REGIONALISM WITHIN THE NEW INTERNATIONAL ECONOMIC ORDER: A LEGAL PERSPECTIVE

BY

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DECLARATION

I, hereby declare that this thesis has been written by me and that it is a record of my own research work.

It has not been presented or published anywhere, at anytime by anybody, institution or organization.

All quotations and references have been acknowledged accordingly.

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CERTIFICATION

This thesis entitled: REGIONALISM WITHIN THE NEW INTERNATIONAL ECONOMIC ORDER – A LEGAL PERSPECTIVE by Thompson Onukwue Nwankwere meets the regulations governing the degree of Master of Laws (LL.M) of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to my living Octagenarian Mother, Chief Mrs. Comfort Onyeokwere Nwankwere (Nee Omeokwe), who uptill now has been nudging me in all my undertakings and who firmly stands for justice, equity and morality.

"TO GOD BE THE GLORY".

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ABSTRACT

On l[sl] May, 1974, the United Nations General Assembly at the sixth special session passed and adopted Resolutions 3201 and 3202; entitled the establishment of the New International Economic Order (NIEO) and programme of action on the New International Economic Order (NIEO) respectively. On the 12[th] December. 1974, at the 29[th] Regular session, the United Nations General Assembly adopted a Charter of Economic Rights and Duties of States. The global problem today lies on the universal implementation of these resolutions and charter. It is sad to note that the binding force of United Nations resolutions is weak. This calls for an urgent review of the United Nations Charter.

Article 21 of the League Covenant and Article 52 of the United Nations Charter implied that the United Nations systems encouraged regional co-operation both with symbols and with practical steps.

The lapses, inefficiencies and ineffectiveness of the Economic Commission for Africa (ECA) in speaking for Africa, gave birth to the Monrovia Declaration in July 1979, and subsequently the Lagos Plan of Action in April, 1980. The Abuja Treaty of June 1991, established the African Economic Community (AEC). Article 6 (2a) of African Economic Community (AEC) Treaty calls for the strengthening of existing sub-regional economic communities and the establishment of such communities in other regions of Africa. In Africa we have the following sub-regional blocs:

Economic Community of West African States (ECOWAS), Union Douaniere Equatoriale Et Du Cameroun (UDEAC), South African Development Co-ordinating

Conference (SADCC), now South African Development Community (SADC), the demised East African Community (EAC), to mention but a few.

All these sub-regional blocs aim at economic co-operation, collective self-sustenance and self-reliance of each sub-region, For instance, Economic Community of West African States (ECOWAS) provides the framework within which collective self-reliance and co-operation among member states of the community could be given concrete expression in line with the New International Economic Order.

African states should not solely rely on their demand for the New International Economic Order, rather they should look inwards on how to develop their abundant resources and be self-reliant.

All the same, African regional and sub-regional blocs should have common goals, objectives, rules and policies as to maintain regional order and of course, promote world peace and security.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE PROBLEM

The United Nations Economic and Social Council through its resolution of 29th April, 1958, established the Economic Commission for Africa and other four Regional Commissions. The terms of reference of the Economic Commission for Africa require:

(a) That the Commission initiate and participate in measures for facilitating concerted action to relieve the economic and technological problems of Africa.

(b) That it makes or sponsors investigations into economic and technological problems of development.

(c) That it undertakes or sponsors the collection, evaluation and dissemination of economic, technological and statistical information.

(d) That it performs such advisory services as countries of the region may desire, provided that these do not overlap with those provided by other bodies of the United Nations or its specialized agencies.

(e) That it assists the United Nations Economic and Social Council, at its request, in discharging its functions within the region in connection with any economic problems including those in the field of technical assistance.

(f) That it assists in the development of coordinated policies for promoting economic and technological development in the region.

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(g) And that it deals, where appropriate, with the social aspects of economic development and with the relationship between economic and social factors[1].

This gave new impetus to regional co-operation in the technical and economic fields, on a continental and sub-continental scale.

It was also aimed at facilitating the harmonization of views and eventually of policies on common problems, particularly on some aspects of economic relations with the developed countries. Such opportunities were of great significance to Africa, where feelings on the above issues were more intense.

This has encouraged the general debate under the framework of the New International Economic Order, which the African countries, as the most affected sub-group of the third world, have remained in the front line of the argument.

How is Africa to be affected by restructuring of the global economy? What are the demands of the African countries? How reliable and realistic are they? In Africa, as in other parts of the third world, has regional experiments produced satisfactory result? Will most African States see the past criticism of the Economic Commission of Africa as no longer valid?

The United Nations pre-occupation with economic development is rooted in the sharp division of its membership between rich and poor nations: Has this division threatened world peace and security? Has the New International Economic Order generated any conflict?

