened by excessive government interference in the economy have moved quickly to privatize state corporations in order to ensure that they remain competitive.[184] State corporations, especially in the airline industry,[185] have demonstrated that they are unable to compete successfully with private corporations.

African economies continue to be heavily dominated by state corporations, which in turn explains the low economic efficiency that they exhibit.[186] EC-ACP transactions have hitherto been undertaken

[180] *See* Broad *supra* note 23, at 144. Much has been said and written about the "miracle models of capitalist development" such as South Korea and Taiwan. Recent studies, however, are beginning to highlight the human and environmental costs that these countries have paid. It now appears that all is not rosy in these countries. *Id.*

[181] *See* statement by Gary Busch in THE IMPACT OF EUROPE IN 1992 ON WEST AFRICA 73-74 (Olesegun Obasanjo & Hans d'Orville eds., 1990) [hereinafter Obsanjo].

[182] *Id.*

[183] *See* ECONOMIST, Nov. 23, 1991, at 14.

[184] *See generally* RICHARD HEMMING & ALI M. MANSOOR, PRIVATIZATION AND PUBLIC ENTERPRISES 12 (IMF Occasional Paper No. 56, 1988); Mayer & Meadowcroft, *Selling Public Assets: Techniques and Financial Implications*, 6 FISCAL STUD. 42 (1985). Under Margaret Thatcher (1979-91) Britain carried out the world's most comprehensive privatization program. "Thatcherism," as her government philosophy came to be known, was at its peak synonymous with privatization.

[185] *See Iberia's Acquisition; All Aboard*, ECONOMIST, Feb. 29, 1992, at 71. British Airways is the only major European airline that is privately owned and the only major European carrier to report significant profits for the past two years.

[186] For a discussion of state corporations and privatization in Africa, see THE IMF AND THE WORLD BANK IN AFRICA (Kjell J. Havnevik ed., 1987); C. VUYLSTEKE, TECHNIQUE OF PRIVATIZATION OF STATE-OWNED ENTERPRISES: METHODS AND IMPLEMENTATION (World Bank Technical Paper No. 88, 1988); R. CANDOY-SEKSE, TECHNIQUES OF PRIVATIZATION OF STATE-OWNED ENTERPRISES: INVENTORY OF COUNTRY EXPERIENCES AND REFERENCE MATERIALS (World Bank Technical Paper No. 90, 1988); PRIVATIZATION IN DEVELOPING COUNTRIES (V.V. Ramanadham ed., 1989); PRIVATIZATION IN LESS DEVELOPED COUNTRIES (Paul Cook & Colin Kirkpatrick eds., 1988). Most African governments are now convinced that "[t]he development of the private sector is necessary to correct the mismanagement of the past thirty years. It is not the business of any government to be in business." Richard Synge, *In Search of a Private Sector*, INSTITUTIONAL INVESTOR, Apr. 1992, 113. Although there is still widespread skepticism about the ability of the continent's private sector to compete

at the governmental level by African States through government controlled producers, processors, and exporters. Changing demand patterns, exploitation of new markets, and response to market signals have been concepts that this inefficient and bureaucratic state machinery has been slow, or, in most cases unable, to acknowledge.[187] Euro-92 will expose in a more dramatic fashion the lack of imagination on the part of African States in attempting to use state corporations to compete against private European companies for the EC market. Euro-92 will also make EC products more competitive and, therefore, those wishing to tap the EC market will have to ensure that they are just as, if not more, competitive.[188]

For the last two decades, Africa has seen the prices of its export commodities fall, its share of world trade drop and its competitiveness decline; yet, no structural adjustment took place to at least tackle these reverses. Structural adjustment is now being given serious consideration,[189] but this means that Africa has lost many years in which it could have been consolidating its economic position. Unless the private sector takes the lead, in the years to come the ills already engendered by the unequal operation of the Lomé Convention will multiply. A deliberate and sustained effort must be made to cultivate the idea that domestic investment, and the conventional attitude that foreign investment, particularly in the form of multinational corporations, is the most efficient way of achieving a quick transfer of technology, although such investment has been shown to come with its own risks.[190]

C. *Integration as a Response to Euro-92*

The experience of developing countries throughout the world shows that geographical largeness is neither a necessary nor sufficient condition for rapid growth.[191] India and Nigeria have not

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against European companies, there are documented examples of indigenous entrepreneurs who have established international markets. *Id.*

[187] *See generally* LANDELL-MILLS PIERRE ET AL., SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH, A LONG TERM PERSPECTIVE STUDY, WORLD BANK (Nov. 1989); M. Michaely, *Trade Liberalization Policies: Lessons of Experience* (World Bank Paper presented at the Conference in Sao Paulo for a New Policy Towards Foreign Trade in Brazil, April, 1988); John R. Nellis, *Public Enterprises in Sub-Saharan Africa* (World Bank Discussion Papers I, 1986).

[188] *See* statement by Emile van Lennep *in* Obasanjo, *supra* note 181, at 81.

[189] *See infra* text accompanying notes 235-244.

[190] The AMCO case illustrates this. AMCO Asia Corp. v. Republic of Indonesia, No. ARB/81/1, Nov. 21, 1984 (Award on Merits), *in* 24 INT'L LEGAL MATERIALS 1022 (1985). *See also* AMCO Asia Corp. v. Republic of Indonesia Case, No. ARB/81/1 Ad hoc Committee ICSID (W. Bank), May 16, 1986. AMCO illustrates the way foreign investors manipulate investment laws and how small the impact of foreign investment on the local economy can be.

[191] Nguyuru H.I. Lipumba & Louis Kasekende, *The Record and Prospects of the Preferential Trade Area for Eastern and Southern African States* 36 (paper presented at the Africa Economic Issues Conference Organized by the World Bank, Nairobi, Kenya, June 4-7, 1990).

grown faster than Korea, Taiwan, or Thailand.[192] However, many African States are just too small to act as viable economic units; there are about twenty states with a population of less than one million people.[193] These facts have encouraged several initiatives aiming at regional integration.[194] Sadly, many of these initiatives have failed or faced difficulties.[195]

Two recent developments require African states to make fresh attempts at ensuring that integration becomes a reality. First, Euro-92 presents an external economic challenge that can only be tackled within a framework of increased intra-African cooperation.[196] Second, the North American Free Trade Area[197] is soon to be inaugurated. The economic and political economies of scale—synergy gains, lower per-unit production costs, enhanced competition, and increased bargaining power in international fora—that are possible with integration will marginalize independent actors.[198] Unlike the EC, NAFTA includes a developing country, Mexico. The inclusion of Mexico means that NAFTA will be able to tap one of the cheapest resources that developing countries have to offer: labor. Clearly, Africa has to approach the concept of integration with more urgency than ever before. Previously, integration was touted as a scheme which could perpetuate self-development within an integrated region. Present dynamics are such that without integration domestic development will be unattainable, and, worse still, Africa will not be

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192 *Id.*

193 Statement by Patrick Agboh, *in* Obasanjo, *supra* note 181, at 75. *See also* Elliot Berg, *Regionalism and Economic Development in Sub-saharan Africa* (study prepared for the United States Agency for International Development, Oct., 1988). *See generally* ANDREAS INOTAI, REGIONAL INTEGRATION IN THE NEW WORLD ECONOMIC ENVIRONMENT (1986); PETER ROBSON, THE ECONOMICS OF INTERNATIONAL INTEGRATION (1980); E.M. EL-AGRAA, INTERNATIONAL ECONOMIC INTEGRATION (1988); SULEIMAN I. KIGGUNDU, A PLANNED APPROACH TO A COMMON MARKET IN DEVELOPING COUNTRIES (1983).

194 For a review of integration processes in developing countries, see BEVERLY M. CARL, ECONOMIC INTEGRATION AMONG DEVELOPING NATIONS: LAW AND POLICY (1986).

195 Examples include the Arab Maghreb Union (AMU) and the Arab Cooperation Council (ACC) in northern Africa; the Economic Community of West African States (ECOWAS) and the Communaute de l'Afrique de l'Ouest (CEAO) in western Africa; the Southern African Development Cooperation Conference (SADCC) and the Southern African Customs Union (SACU) in southern Africa; the Communaute des pays Grands Lacs (CEPGL) and the Communaute Economique des Etats de l'Afrique Centrale (CEEAC) in central Africa; and the East African Community (EAC) and the preferential Trade Area for Eastern and Southern Africa (PTA) in east and southern Africa. Arnt Detlefson, *Wirtschaftsregional Vereimgungen*, AFRIKA-POST 16, 17 (1989).

196 *See supra* note 188 and accompanying text.

197 *See, e.g.*, Arlene Wilson, *Mexico-U.S.-Canada Free Trade Agreement (NAFTA)*, CRS Report for Congress, Dec. 17, 1990, at 1. On completion, NAFTA will bring together 360 million people producing $6 trillion of goods and services which will clearly be the world's largest free-trade zone. *Id. See also* Clyde H. Farnsworth, *Concerns Raised on Mexican Trade*, N.Y. TIMES, Feb. 21, 1991, at D19.

198 *See* Sharon Bowden & Marlin Elling, *In the Shadow of 1992: Developing Country Efforts at Economic Integration*, 32 HARV. INT'L L.J. 537, 538 (1991).

able to compete at the international level.[199] As urged above,[200] a robust private sector has to be nurtured and prepared to respond to market signals so as to make integration more meaningful and dynamic.

D. The Democratization Process in Africa and Euro-92

Presently, African Rulers are contending with a new and more active generation of Africans deeply concerned about jobs, justice and political accountability of their leaders.[201] Democracy movements have sprouted all over the continent. The process has rocked longtime regimes and dented the rusty armor and mist of omnipotence of "big men" across the continent.[202] The signs had been showing for the last decade or so, but there was no spark to ignite the population into the frenzy that has now taken root. Corrupt governments "could no longer blame the colonialists who had gone home two or more decades ago."[203] Many of the gains of the 1960s and 1970s have eroded. Post-independence African political systems have shown themselves to be inadequate for the challenges of modernization.[204] Towards the end of the 1980s, discontent, disillusionment and anger were rife in a majority of African States. The revolutionary events in Eastern Europe suddenly gave a momentum to the process of change that a majority of the African populace desired.[205]

The changes in Africa have been spectacular and "using national conferences as a kind of modern-day bludgeon for disposing dictators, Africa's democracy movement has scored several new breakthroughs and has managed to replace their antiquated regimes."[206]

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199 For a discussion of prospects of Sub-Saharan African integration efforts, see Ali Mansoor & Andras Inotai, *Integration Efforts in Sub-Saharan Africa: Failures, Results and Prospects-A Suggested Strategy for Achieving Efficient Integration* (paper presented to the Economic Issues Conference held in Nairobi, Kenya, June 5-7, 1990).

200 *Supra* notes 181-190 and accompanying text.

201 *See* GUARDIAN WKLY., Sept. 22, 1991, at 8.

202 *See Democracy in Africa: Lighter Continent*, ECONOMIST, Feb. 22, 1992, at 17.

203 *Id.* at 18.

204 The African malaise, characterized by a pervasive situation of hopelessness and socio-economic decay has been largely attributed to the "miscalculation of the early post-independence leaders in asserting a philosophy and praxis of development that did not place Africa's interest above any other geo-political consideration." THOMAS ODHIAMBO, HOPE BORN OUT OF DESPAIR xiii (1988). *See also* TREVOR W. PARFITT & STEPHEN P. RILEY, THE AFRICAN DEBT CRISIS (1989).

205 For a discussion of the changes in Eastern Europe, see LINCOLN GORDON, ERODING EMPIRE (1987); ZBIGNEW BREZINSKI, THE GRAND FAILURE: THE BIRTH AND DEATH OF COMMUNISM IN THE TWENTIETH CENTURY (1989); Omar Al-Hassan, *Democratic Change in Eastern Europe and Political Reform in the Middle East* (Gulf Center for Strategic Studies Special Report No. 3). One theory that attempts to explain the collapse of the Soviet Empire asserts that the arms race accelerated by Ronald Reagan was the final blow to an already crumbling empire. *See generally* PAUL KENNEDY, THE RISE AND FALL OF THE GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500 TO 2000 (1989).

206 P. Kenneth Kiplagat, *supra* note 23, at 35.

Countries experiencing change have had to contend with the proliferation of political parties. In Zaire, there are now over eighty political parties, while in Congo over twenty parties have been formed.[207] On the average, most African countries have at least ten political parties.[208] Most of these parties, however, appear unable to act as effective political organizations, formulate coherent platforms or enforce their political will. Most of them have weak internal structures and political activity seems to revolve around one or two well-known personalities. In countries where a new breed of politicians has taken over the reins of government, a disturbing development has been demonstrated. The democratic groups came to power basically unprepared; while they were clear about why the old system ought to be replaced, they were much less specific on how to achieve economic and political transformation.[209]

How does the above relate to Euro-92? The process described above has resulted, or will result, in unstable governments across much of Africa. The Polish example where twenty-nine parties are represented in Parliament but none is able to command more than 12.3% of the seats will be the typical scenario in Africa.[210] Though the multiplicity of parties and the infighting engendered by such a configuration are not of themselves unhealthy, what is worrisome is the fact that governments have virtually been rendered impotent.[211] The re-evaluation of the Lomé Convention by individual African countries requires stable and strong governments able to propose and implement drastic, and at times painful, measures. In the current political climate demagoguery and populist agenda are likely to dominate, and the *status quo* will hardly be disturbed. A consensus has emerged that Lomé in its current formulation has presided over the economic decline of African states and has, perhaps, outlived its usefulness. Without political will, African States will not be able to move to the next logical level of this consensus.