Article 1, Paragraphs 2 and 3 of the United Nations Charter provides that "The purposes of the United Nations are to develop friendly relations among nations .....

and take other appropriate measures to strengthen universal peace, to achieve international co-operation in solving international problems of an Economic, Social, Cultural or Humanitarian character[2].

Article 62 of the United Nations Charter established the Economic and Social Council, whose primary task according to section 62 (1) of the charter is to make or initiate studies and reports with respect to international economic, social, cultural, educational health and related matters ……."[3].

Regional efforts should be of great value to the attainment of world peace, since this is consistent with the aims of the United Nations, as regional commissions are subsidiary organs of the United Nations.

The research problem here is how effective are the Regional Commissions especially the Economic Commission for Africa.

1.2 OBJECTIVES OF THE RESEARCH

A proper world economic system must be created in order to reduce the gap in economic development between the developing and the developed world.

This research will look into the legal framework of Regionalism in the third world with special reference to Africa. Regionalism has an important function within the New International Economic Order in promoting world peace.

This thesis will further examine regional economic law as a vehicle for the maintenance of world peace.

Effective work for a universal goal can only be carried out on a regional basis.

The contribution by regional co-operation to the development of the third world especially Africa cannot be overemphasized, thus, regional experiments have continued unabated in Africa.

It is worth considering whether sub-regional efforts such as Economic Community of West African States, might not gain increasingly active membership support and also financial and manpower resources from member governments.

Finally, attempt will be made to establish whether the Economic Commission for Africa in the future, can achieve respect and recognition as speaking for Africa on economic and social issues?

1.3 THE SCOPE OF THE RESEARCH

This research will concentrate on regional and sub-regional groups in Africa. The New International Economic Order among other things, recognizes that collective self-reliance and growing co-operation among developing countries would further strengthen their roles in the New International Economic Order.

The first issue to be addressed is that of the demands made by developing nations with special reference to Africa. This thesis will also investigate the legality and legitimacy of these demands and the responses of the developed world to the demands of Africa.

Regionalism within African continent will be documented, especially the Economic Commission for Africa, the African Economic Community, the Economic Community of the West African States, and the South African Development Commission.

The Legal framework creating these organs, their problems and prospects would be investigated. It is worthy to note that regionalism does not only mean economic/legal cooperation, it also includes both social, political and military cooperation. This thesis will dwell mostly on the legal and economic implications of regionalism in Africa towards the attainment of world peace.

The means of achieving economic equality through the creation of international economic legal norms, and the legal effects of negotiations to represent the culminating point in the definition of legal norm will be addressed through brief overview of the United Nations Conference on Trade and Development and the World Trade Organization of which most African States are members.

1.4 RESEARCH METHODOLOGY

The research, considering the reality of the subject matter, will adopt the method of secondary data collection. It is worth mentioning that published materials on research of this nature are very scanty, as few comprehensive books on regional organizations in African Legal perspectives exist.

At the same time, relevant published journals, Textbooks, Statutes, Decrees, United Nations Charter, Treaties and resolutions, will be adequately consulted and should be very useful to this thesis. These various sources of information shall accordingly be acknowledged.

In addition to the above stated method of data collection, the research will also employ the method of unstructured interview. The universe will be made up of executive and other managerial staff of key economic institutions relevant to world trade and economic matters chosen from within national and international institutions in Nigeria.

1.5 DEFINITION OF TERMS

"Economic Sovereignty": This is the basic premise of International Economic Law, as Sovereignty is that of international law at large. An increasing shift from the purely political and legal symbols of sovereignty to its economic aspects and the political emancipation of a considerable number of formerly subjected countries revealed the sharp contrast between the numerical minority of the industrialized developed countries and the majority of the developing countries.

"International Economic Law": The branch of international public law which is concerned with the ownership and exploitation of natural resources, production and distribution of goods, invisible international transactions of an economic or financial character, currency and finance, related services and the status and organization of the entities engaged in such activities.

"Economic Sanction": This is the most frequently used legal form of economic coercion. It was provided for by Article 16 of the covenant of the League of Nations incorporated in Article 41 of the charter of the United Nations and brought unsuccessfully unto operation during the Italio-Ethiopian war.

"International Economic Order": Primarily a basic but essentially a de facto system of international economic relations. The term world economic order emphasizes the global character of such an international economic order.

"Jus Cogens": Law binding irrespective of the will of individual parties.

"New International Economic Order": The target at which the less developed countries are aiming is what they described as the "New International Economic Order.

This calls for sovereign equality, equity, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems, which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and developing countries and ensue steadily accelerating economic and social development in peace and justice for present and future generations.