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207 *See* Zhou Zongmin & Liu Jiang, *Africa Challenged by Political Pluralism*, XINHUA, July 1, 1991 *available in* LEXIS, Nexis Library.

208 *Id.*

209 For a discussion of this phenomenon and how it operates in Eastern Europe, see Jan Zielonka, *East Central Europe: Democracy in Political Retreat?*, WASH. Q., Summer 1991, at 107; Zbigniew Brzezinski, *Beyond Chaos: A Policy for the West*, NAT'L INTEREST 3 (1990). *See also* SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY (1991).

210 *See* Roger Boyes, *Warsaw Speaker Chosen*, TIMES (London), Nov. 26, 1991, at 1. In the space of less than one year Poland has had no less than three Prime Ministers who have had to govern with the help of at least four political parties in a coalition government. *See Poland: Walesa Yields*, ECONOMIST, July 11, 1992, at 52; *Poland's Struggle Towards a New Government*, FIN. TIMES, Nov. 15, 1991, at 10.

211 Poland again is a good example.

E. The "Spoilers"

1. Eastern Europe

The past four years have witnessed the greatest transformation in Europe since the end of the Second World War. Eastern[212] Europe[213] has emerged from decades of communist rule characterized by command economies and political suppression.[214] The region is busy implementing economic and political reform, which is proving to be harder than many had anticipated.[215] There is growing anxiety that "should the whole process of economic change go sour then nationalism could come to be manipulated in order to divert people's attention away from economic problems into conflicts with internal and external enemies."[216] The civil war in the former Yugoslavia[217] and the breakup of Czechoslovakia[218] have created the worst military[219] and refugee[220] crises in Europe since the end of World War II.

Western Europe is under pressure to ensure that stability is re-

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212 "Eastern" as used over the period during which the Soviet Empire existed, does not reflect the true geographic position of the countries that were covered by the designation. This was a geopolitical designation. For example, Prague, the capital city of a former "east" European state lies considerably to the west of Vienna, a city in the "west." Central Europe best, and accurately, defines the geographical designation of these states. *See* Timothy Garton Ash, *Eastern Europe: The Year of Truth*, N.Y. REV. BOOKS, Feb. 15, 1990, at 17.

213 The countries that make up Eastern Europe are Poland, Czechoslovakia, Hungary, Romania, Yugoslavia, Bulgaria, and Albania. Yugoslavia and Czechoslovakia no longer exist as such, since power has since devolved to splinter republics. This region included about one-fourth of the population of Europe, living on almost one-fourth of Europe's territory. *See* DOMINANT POWERS AND SUBORDINATE STATES: THE UNITED STATES IN LATIN AMERICA AND THE SOVIET UNION IN EASTERN EUROPE 2 (Jan F. Triska ed., 1986).

214 Mikhail Gorbachev is credited with the initiation of this change. Some, however, trace the origin of these reforms to Nikita Khrushev and Aleksei Kosygin. *See* Frederick Kagan, *The Secret History of Perestroika*, NAT'L INTEREST 33 (1991); Hubert Izdebski, *Legal Aspects of Economic Reforms in Socialist Countries*, 37 AM. J. COMP. L. 703. For a discussion of Gorbachev's reforms, see THE SOVIET UNION UNDER GORBACHEV: THE PROSPECTS FOR REFORM (David A. Dyker ed., 1987); GORBACHEV'S REFORMS: U.S. AND JAPANESE ASSESSMENTS (Peter Juliver & Hiroshi Kimura eds., 1988); GORBACHEV AT THE HELM: A NEW ERA IN SOVIET POLITICS? (R.F. Miller et al. eds., 1987); GORBACHEV AND PERESTROIKA: TOWARDS A NEW SOCIALISM? (Ronald Hill & Jan Ake Dellenbrant eds., 1989); KAREN DAWISHA, EASTERN EUROPE, GORBACHEV AND REFORM (1988).

215 As one writer has commented:

> The winterscope of Eastern Europe is forbiddingly dark. The fervor for freedom that spilled into the streets last year [1989] and fueled the 20th century's remarkable round of democratic change has run low. In its place, there is a dark awareness of freedom's costs, destitution and demagoguery.

Blain Harden & Mary Battiata, *In Eastern Europe, the Horizon is Getting Darker*, INT'L HERALD TRIB., Dec. 26, 1990. *See also* James Walsh, *Populism on the March*, TIME, Dec. 24, 1990.

216 Christopher Cviic, *The East European Experience*, *in* CHANGE IN EASTERN/CENTRAL EUROPE: SOME IMPLICATIONS FOR SOUTHERN AFRICA 1 (Alan Begg & Andre du Pisani eds., 1991) at 5.

217 *See A Patchwork of Horrors*, ECONOMIST, July 11, 1992, at 43.

218 *See Czechoslavakia: Going, Going. . . .*, ECONOMIST, July 11, 1992, at 52.

219 *See An Inch Deeper into the Balkan Quagmire*, ECONOMIST, July 18, 1992, at 47.

220 *See Lace, Cards and Dreams*, ECONOMIST, July 18, 1992, at 48.

stored in Eastern Europe lest the anarchy slowly building up spill over to the West.[221] In pursuit of this goal the EC is likely to strengthen ties with Eastern Europe at the expense of its ties with other regions. This is not a tendency that is unique to the EC but is one that Western economies generally have adopted. For example, the international preoccupation with the Balkan crisis belies the equally tragic situations in Somalia, Ethiopia, Sudan, Mozambique and Liberia, states in which civil strife is raging unrelentlessly.[222] The conclusion is clear—the end of the cold war has relegated Africa to the periphery of Western political and economic considerations.

The collapse of communism was dramatic and continues to captivate the minds of millions in the West. Eastern Europe is considered in the West as virgin territory promising handsome rewards for those who are quick to seize the opportunities it offers. For the EC, partnership with Eastern Europe offers an attraction that cannot be matched by Africa, and it already appears that admission of East European states into the EC is only a matter of time.[223] As discussed above,[224] the EC internal market will be dominated by private capital which, when evaluating where to invest, will likely opt to concentrate investment in Eastern Europe because of its proximity, fairly developed infrastructure, and technically skilled cheap labor. In this sense Euro-92 could not have come at a worse time for Africa.

2. *Maastricht and its Implementation*

The Maastricht summit of December 1991[225] signaled the start of serious problems in the European integration process. Maastricht contained historic integrative decisions aimed at creating a so-called European Union.[226] Perhaps as an indication of things to come, the road to Maastricht was so troubled that it caused the downfall of Margaret Thatcher.[227] The panic really began when Danish voters

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221 *See* Jan Zielonka, *Europe's Security: A Great Confusion*, 67 INT'L AFF. 127-37, (1991).