"Partial International Economic Orders": International Economic Orders, which, as a rule, are based on multilateral agreements or institutions but fall short of universality. If they aim at universality, they will be called universalists. While United Nations have not yet reached this point; if the scope of such organs or institutions is regional in the geographical or common sense meaning of the term such as, for example, Eastern or African Economic Commission of the United Nations, or any other established on such a limited scale would be regional. If such an order is of an exclusive or selective character, it is termed sectional.

"PAN-Africanism" was essentially the consciousness of the right of the African peoples to cultural, political and economic independence that is to equality with the other nations of the world.

"Regionalism": Muzan A. O. define it as the approximation of policy by two or more states for their mutual benefit in a common geographic setting. The imperatives

of geographical contiguity, sovereignty and policy approximation are the key distinguishing characteristics of Regionalism from other bilateral or multilateral frameworks [4].

"Regional Economic Integration" is a component of the broader concept of regionalism. Like most other human behaviour at any level, it has a political dimension, and in many instances, it is pervaded by the vicissitudes and idiosyncrasies relating to particular time factors in politics. In every part of the world there is a growing enthusiasm for economic integration leading to the ultimate goal of regional economic union.

1.6 LITERATURE REVIEW

The theory of regional co-operation or integration was elaborated mainly as a response to the major concerns of Europe after the Second World War: Containment of naturalism and the promotion of economies of scale. These concerns have been the central themes and shared objectives of the two main schools of thought or regional co-operation. These are the Federalists and the functionalists[5].

The functionalists school, accepts the idea of the predominance of economics over politics, a kind of economic determinism, so dear to classical liberalism and the Marxist. For the functionalist, political integration is the child of growing economic inter-dependence usually the mark of a relatively, high economic diversification or development. For the Federalist school, these objectives could be better attained by launching a frontal attack on national sovereignty. This implies the adoption of a common constitution and the creation of joint institutions or a central government. Through its legal, administrative, budgetary and if necessary coercive power, the central government would give birth to an integrated economy and community attitudes. In practice, regional co-operation has often combined Federalist and functionalist elements.

The treaty of Rome of 1957 adopted a gradualist approach to economic co-operation, but clearly proclaimed its political, quasi-Federal, final objective[6]. In every part of the World there is growing enthusiasm for economic integration leading to the ultimate goal of regional economic union. Today, many neigbouring countries with common problems, strive to maintain some degree of economic co-operation, and the

universal trend towards the formation and strengthen of regional economic groupings that is a clear manifestation of the growing awareness of the global inter-dependence of mankind in all facets of economic well-being and the promotion of international understanding.

The United Nations has through its various agencies and special sessions encouraged developing nations to promote regional integration and co-operation in the fields of economic development. In Africa, the United Nations Economic Commission for Africa recommended that member states of Economic Commission for Africa, should establish as soon as possible sub-Regional groups that will assist in harmonizing their economic and social development.[7]

In Africa South of Sahara, the general feeling which was more favourable to a functional approach to regional co-operation on a continental or sub-continental scale easily took root in the fertile soil of PAN-Africanism. At this point it is necessary to undertake a review of the work of some leading authors relevant to this field of research.

Firstly, the work of "Muzan"[8] was consulted and was found very useful in the study of the history and development of regionalism. It also helped to throw more light at the integrative capacity of the Economic Community of West African States (ECOWAS) treaty, as well as assisted in comparative analysis of this treaty vis-à-vis other regional treaties.

Secondly, the publication of a leading new functionalist "Haas"[9] who signalled the "obsolescence of regional integration theory" in 1976 provided the researcher, with a

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better grasp of the possible linkages between regional and sub-regional co-operation as an instrument for building or strengthening the continental and sub-continental capacity for development. This work immensely assisted in achieving a deeper understanding of the reasons why regional co-operation has not produced the expected results in some continents especially in Europe. To that effect the book re-examined the major tenets of the established theory and practice of regional co-operation and suggested new avenue for thought and action in this field.

Thirdly, the work of "Burton"[10] addresses itself to scholars, policy makers and hopefully wider sections of the public with an interest in international organizations or the more general field of international law.

This work filled a gap in the systematic studies of global organizations. It focused on policy implementations as a transparent tool in all forms of regional co-operation.

Fourthly, the work by "Bowett"[11] took a detailed legal cum historical perspective in regional conferences and Alliances since the eighteenth century.

The researcher found this work very useful. A brief review of the growth of the legal aspects of the organizations of general competence that is the League of Nations, the United Nations and its organs. Other organizations like the regional and sub-regional bodies were not left out especially the Organization of African Unity (OAU) and this made interesting reading.

Fifthly, "Van Meerhaeghe"[12]discussed purely the International Economic Institutions with emphasizes on Regional integration. This was found not only useful but also important to the researcher.

This work combined the knowledge of the theory with work on the practice of the major international economic organizations, many of which are having a growing influence on the national economy of their members.

- Sixthly, the Classical book by "Bruce Russett"[13] which discussed questions on how international regions exist, was consulted and was found very helpful.

Seventhly, also consulted was a study published in 1972[14] by Joseph Nye who noted that despite the ambiguity of Russett's conclusions about the indicators of regionalism, it had been clear from his evidence that regional intergovernmental organizations had increased even faster.

Furthermore, the book by "Roger Masters"[15] was very illustrative on regionalism. It accepted the possibility that regions might emerge more clearly without examining in much detail the evidence for this, and without specifying any indicators of regionalism. Finally, of importance were published journals and Articles by the United Nations Agencies. They contributed in illuminating and updating this research.

1.7 LEGAL EVOLUTION OF ECONOMIC REGIONALISM

Article 21 of the League of Nation's Covenant provides as follows:

> Nothing in the covenant shall be deemed to effect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe doctrine for securing the maintenance of Peace[16].

This implies that even prior to the league, "Regionalism in the sense of grouping of states by a common bond of policy existed; the Monroe doctrine and also the British Empire are good examples of Regionalism in its restricted meaning. It was in the league era that the Balkan Entente, the Lacarno Agreements and the Briand proposal for the European Union were created.

Article 52(1) of the United Nations Charter also tried to protect the existing regionalism by providing as follows:

> Nothing in the present charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security, as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the purpose and principles of the United Nations[17].

The implication of this article is the avoidance of conflict between United Nations Security organs and the regional arrangements provided in Article 21 of the League of Nations covenant. Regional Security arrangements were permitted by Chapter VIII of the United Nations Charter.

A regionalist view was even encouraged by the principle of equitable geographical presentation in the United Nations elective bodies. As de-colonization progressed, by its very existence and the principles of universal membership, the United Nations system offered unprecedented opportunities for diplomatic and other forms of interaction among newly independent countries.

The formation of continentally based groups within the organization facilitated the harmonization of views and eventually of policies on common problems, particularly on those issues related to national liberation, racial equality and some aspects of economic relations with the industrialized countries. Such opportunities were of great significance to Africa, where feeling on the above issues were more and where at a relatively low degree of intra continental rivalries at least as compared to the prevailing situation in Europe and Asia allowed the emergence of some kind of continental attitude. The majority of African countries became independent in an era of regionalist euphoria.

"It is plausible to date the beginning of regional co-operation in Africa from 1899 when Sir Harry Johnston, Special Commissioner to the Uganda Protectorate proposed a merger of Uganda and Kenya within the British protection".[18] The Treaty of Rome of 1957 which created the European Community, also gave birth to Associated African and Madagascar States (AASM) in 1963.[19] This was the beginning of Regionalism in Africa.

Between 1960 and 1962, eighteen African Countries became independent along with Madagascar, and this led to that signing of the agreement in Yaounde, Cameroun on June 1 1964 of the Associated African States and Madagascar. Again in 1969, a second agreement was singed in Yaounde Convention admitting Mauritius and bringing the membership to nineteen African countries. The Pan American Union which in 1948 metamorphosed into the organization of American States (OAS), the Arab League, and the Organization of African Unity (OAU) advocated that regional procedures have priority over the Security Council's procedures for settlement.

In the 1950s and early 1960s the regional trend was reinvigorated worldwide by several interacting factors notably the existence of the United Nations (UN), a raging East-West conflict, the progress of de-colonization and new technological developments.

The Security Council, after a somewhat questionable abdication of jurisdiction in the Guatemalan case [20] has more recently shifted towards a more pragmatic approach in which, whilst supporting the use of regional procedures, it nevertheless retains a supervisory jurisdiction by maintaining the question on its own agenda (as in the Haitian and Panama cases in 1963 and 1964)[21] and even in the case of the Dominican Republic in 1965, dispatching its own observer mission. [22]

The establishment of the Economic Commission for Africa (ECA) in 1958 by the United Nations, Economic and Social Council (ECOSOC), the United Nations resolution on the International Development Strategy for the Second United Nations

Development Decade encouraged developing countries to continue their efforts to negotiate and put into effect schemes for regional and sub-regional integration among themselves. The sixth special session of the United Nations General Assembly held in May 1974 adopted resolutions 3201 (S.IV) on the declaration on the establishment of a New International Economic Order [23] and resolution 3202 (S.IV) entitled a programme of Action on the establishment of a New International Economic Order [24], which, among other things, recognizes that collective self-reliance and growing co-operations among developing countries would further strengthen their role in the New International Economic Order.

Also the Cocoyoc Declaration [25], and the action programme adopted at the conference of developing countries held in Dakar early in 1975. Another Declaration that encouraged regionalism in Africa is the Second General Conference of United Nations Industrial Development Organization (UNIDO) held in Lima in March, 1975.