222 *See, e.g., Death by Looting*, ECONOMIST, July 18, 1992, at 41; *East Africa: Swamped*, ECONOMIST, June 6, 1992, at 46.

223 *See generally*, David Kennedy & David E. Webb, *Integration: Eastern Europe and the European Economic Communities*, 28 COLUM. J. TRANSNAT'L L. 633 (1990); THE POLITICAL AND LEGAL FRAMEWORK OF TRADE RELATIONS BETWEEN THE EUROPEAN COMMUNITY AND EASTERN EUROPE (M. Maresceau ed., 1989); Wellenstein, *The Relations of the European Community with Eastern Europe*, *in* ESSAYS IN EUROPEAN LAW AND INTEGRATION 197 (D. O'Keefe & H.G. Schermers eds., 1982); Susan Senior Nello, *Some Recent Developments in EC-East European Economic Relations*, 24 J. WORLD TRADE L. 5 (1990).

224 *See supra* notes 181-190 and accompanying text.

225 For a detailed discussion of post-Maastricht EC, see EURO-POLITICS: INSTITUTIONS AND POLICY MAKING IN THE "NEW" EUROPEAN COMMUNITY (Alberta M. Sbragia ed., 1992) [hereinafter EURO-POLITICS].

226 The Treaty of Maastricht basically has two parts. One covers economic and monetary union (EMU) and the other political union. *See The Deal is Done*, ECONOMIST, Dec. 14, 1991, at 51. For a historical analysis, see *The History of the Maastricht Summit*, ECONOMIST, Nov. 30, 1991, at 47.

227 "Thatcher's fall in November by a coup from within her own party had many

rejected the Treaty.[228] Suddenly, EC officials were not sure of the direction of the Community anymore. The Irish ratification[229] of the Treaty and the ratification by French voters[230] have done little to restore confidence. In Britain, John Major is facing a rebellion within his own party and Lady Thatcher, with her new base in the House of Lords, is campaigning for a national referendum on the Treaty.[231] Major may soon find himself ejected by Maastricht.[232] German monetary decisions, particularly the *Bundesbank's* decision to adopt policies to reduce German inflation which will hurt other EC members, have heightened anxieties about the future of Maastricht.[233]

With reference to Africa, there are two negative consequences that the difficulties of Maastricht will engender. First, the EC and its constituent members will be so burdened by the modalities of seeing through the implementation of the Treaty that there will be little time left to evaluate EC relations with other external parties. Second, the EC and heads of governments of EC States are going to have to exercise great caution in their dealings with EC citizens more than ever before. Any action that affects EC citizens[234] may be rebuffed in the same manner the Danes showed. In as far as a genuine re-evaluation of the Lomé Convention requires measures by the EC which will in the short run hurt some sectors in the EC, those measures will not be implemented. The same is true of EC-GATT relations.

3. *The World Bank, IMF and the Manipulation of African Economies*

The period between 1980 and 1990 is generally regarded as the lost decade for developing countries.[235] In this period, growth stagnated, international debt increased,[236] hopelessness set in, and the

causes, not least of which was fear that she would lead the party [Conservative Party] to defeat in the next election." Peter Lange, *The Politics of the Social Dimension*, *in* EURO-POLITICS, *supra* note 225, at 245.

228 *See Why the Danes Wouldn't*, ECONOMIST, June 6, 1992, at 52.

229 *See Essence of Maastricht*, ECONOMIST, July 11, 1992, at Survey 10.

230 *See id.*

231 *See, e.g.*, *Major scorns Thatcher's Views on Maastricht*, MANCHESTER GUARDIAN WKLY., July 5, 1992, at 52.

232 Maastricht has created speculations about Major's future. *See Maastricht Rethink Call*, TIMES, July 20, 1992; *New Talk is of Dumping Major*, INDEPENDENT, July 19, 1992.

233 *See Europe Caught in Crosscurrents*, N.Y. TIMES, July 22, 1992, at D1.

234 In fact "[t]he 17 Commissioners are so keen to encourage the speedy ratification of the Maastricht Treaty that they are loathe to do or say anything that might upset public opinion in any country of the European Community." *Brussels Tamed*, ECONOMIST, July 18, 1992, at 54.

235 *See generally* Douglas Matthews, *Lomé IV and ACP/EEC Relations: Surviving the Lost Decade*, 22 CAL. W. INT'L L.J. 50 (1990).

236 For a discussion of developing countries and the debt problem, see Sergio Galvis et al., *On Third World Debt*, 25 HARV. INT'L L.J. 83 (1984); Walter Goldstein, *The Continuing*

very capacity of these economies to grow in the future became doubtful. This crisis of development which has become the *bête noire* of North/South relations is traceable to the imbalances inherent in traditional North/South trading patterns.[237]

The response to this crisis has been coordinated under the aegis of the World Bank and the IMF. There is little doubt that in the last decade the formulation of economic policies in developing countries was carried out in Washington. These two institutions subjected developing countries to structural adjustment[238] and conditionality.[239] Although a discussion of the merits and demerits of these programs is outside the scope of this article, it will suffice to state that structural adjustment and conditionality have damaged environments, worsened structural inequalities, failed even in the narrow goal of pulling economies forward, and bypassed popular participation.[240] These programs have typically had short timetables and inflexible targets,[241] often requiring devaluation of national currencies,[242] and increasingly, a bias towards export promotion instead of import sub-

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World Debt Crisis, 3 INT'L TAX & BUS. LAW. 119 (1985); Jack Guttentag & Richard Herring, *What Happens When Countries Cannot Pay Their Bank Loans? The Renegotiation Process*, 5 J. COMP. BUS. & CAP. MARKETS L. 209 (1983); George Hoguet, *International Debt Problems: The Role of the World Bank*, 77 AM. SOC'Y INT'L L. PROC. 317 (1983); Karl M. Meessen, *Back to the Market: The Debt Problem in Legal Perspective*, 12 FORDHAM INT'L L.J. 1 (1988); Stephen Silard, *International Law and the Conditions for Order in International Finance: Lessons of the Debt Crisis*, 23 INT'L LAW. 963 (1989).

237 Matthews, *supra* note 235, at 54.

238 Article 1, sec. VI of the IMF Articles of Agreement announces the policy of structural adjustment as a device:

> To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of productive resources of all members as primary objectives of economic policy.

For a comprehensive study, see J. SENDER & S. SMITH, THE DEVELOPMENT OF CAPITALISM IN AFRICA (1986); JUSTIN B. ZULU & SALEH M. NSOULI, ADJUSTMENT PROGRAMS IN AFRICA: THE RECENT EXPERIENCE (1985); G.K. Heller, *The IMF and Africa in the 1980s*, 17 CAN. J. AFR. STUD. 23 (1983).