On 12th December, 1974, the United Nations General Assembly at its Twenty Ninth regular session adopted the Charter of Economic Rights and Duties of States prepared over a 17-month period by a Working Group of representatives of the 40 member states, under the auspices of the United Nations Conference on Trade and Development (UNCTAD) [26]. All these embody proposals that will develop the theme of regional co-operation and self-reliance which represent genuine desires for a restructuring of international economic relations. The proposals also offer a reasonable basis for co-operation among developing nations on the other hand for the establishment of the New International Economic Order.

1.8 ORGANIZATIONAL LAYOUT

Chapter one of this research is an introductory one. It deals with the origin of the problem, objectives and scope of this research. The research methodology is also highlighted. The chapter examines the legal evolution of regionalism especially in Africa.

The definition of important terms and the organizational layout of this work are also projected in this chapter.

Chapter two investigates the regional trends. It reviews the changes in the global economy and the growing regional integration of the developing countries into an increasingly interdependent economic system. The legal framework and consequences of these transformations on their regional block; with special reference to Africa will be highlighted. It will summarize problems, trends and prospects of Inter-African Co-operation in the light of redefinition of the whole concept of regionalism.

Chapter three examines the New International Economic Order and the legal perspectives of this order with special reference to the United Nation resolutions. This chapter also focuses on the demands of the developing countries (especially African countries) directed at the developed and industrialized countries of the world. The legal implications of these demands and how their acceptance and implementation by the developed countries can promote world peace.

Chapter four deals with African regional organizations. Primarily, it focuses on the special significance of the United Nations to African countries. This is followed by the legal and economic study of the more peculiar African continental and sub-continental

institutions like the Economic Commission for Africa and the African Economic Community.

Chapter five addresses the more peculiar African sub-regional economic bodies like the Economic Community of West African States (ECOWAS), South African Development Co-ordination Conference (SADCC), Central African Economic and Customs Union (UDEAC), and the Economic Community of East Africa (ECEA).

Chapter six presents a summary of the work, recommendations and conclusions.

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CHAPTER TWO

REGIONALISM

2.1 THE REGIONAL TRENDS

The end of the Second World War brought about many changes in global economic development and regional groupings. United States, Europe and other major countries became worried about the recovery of war torn Europe. [27]. Technology development created some of the most compelling conditions for the establishment of strong economic communities of States in the industrialized countries. In brief, the major forces behind the regional trend are technology, nationalism and ideology.

Technology may have played an important role in bringing industrialized countries closer together and nationalism in bringing developing countries together.

The greater extent to which regional co-operation is considered by developing countries as an instrument for the satisfaction of basic national aspirations also explains the higher degree of ambiguity of the regional process in the third world.

Economic integration schemes of developing countries are no longer based on the principles of free competition in order to stimulate trade and development, but rather on principles designed to guarantee real equality of opportunity to the developing countries.

In Africa, as in other parts of the third world, regional experiments have produced few satisfactory results.

Regional co-operation and decolonisation are intimately related processes.

The first period embracing this African experience extends from the independence years to post World War II.

Though faced with the reality of this negative panaroma, Africa is beginning to seek new alternatives, which will enable it to overcome the drawbacks of regionalism. This marked the second important stage of African experience in the field of International Economic Law.

Muzan, opined that "various measures have been made and levels or categories of regional integration derived. Among these are social integration (e.g. analysis of transactions like trade, mail, tourism etc.): political integration (including institutional integration, policy integration, attitudinal integration and security community) and other micro-sociology aspects of integration. [28]

2.2 THE CONDITIONS FOR SUCCESSFUL REGIONAL ECONOMIC INTEGRATION.

A regional economic integration is apparently successful, if it leads to increase in trade and economic welfare of the countries forming the union. For this to be fully attained certain conditions have to be met. [29]

Firstly, the area of the community has to be large. The larger the economic area of the countries forming the union the greater will be the scope of trade creating.

Secondly, the economies of member states should be competitive in the sense that the range of products produced by industries in different parts of the union is similar. They should also possess resources that are complimentary to each other.

Thirdly, trade among members should be substantial and trade with non-union members should be a relatively small proportion of total trade.

Finally, there should be enough resources or funds to support profitable joint projects from within the region or aids from other countries.

Economic integration arrangement in the various sub-regions of Africa may well be the pillars on which a future united African continent is built.

Economic analysis of integration in Africa is centered on two major areas.

Firstly, the effects of economic union on aspects of welfare. This emphasizes the welfare gains and losses from a marginal re-allocation of production and consumption patterns, under conditions of static equilibria in which such things as factor endowments, technology, demand, and population are assumed to remain unchanged.[30]

Second, is the effects of union on the pattern and volume of trade. This focuses on the dynamic aspects of integration, such as the existence of economies of scale and variable factor proportions[31]. Regional Economic integration therefore denotes a state of affairs or a process involving the combination of separate economies into larger economic regions[32].