239 Conditionality is the term given to the conditions relating to macro-policy elements which countries have to meet in order to get access to international loans. *See* THE IMF AND THE WORLD BANK IN AFRICA 15 (Kjell J. Havnevik ed., 1987). Conditionality has widened to include additional conditions put forward by the World Bank relating to sectoral, institutional and more micro levels to qualify for sectoral adjustment loans. *Id. See also* Corrado Pirzio-Biroli, *Making Sense of the IMF Conditionality Debate*, 17 J. WORLD TRADE L. 115 (1983); Zygmunt Plater, *Damming the Third World: Multilateral Development Banks, Environmental Diseconomies, and International Reform Pressures on the Lending Process*, 17 DENV. J. INT'L L. & POL'Y 121 (1988).

240 *See* Broad, *supra* note 23, at 150.

241 *See* Dossier, *Structural Adjustment*, COURIER, Sept.-Oct. 1988, at 70. A dramatic example is provided by the way the IMF handled the drought and subsequent food shortages in Zimbabwe. In the face of the worst drought in living memory Zimbabwe was pressured into selling its maize reserves stating that the "IMF experts approved this course, for their [IMF] priority is always to see that foreign currency is earned to pay off interest on debt." *The Scorched Earth of an African Paradise*, MANCHESTER GUARDIAN WKLY., June 28, 1992, at 9.

242 *See* Donald L. Sparks, *Economic Trends in Africa South of the Sahara*, *in* AFRICA SOUTH OF THE SAHARA 31, 35 (21st ed. 1992).

stitution.[243] As countries implementing these programs have continued to sink further into economic crisis, their dependency on foreign assistance has increased. These countries have now discovered that "the only way to get such support is to sing in the free-market choir."[244]

The IMF, the World Bank and other international institutions presently involved in managing development in Third World countries are controlled by Western powers featuring most of the EC members. The implication is obvious: the EC wields a powerful card which it can use to frustrate most attempts by developing nations to charter a course that may in any way be detrimental or economically offensive to the EC.

F. The Case for the Discontinuation of the Lomé Convention

During the seventeen years of EC-ACP cooperation there was a striking absence of ACP re-evaluation of the relevance of the Treaty. It is now time to take stock of the arrangement. In the words of one scholar:

> Whatever view we hold of the significance of the Lomé Convention to ACP development in particular and to world cooperation in general, it must remain an indisputable fact that in the exercise of negotiating the Lomé Convention, and in the several discussions on, and analysis of, the Lomé Convention that have been undertaken worldwide since 1975, some significant knowledge has been gained that is beneficial to the ACP group, the EEC and the world in general, towards a better understanding of the elements of meaningful global cooperation and rational development.[245]

The days when "Africans posed their problems and Europeans invented the solutions"[246] are gone and this article argues that the best lesson ACP States should have learned by now is that they should terminate the arrangement in its present form. The argument may at first sound simplistic, rhetorical and unrealistic and no different from the failed Third World agitation for a NIEO.[247] However, the practicality of this solution stems from the fact that it does not seek to take on developed countries as a bloc, which would be an impossible undertaking in the current international political and economic dynamics, but rather is an attempt to seek a realignment with a different participant of this bloc, playing one participant against the other. The weakness of ACP economies has had the effect of lulling them

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243 *See* Matthews, *supra* note 235, at 54.

244 *Id.* (quoting Pollen & Cocburn, *The World, the Free Market, and the Left*, 252 NATION 224, 226 (1991)).

245 Anyiwo, *supra* note 99, at 109.

246 I. William Zartman, *An American Point of View*, *in* THE LOMÉ CONVENTION AND A NEW INTERNATIONAL ECONOMIC ORDER, *supra* note 99, at 134, 141.

247 The Lomé Convention has erroneously been portrayed as the test case of the NIEO in particular and North/South cooperation in general. *See, e.g.*, I.K. Minta, *The Lomé Convention and the New International Economic Order*, 27 How. L.J. 953 (1984).

into believing that a break with the EC would spell doom for their already fragile economies. This course of action will undoubtedly adversely affect a number of African States[248] but will be a boost to many more. Many of the widely quoted benefits of the Lomé Convention have been proved by time to be, at best, superficial.

1. The Preference Myth

Article 1 of the Lomé Convention[249] articulates the broad aims and ambitions of the Convention.[250] Pursuant to these objectives, Article 2 provides for free access to the EC market for certain non-agricultural and agricultural products originating from ACP countries.[251] Under this provision most ACP exports could enter the EC market on a preferential basis. As a consequence, it is estimated that 99.2% of all EC imports from ACP countries would enter the EC market duty-free.[252] Several exceptions were stipulated including the Common Agricultural Policy (CAP),[253] public policy,[254] internal duties,[255] safeguard clause,[256] and rules of origin.[257]

The EC preference regime came under heavy criticism from the GATT, UNCTAD, and the United Nations General Assembly for discriminating against non-ACP countries. In the United States it attracted penal sanctions in the 1974 U.S. Trade Act.[258] As a result, the EC gradually extended the system to more and more developing countries outside the ACP. This process began in 1968 when the EC undertook at UNCTAD 11 to reduce tariffs to all developing countries on a non-reciprocal basis.[259] This was extended in 1971 under the EC's Generalized System of Preferences (GSP) to all developing

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248 *See* Onyonka *supra* note 26.

249 Lomé I, *supra* note 12.

250 It provides that:

> In the field of trade cooperation, the object of this convention is to promote trade between the Contracting Parties, taking account of their respective levels of development, and, in particular, of the need to secure additional benefits for the trade of ACP States, in order to accelerate the rate of growth of their trade and improve the conditions of access of their products to the market of the European Economic Community, so as to ensure a better balance in the trade of the Contracting Parties.

Id. art. 1.

251 *Id.* art. 2.

252 *See* Edward A. Laing, *New Departures in Multilateral Trade, Development and Cooperation: The Lomé Convention and its Impact on the United States*, 27 MERCER L. REV. 781, 797 (1976).

253 Lomé I, *supra* note 12, art. 2.

254 *Id.* art. 5.

255 *Id.* art. 6.

256 *Id.* art. 12.

257 *Id.* art. 1(1)(a) of Protocol No. 1.

258 *See* K.R. Simmonds, *The Evolution of the External Relations Law of the European Economic Community*, 28 INT'L & COMP. L.Q. 644, at 651.

259 *See* LISTER, *supra* note 37, at 48.

countries.[260] The obvious effect was that the preference arrangement, which some had concluded was the most beneficial feature of the Lomé Convention,[261] was diluted by its extension to ACP competitors.[262] It is estimated that 75% of all ACP exports in the form of raw materials would have entered the EC duty-free even without Lomé preferences.[263] About 90% of ACP industrial exports would also have entered the EC duty-free under GSP arrangements.[264] Of the twenty-five most important ACP exports, only seven received preferences over other suppliers from developing countries.[265]

Although many African countries continue to regard the Lomé Convention as a beneficial arrangement, the facts do not support this perception. Lomé does not significantly prefer ACP countries over other competitors. Furthermore, even if the preference regime discriminates in favor of ACP countries, studies have shown that trade preferences have little effect on trade expansion.[266]

2. *Dynamics of the World Market and Market Access Provisions*

Euro-92 aims specifically at enhancing the operations of the private sector and, conversely, reducing governmental participation.[267] Market forces are to be given free rein in order to increase efficiency by driving out less competitive producers. In anticipation of this process, a number of European companies have merged, and some have acquired other companies with the hope of capturing the synergies that will result.[268] Africa and other ACP countries have yet to adjust to this new reality and the Lomé arrangement is likely to stifle an effective response.

A critical theme of the Lomé Convention is its promotion of market access for ACP countries.[269] As a consequence, the EC now absorbs 70% of the ACP's non-oil exports.[270] It is true that market access provisions have been useful in the sense that products entering the EC market duty-free are subject to tariff rates in the United

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260 *See* R.E. Baldwin & T. Murray, *MFN Tariff Reductions and Developing Country Trade Benefits Under the GSP*, 87 ECON. J. 30, at 33 (1977).

261 *See, e.g.*, Amoa, *supra* note 33, at 48-49.

262 *See* Yelpaala, *supra* note 67, at 831.

263 *See* CAROL C. TWITCHETT, A FRAMEWORK FOR DEVELOPMENT (1981).

264 *See* Kirkpatrick, *supra* note 121, at 353.

265 *See generally*, Joanna Moss & John Ravenhill, *Trade Between the ACP and EEC During Lomé I*, *in* 3 EEC AND THE THIRD WORLD: A SURVEY: THE ATLANTIC SURVEY 133 (Christopher Stevens ed., 1983). *See also* OPERATION AND EFFECTS OF THE SCHEME OF GENERALIZED PREFERENCES OF THE EUROPEAN ECONOMIC COMMUNITY, U.N. Doc. TD/B/C. 5/23 (1974); U.N. Doc. TD/B/C.5/42, at 83, 86-87 (1974); *Effects and Prospects of EEC/ACP Trade and trade Policy Relations (Kiel Study)*, COURIER, no. 98, at 61-96; *Overseas Development Institute, Briefing Paper no. 1, (Feb. 1980)* at 5.

266 *See* Minta, *supra* note 247, at 954.

267 *See supra* text accompanying notes 181-190.

268 *Id.*

269 Lomé I, *supra* note 12, art. 2.

270 Jini Roby, *Fortress Europe*, B.Y.U. L. REV. 1781, at 1783 (1990).

States and Japan, for example.[271] However, market access has shielded ACP producers from the operation of market forces. ACP countries have continued to produce products that were showing falling demand in the world market and failed to diversify into new products or new markets. Pyrethrum production offers a good example in this regard. Agridyne, a genetic engineering firm in the United States, is soon to start producing pyrethrin genetically.[272] Because of lack of market information, government domination of the export market and market access provisions, this information will not reach peasant producers. The result will be that production of pyrethrum will continue even when demand is falling or is non-existent. The production of rosy periwinkle offers yet another example.[273]

As biotechnology has made great strides at the expense of natural raw materials, ACP States have been caught flat-footed. They have shown no sense of anticipation or ability to adjust even where information has been readily available.[274] When the EC market eventually refuses to admit their products because of availability of cheaper synthetic alternatives, ACP countries will experience devastating consequences. Clearly, an interdependent world requires that producers stay in touch with market dynamics and act accordingly. The market access provisions of the Lomé Convention do not facilitate a dynamic response by ACP countries.

Even more disturbing is the failure by ACP countries to explore and break into new markets. ACP countries have adopted a parochial approach to world trade by concentrating on the EC market, whereas regions such as Latin America have expanded trade links with virtually all the major trading blocs of the world. As Euro-92 becomes a reality, Africa must learn to respond to developments in the international marketplace.[275] Guaranteed market access leads to one of two conclusions: that the producer is inefficient and cannot compete with outside producers, or that there is no demand by non-contracting parties for the product in question.

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271 *See UNCTAD V*, *supra* note 158, at 17. Lomé market access provisions show a clear bias against manufactured and semi-manufactured products and are considered by many to be an indicator of EC's determination to ensure that ACP countries remain raw material producers. *See id.*

272 *See* Horace Awori, *Kenya: Biotechnology Threatens Exports*, INTER PRESS SERVICE, July 10, 1992 (available in LEXIS, Nexis Library). Kenya, Tanzania and Rwanda are the largest producers of pyrethrum in Africa and together stand to lose about $100 million annually in lost export revenue. *Id.*

273 *Id.*

274 There is a general recognition that African economies have been too static and diversification is urgently required. *See, e.g.*, Obasanjo, *supra* note 181, at 73.

275 As the consequences of Euro-92 become more apparent there is an acknowledgement that "access to Europe will depend on who is more competitive." *Id.* at 81.

3. *GATT: The Way Forward?*

The EC has, since its inception, struggled to maintain a working relationship with the GATT. As early as 1958, fears were already being expressed about the effects of the EC on world trade.[276] A working party established to report on the Treaty of Rome Association to the 13th session of the GATT concluded that the Association infringed Article XXIV of the GATT as it expanded existing discriminatory trade provisions.[277] More recently, the EC has been portrayed as a pariah by pro-GATT advocates.[278] The United States has emerged as the fiercest critic of EC policy.[279] Soon after the conclusion of the Tokyo Round (1974-79) of the GATT multilateral trade negotiations (MTN),[280] the United States began lobbying for a fresh round of negotiations.[281] The EC opposed this initiative with the help of Brazil and India[282] but was finally pressured into agreement in 1982.[283] The EC's reluctance largely hinged on the thorny issue of agricultural trade. To understand the EC's position, one has to be familiar with the agricultural policy of the EC.

The Treaty of Rome[284] at Article 39 lists the main objectives of the EC's Common Agricultural Policy (CAP) as: (a) maintenance of reasonable prices for consumers; (b) increase of farm productivity; (c) ensuring availability of suppliers; (d) stabilization of agricultural markets; and (e) the provision of a fair standard of living for farmers.[285] The central pillars of this policy revolve around common fi-

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276 *See generally* WILLIAM G. BARNES, EUROPE AND THE DEVELOPING WORLD: ASSOCIATION UNDER PART IV OF THE TREATY OF ROME (1967).