There is usually free movement of goods and factors of production among such countries and absence of trade restriction such as tariffs and quotas. Regional Economic Integration can take several forms depending on the degree of cooperation. These include free trade area, customs union, common market and economic union.

2.3 REGIONAL ECONOMIC INTEGRATION IN AFRICA

There are two important impacts on the developing countries of Africa created by the Regional Economic Integration. These are: Trade Creation, and Trade Diversion. [33]

An economic integration that leads to trade creation will improve the welfare of union members as opposed to a trade diversion union. For an economic integration to be trade creating, some of the conditions, which are necessary, include substantial intra-union members.

The conditions that obtain in developing countries and African countries in particular are such that are not favourable for a trade creating union [34]. Trade among developing countries is relatively small, while their trade with developed countries is relatively large and their imports from them consist of intermediate and capital goods. This makes economic integration on the conception of trade creation apparently fruitless among developing countries. Nevertheless gains from integration are not derivable from trade creation only. There are some prospective gains from Regional Economic Integration, which touchs on the more fundamental problem of developing countries such as the need to industrialize, the need to mobilize unemployed resources and create opportunities for profitable investments and the need for economic growth. The abolition of tariffs as a result of Regional Economic Integration will promote intra union trade among African countries to some extent. Regional markets will be created for the products of member countries.

There will also be opportunities to mobilize domestic unemployed resources for investment purposes and industrial development will be enhanced. Besides, the formation of a union will strengthen the bargaining power of African countries in international markets. This they can effectively use to get better prices for their products, improve their terms of trade and balance of payments conditions and also ensure a more favourable international economic order.

The multinational or the transnational corporation does not do business in a vacuum. They operate in an environment and would maintain stability when the enabling environment is integrated. This will accordingly improve international trade position as well as raise the level of economic development of the African States. [35]

Indeed, the key economic case for economic integration in Africa rests on the potential for exploitation of internal and external economies of scale, especially in manufacturing activities. Integration will also affect the rate of growth of Gross National Product of the participating countries.

The above benefits of regional integration no doubt encouraged the establishment of the regional organizations in Africa.

2.4 REGIONAL COMMISSIONS WITHIN THE UNIVERSAL SYSTEM.

2.4.1 ESTABLISHMENT

The five regional commissions play a major role in the work of the United Nations in the economic field. All but the Economic Commission for Europe (ECE) are specifically mandated to deal also with the social aspect of economic development. The Economic and Social Commission for Asia and the Pacific or ESCAP (until 1974 known as the Economic Commission for Asia and the Far East – ECAFE) and Economic Commission for Europe (ECE) were established in 1947, and the Economic Commission for Latin America (ECLA) in 1948. The Economic Commission for Africa (ECA) was established in 1958 and began operations in 1959. Political tensions between Arab states and Israel delayed the establishment of Economic Commission for Western Asia (ECWA) until 1973. It commenced operations in 1974. Before that time, members of Economic Commission for West Asia (ECWA) were served by a small United Nations Economic and Social Council Office in Beirut, which was absorbed into the secretariat of Economic Commission for West Asia (ECWA) when it became operational.

2.4.2 COMPOSITION:

Membership in the regional commissions is not necessarily limited to states that are members of the United Nations (UN). Thus, though they are not members of the United Nations, South Korea and South Vietnam are full members of Economic and Social Commission for Asia and the Pacific (ESCAP). Furthermore, membership in a

particular regional commission is not strictly limited to countries located in the region but may include any outside countries that Economic and Social Council (ECOSOC) decides have a special interest in the region's economic development. Thus the United State of America is a member of Economic Commission for Europe (ECE), Economic and Social Commission for Asia and the Pacific (ESCAP), and Economic Commission for Latin America (ECLA); France and the United Kingdom (UK) are not only members of the Economic Commission for Europe but belong to Economic and Social Commission for Asia and the Pacific and Economic Commission for Latin America as well as the former Union of Soviet Socialist Republic are in the Economic Commission for Europe and Economic and Social Commission for Asia and the Pacific.

2.4.3 CONSULTATIVE PARTICIPATION AND ASSOCIATE MEMBERSHIP:

Countries not belonging to a particular regional commission may have been invited to participate in its work in a consultative capacity. These countries do not have the right to vote, but since formal vote-taking is rare, particularly in the committees and other subsidiary bodies where most of the continuous work goes on, their de facto position is not too different from that of a regular commission member.

Dependent or no-self-governing territories in any of the regions covered by the work of the commissions may become associate members until such time as they become independent states.

2.4.4 ORGANIZATION

Although their budgets form part of the regular United Nations budget and their personnel part of the regular United Nations staff, the regional Economic Commissions in most respects resemble full-fledged permanent international agencies. Each commission has its own secretariat, headed by an Executive Secretary. As decided by the participating governments, the Commissions organize their work through various subsidiary bodies; committees subcommittees, working groups, and special conferences.

Economic Commission for Europe headquarters is in Geneva at the European office of the United Nations, where its annual sessions also take place.

Economic and Social Commission for Asia and the Pacific headquarters have been maintained in Bangkok, Thailand, since 1949. The annual sessions of the commission are held in different countries of the region.

Economic Commission for Latin America headquarters is in Santiago, Chile with local offices in Mexico City, Rio de Janeiro and Washington. Economic Commission for Latin America sessions take place normally at intervals of two years, each time in a different Latin America country. In alternative years the committee of the whole, composed of all Economic Commission for Latin America members, meets at headquarters in Santiago to review the Commission's work.

Economic Commission for Africa has its headquarters in Addis Ababa, Ethiopia, and it holds biennial sessions. Owing to the difficulty of communications within the African continent, the Commission has divided its area of activity into four sub-regions, each

served by an outpost of its secretariat. North Africa is served by a sub-regional office at Tangier, Morocco; East Africa by an office at Lusaka, Zambia; Central Africa by an office in Kinshasa, Democratic Republic of Congo; and West Africa by an office in Niamey Niger.

2.4.5 FUNCTIONS:

Each commission serves as a regional forum where governments consult one another, exchange experiences, and endeavour to coordinate their policies and devise measures to solve common economic problems. For each Commission, Economic and Social Council has established a set of "terms of reference" that serve as its statute or constitution. The prescribed objective of all the Commissions is to "facilitate concerted action" to raise the level of economic activity in the region, and to maintain and strengthen the economic relations of the countries of the region both among themselves and with other countries of the world.

The specific functions of the commissions are the pooling and exchange of information and experience; discussion, harmonization and coordination for the social implications and economic implications may be particularly far-reaching. The five Commissions are also important forums for the discussion of technical assistance programs in the region. The secretariats and subsidiary organs of the Commissions play a major role in initiating and implementing regional technical assistance projects.

2.4.6 COOPERATION WITH OTHER ORGANIZATIONS:

The regional Commissions maintain close contact with United Nations headquarters and its specialized agencies. Cooperation between the regional

Commissions is also extensive. Whenever one Commission has acquired a body of knowledge and experience that can be of help to another, it makes this available through exchange of information and mutual consultations.

Since the end of World War II, a number of regional institutions and agencies have been set up outside the United Nations structure, especially in Europe. The Economic Commission for Europe secretariat, for instance, has made working arrangements with intergovernmental bodies such as the Council of Europe, the Organization for Economic Cooperation and Development (OECD), and the Danube Commission. Regional organization with whose work Economic Commission for Latin America is closely associated include the Organization of American States (OAS) and the Inter-American Development Bank (IDB). Similarly, Economic Commission for Africa maintains close liaison with the Organization for African Unity (OAU), which was established in 1963.

The work of the United Nations regional Commissions also involves the participation of professional and other non-governmental organizations. In view of the highly technical character of many of the commissions' tasks, specialized advice is often required, and outside contribution is fully acknowledged.

Thus "Regionalism" can be said to be "The attainment within a territory of a sense of "community" and of institutions and practices strong enough and widespread enough to assure, for a long time, dependable expectations of peaceful change."[36]

2.5 UNITED NATIONS REGIONALISM IN AFRICA

2.5.1 BACKGROUND

Economic and Social conditions in the various parts of Africa differ widely, but as a whole the continent is perhaps the poorest region of the world. Many obstacles stand in the way of economic development in areas needing it most. Some of these are a shortage of investment capital, lack of trained personnel, and outmoded commercial and industrial legislation. Many political units in Africa are small in size, and depend for their economic progress on cooperative regional and sub-regional efforts. The Economic Commission for Africa (ECA), embracing " the whole continent of Africa, and other African Islands," promotes economic and social progress through cooperation in the entire region.

2.5.2 SCOPE OF ECONOMIC COMMISSION FOR AFRICA (ECA)

When the Economic Commission for Africa met for the first time, there were only ten independent countries in Africa; by November 1975 there were 46 (excluding South Africa). The work of Economic Commission for Africa has been marked by a sense of urgency and a determination to match the rapid pace of African political progress with economic and social progress.[37]

The member countries aim to achieve this in several coordinated ways: by actions taken on the country level; by concerted policies, based on closer ties between them at both sub-regional and continent-wide levels; through advice and assistance from the United Nations and the specialized agencies; and by drawing on the know-

how and the financial and technical resources of industrialized countries outside Africa.