277 *Id.*

278 In 1986, Gardner Patterson commented that:

> The Community's behavior creates serious problems for others and threatens an international trading system regularly extolled by European authorities. It can be traced to: the structure of the EC and its decision-making process, which is slow, hard to predict, and has a protectionist bias; the EC propensity toward bilateralism and sectoral arrangements, which ignore the global rules and endanger the very possibility of maintaining international economic cooperation; the EC's tolerance, even affection for, discriminatory practices, which are particularly burdensome to many developing countries, the non-market economies, and Japan; and the Community's reluctance to support effective international dispute-settlement procedures, which is a necessary element for a system based on general rules.

Gardner Patterson, *The European Community as a Threat to the System*, *in* TRADE POLICY IN THE 1980s 223, 241 (W.R. Cline ed., 1983).

279 *See* Judith H. Bello & Alan F. Holmer, *Prospects for the GATT Uruguay Round*, PRIVATE INVESTMENTS ABROAD 1, at 2 (1991).

280 *See* The Tokyo Declaration, Sept. 14, 1973, *reprinted in* GATT, 20 B.I.S.D. 19-22 (1974).

281 *See* Sylvia Ostry, *Europe 1992 and the Evolution of Multilateral Trading System*, 22 CASE W. RES. J. INT'L L. 311, at 312 (1990).

282 For Brazilian and Indian views on the renegotiation of GATT, see *infra* note 294 and accompanying text.

283 *See* Ostry, *supra* note 281.

284 Treaty of Rome, *supra* note 2.

285 *Id.* art. 39.

nancing, common pricing, common import restrictions, and common treatment of surpluses.[286] Before the early 1970s, agriculture did not feature prominently in world trade disputes nor in GATT,[287] but events in the 1970s flung agriculture into the forefront of EC-GATT confrontation.[288] The peripheral treatment that agriculture had received for over forty years came to an abrupt end. This change was due to the high priority attached to reform of domestic agricultural policies by the United States.[289] As world prices continue to fall, the EC has increasingly resorted to the use of export subsidies to dispose of its surpluses abroad at prices far below internal market support levels.[290] In fighting this EC practice the United States has received the support of the Cairns Group of nations.[291] The combined pressure of, *inter alia*, the United States and the Cairns Group helped launch a new GATT MTN in Punta del Este, Uruguay on September 20, 1986.[292]

The Uruguay Round differs from previous GATT rounds in two fundamental aspects. First, previous rounds focused largely on

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[286] *See* Vogt & Womach, *The Common Agricultural Policy of the European Community and Implications for U.S. Agricultural Trade*, *in* STUDIES PREPARED BY CONGRESSIONAL RESEARCH SERVICES FOR THE USE OF REPUBLICAN MEMBERS OF THE JOINT ECONOMIC COMMITTEE, S. REP. No. 191, 99th Cong., 2d Sess. 35-37 (1986).

[287] To be sure, agricultural issues were discussed in the Dillon Round (1961-62), the Kennedy Round (1964-67), and the Tokyo Round (1974-79). However, the subject was not as controversial as it is now. *See generally* CONGRESSIONAL BUDGET OFFICE: THE EFFECTS OF THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS ON THE U.S. ECONOMY: AN UPDATED VIEW (1979); J. EVANS, THE KENNEDY ROUND IN AMERICAN TRADE POLICY: THE TWILIGHT OF THE GATT (1971); Houck, *U.S. Agricultural Trade and the Tokyo Round*, 12 LAW & POL'Y INT'L BUS. 265 (1980).

[288] For a history of this trend, see Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT'L L.J. 123, at 124-26 (1989). World agricultural trade expanded from $50 billion per year in 1970 to $225 billion in 1980. *Id.* A declining growth in world food supply and population and income increases in the developing world fueled this expansion. In the 1980s, however, the situation was reversed and between 1980 and 1985, world agricultural trade declined by about 11%. *Id.* High production and low demand combined to create a "crisis of overproduction." *See Agricultural Subsidies Would Be Cut Under U.S. Trade Plan*, WALL ST. J., April 7, 1987, at 1 ("The farming world faces a crisis of overproduction . . .").

[289] During the boom years of the 1970s the United States gradually phased out government price supports allowing farm prices to reflect world market conditions. *See* Filipek, *supra* note 288, at 124.

[290] *See* U.S. INTERNATIONAL TRADE COMMUNICATION, PUB. NO. 1793, REVIEW OF THE EFFECTIVENESS OF TRADE DISPUTE SETTLEMENT UNDER THE GATT AND TOKYO DISPUTE SETTLEMENT, app. 1, 20-28 (1985).

[291] Cairns Group is composed of Argentina, Australia, Brazil, Canada, Chile, Columbia, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay. This is a group of free-traders who wish to see a thorough liberalization of world farm markets. *See* Cairns Group Proposal on Agriculture, *tabled in* Oct. 1987 (unpublished document on file at the Office of the U.S. Trade Representative); Time for Action: A Proposal For a Framework Approach to Agriculture, *tabled in* July 1988, GATT Doc. MTN. GNG/NG5/W/69 (unpublished document on file with the Australian Embassy in Washington).

[292] Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations, Sept. 20, 1986, *reprinted in* 25 INT'L LEGAL MATERIALS 1623 (1986).

quantifiable or, at least, visible barriers to trade, such as tariffs. The Uruguay Round, however, encompasses an unprecedented wide range of issues.[293] Second, the importance of developing countries and, in particular, the NICs has injected a new element into the equation. Two issues particularly concern African countries. One, full-scale liberalization of the international agricultural market would be of immense benefit to African producers who have for a long time been locked out of major markets. Two, developing nations are opposed to the inclusion of services in the trade negotiations.[294] The United States is, however, extremely keen on ensuring that both the agricultural component and the service regime are dealt with in the Uruguay Round.[295]

The EC, on the other hand, is virtually holding the rest of the world at ransom. It has repeatedly rejected all calls to reform the operation of its CAP and, as a consequence, almost derailed the negotiations. There are signs that Britain and Germany are prodding the EC towards conforming with the expectations of the rest of the world.[296] France, however, does not seem able to confront its influential farm constituency.[297] As the stalemate continues, taxpayers in most developed countries continue to suffer.[298] Within the EC, CAP

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[293] The Uruguay Round trade talks cover tariffs, non-tariff measures, agriculture, tropical products, natural resource-based products, textiles and clothing, GATT articles, MTN agreements and arrangements, functioning of the GATT system, and services. *Id.* at 1624-25.

[294] Brazil and India have led this opposition. The main contention of developing countries is that all the potential gains in service trade basically are on the side of the developed countries. *See* Bart S. Fisher, *Economic Development in the Third World: What Can Be Expected From the Gatt Uruguay Round?* 81 AM. SOC'Y INT'L L. PROC. 578 (1987). These countries argue that the inclusion of services will result in an international division of labor in which the South will be forced to concentrate on traditional manufacturing industries whereas the North will monopolize the more profitable and expanding service industries including banking, insurance, telecommunication, etc.

[295] As regards services:

> [I]t is now a truism that the United States is a service economy. In the United States services have risen from 48% of the U.S. GDP in 1950 to 70% today. Seven out of every ten jobs today in the United States are to be found in service industries. Eighty-six per cent of the job growth in the U.S. economy in the last 20 years has occurred in the service producing sector.

Id. at 588.

[296] *See GATT Reprieved?*, ECONOMIST, Oct. 19, 1991, at 15.

[297] *See GATT—France Stays Firm on Agriculture*, GUARDIAN WEEKLY, July 26, 1992 at 14. Whereas the French farm lobby has received wide press coverage during the GATT Uruguay Round there are doubts being raised about the United States government's ability to ratify any GATT arrangement that advocates a liberal agricultural policy. There are those in the EC who believe that the United States cannot deliver on what it has proposed. This belief stems from the realization that "[a]griculture is perhaps the best organized political group of any of the trading groups and, as a result, gets a little more action, a little more protection . . . than do other elements of world trade." *Preparing for the GATT: A Review of Agricultural Trade Issues: Hearings Before the Subcomm. on Foreign Agricultural Policy*, 99th Cong., 2d Sess. 217 (1986) (statement of Sen. Rudy Boschwitz).

[298] Most industrialized countries generously protect and subsidize farm production creating a situation in which surpluses are disposed in the world market at prices way below domestic prices. The OECD estimates that this practice costs taxpayers in these

drains about two-thirds of its budget.[299] A compromise may be possible but given the sacrifices needed to fashion that out, the final agreement may be more symbolic than a true effort at solving the real problems.

Any agreement resulting from the Uruguay Round talks is going to greatly influence economic and political developments in Africa for decades to come. Thus it is critical that developing countries present a unified and articulate front at the talks. The Lomé Convention does not facilitate such a stand. It is a divisive device.[300] It is not possible for ACP members to embrace the EC within the Lomé framework and lambast it in GATT. In making a choice between Lomé and GATT, ACP countries must realize that Lomé is no longer a forward-looking arrangement but a relic of the past. As one writer has concluded:

> But if, in addition, the Lomé Conventions, including Lome III and its inchoate legal form, have failed significantly both to assist the development of third world and provide a workable model even for European external policies towards the third world, it will have to be concluded that resources have been misallocated, policies misdirected, and institutional learning ignored.[301]

The EC itself has confirmed this conclusion by categorically rebuffing ACP attempts to discuss the CAP. The EC forthrightly advised ACP States that "you [ACP] must not ask us [EC] to scorn our own interests, that is not possible."[302] Having arrived at a dead-end road in that regard, ACP countries must recognize that the only forum which presents an opportunity for a forward movement both in economic and trade terms is the GATT forum. ACP and other developing nations should not hope for miracles from the Uruguay Round. In fact, chances are that any agreement that may be worked out in the talks will fall far short of what many developing countries are now seeking. However, there will be significant forward-looking

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countries more than $200 billion a year. *See Free Trade's Fading Champion*, ECONOMIST, Apr. 11, 1992, at 65.

299 *See* Jini L. Roby, *Lomé IV—No "Fortress Europe"*, B.Y.U. L. REV. 1781, at 1792 (1990).

300 As one writer has stated:

> The effect of the Lomé Convention upon the Third World has been divisive. . . . [T]he European Community has fostered Third World divisiveness by following the bloc approach to development.

Dolan, *The Lomé Convention and Europe's Relations With the Third World: A Critical Analysis*, 1 REVUE D'INTEGRATION EUROPEANE 369, at 393 (1977). The potential divisive impact of the Lomé Convention was appreciated by political commentators soon after its signing. In 1975 Mr. Forbes Burnham, Prime Minister of Guyana, stated that:

> "the 46 ACP countries must not allow themselves to be an elite and thus become a factor for division."

Address to the Heads of Governments at Kingston, Jamaica, from April 29 to May 6, 1975.

301 Adrian Hewitt, *The Lomé Convention: Entering a Second Decade*, 23 J. COMMON MKT. STUD. 95, 114 (1984).

302 F. Durieux, Director-General Adjoint, *Presentation to the Committee on Commercial Cooperation* (Mimeo, Nov. 7, 1978).

measures that will be incorporated. Success by the United States, however limited, will have a positive influence on ACP economies by opening up world markets. For this to happen, developing countries must yield on the issue of services in order to establish some *quid pro quo* necessary to fashion out an agreement. In doing so, developing countries could acquire leverage with which they could ask for the removal of trade restraints by developing countries. As one commentator has aptly concluded, "the task for the developing countries is to turn the push for inclusion of services to their advantage, like a judo fighter turns the velocity of the opposing fighter to his advantage."[303]

V. Conclusion

The last three decades have been difficult for African countries. During this period, political independence was achieved. This was followed by a brief period of optimism and real growth. For the most part, however, most countries were plagued by economic decline resulting in pervasive poverty. This article has sought to show that many of the economic and political problems plaguing Africa today stem from the continuation of policies and adoption of institutions that have colonial underpinnings. Africa has not given priority to the formulation of its own policies and goals. Instead, it has relied on its former colonial powers to determine most of its political and economic undertakings. While acknowledging the fact that most African States are young and poor, characteristics which do not enhance their bargaining power in international fora, this article has sought to demonstrate that Africa has not shown any initiative in formulating its policies nor taken advantage of opportunities that have arisen from time to time.

The Lomé Convention has survived for the last seventeen years mainly because its shortcomings have been explained away as shortfalls emanating from an otherwise sound arrangement. This is a great folly; to separate the theoretical aspirations of the arrangement from its practical application is simply wrong. Implementation is the most important part of the arrangement.

Euro-92 will mark a watershed in EurAfrican relations. It will herald a new Europe, and Africa must ensure that a new chapter is opened for itself. To continue EurAfrican relations on the same footing as before will perpetuate economic decline in Africa. Africa's response must be equal to the challenges facing it; half-hearted measures will not do. Risks must be taken. The Lomé Convention cannot benefit Africa in the new international order and should be discarded. Already Spain, Portugal, Greece, and Ireland are discov-

[303] Fisher, *supra* note 294, at 590.

ering that their rich partners are unwilling to help elevate their economies.[304] To continue with the Lomé Convention may confirm the view held by a growing number of scholars that "Africa has no future."[305]

[304] Delor's budget plan, which sought to invest money on the poor members of the community, was rejected by the rich members of the Community. *See Lamont To Turn Spotlight On Delor's Bigger Budget*, INDEPENDENT, July 13, 1992, at 1; *Lamont's Questions Anger EC Ministers*, INDEPENDENT, July 14, 1992, at 8.

[305] V.S. Naipaul, *Viewpoint*, TIMES LITERARY SUPPLEMENT, Feb. 1, 1992.