It was decided that in its initial phase Economic Commission for Africa would concentrate its efforts on a limited number of objectives. It would promote and facilitate concerted action on the part of various countries and territories to solve common economic and social problems; and it would carry out a program of research and investigation to include studies on economic development programming, surveys of resources, and work in the field of statistics. The African Development Bank (ADB), with headquarters in Abidjan, Ivory Coast, was established under the aegis of Economic Commission for Africa in 1964 and commenced operations in 1966.

In 1969, Economic Commission for Africa decided that its biennial sessions would be held at the ministerial level and known as the Conference of Ministers. It established an executive committee to ensure more frequent contacts between Economic Commission for Africa and the member states and to assist Economic Commission for Africa's Executive Secretary in carrying out his program of work. Another subsidiary body was established: the technical committee of experts, composed of officials of member states concerned with economic and fiscal matters.

The approach of Economic Commission for Africa is primarily at the level of its four sub-regions: North Africa, East Africa, Central Africa, and West Africa. Members of the commission have made it clear that the sub-regional approach is to be regarded as a necessary first step and that Pan-African economic integration remains the goal.

2.5.3 THE WORK OF THE SECRETARIAT

As Economic Commission for Africa has steadily expanded its membership and work programs, its secretariat has had to undergo several reorganizations to enable it keep up with growing demands.

Economic Commission for Africa has in the past devoted a great deal of attention to the promotion of economic cooperation directly through the promotion of economic groupings or individually by sponsoring the establishment of multinational institutions and infrastructural facilities. By 1975 the secretariat consisted of ten substantive divisions, each comprising several subsections that between them cover over twenty work fields.

2.5.4 ECONOMIC DEVELOPMENT PLANNING

In the late 1969 the secretariat brought out its first survey of economic conditions in Africa, covering the period 1960-67. Annual surveys conducted since then consist of two parts: a review of the general economic situation in the region and an in-depth analysis of specific economic and social problems in the various countries. In connection with the second United Nations Development Decade, the Secretariat identified for each member country the industrial projects most readily capable of modification in the economic and social structure. It is also continuing work on a comparative study of national development plans with the object of promoting greater uniformity of concepts and policies.

Economic Commission for Africa`s fields of activity include economic co-operation, fiscal affairs, industry, natural resources, agriculture, housing and planning,

transport and communications, human resources, population, science and technology, and statistics. A centre for economic cooperation functions in the central secretariat and the four sub-regional offices. The secretariat assists in assuring the smooth operation of the Association of African Central Banks, inaugurated in 1969. Ever since 1966, the joint Economic Commission for Africa – Food and Agriculture Organization (ECA-FAO) agriculture division of the secretariat has conducted programmes to promote agricultural development. A population program centre was set up in the secretariat in 1970. Economic Commission for Africa produced the study, which serves as the basis for the Trans-Saharan highway project from Algiers to Goa and Arlit, and assists in planning other major highways. In collaboration with the Organization of African Unity, African Development Bank (ADB), International Telecommunications Union (ITU), it has mobilized 80% of the $140 million investment required for the projected 20,000-km Pan-African Telecommunications Network (PANAFTEL).[38]

To assist in the development of the natural resources of Africa, two institutions have been established under the eagis of Economic Commission for Africa: the Regional Centre for Training in Aerial Survey at Ile-Ife in Nigeria in 1972, and the Regional Centre for Services in Surveying and Mapping at Nairobi, Kenya in 1974. A centre for Mineral Resources Development in East Africa was established in 1976 in Dar-Es-Salaam, Tanzania.

2.6 REGIONALISM AND ITS LEGAL PERSPECTIVES

An examination of global regionalism in matters of international economic law reveals interesting perspectives.

Article 21 of the League Covenant provides that:

> Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe doctrine for securing the maintenance of peace [39]

Bowett, concludes that "the League therefore foresaw the creation of the Balkan Entente, the Locarno Agreements, and the Braind proposal for the European Union"[40]. The covenant of the League of Nations inspired and motivated regionalism, legally.

Another legal instrument that encouraged regionalism was Article 52 of the United Nations Charter, which provides as follows:

> Nothing in the present Charter precludes the existence of regional arrangements of Agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and other activities are consistent with the purposes and principles of the United Nations [41].

According to Muzan:

> At the San Francisco United Nations Conference on International Organization (UNCIO), it was agreed that Chapter VIII of the new Charter be related to matters of regional arrangements. Thus Article 52 of the United Nations

Charter made provision for member states right to form regional organizations[42].

Article 62[43] provides that the council may make recommendations, either under Article 62(1) or without being related to any particular study under Article 62(2).

In addition specific legislative action by states is authorized under United Nations Economic and Social Council resolution 368 (XIII) dealing with methods of financing development in the under-developed countries.

Economic and Social Councils resolution 38(VI) of March 28, 1947 established the Economic Commission for Europe[44].

Also on the basis of 'the United Nations General Assembly Resolution 1155 (XII) of November 26, 1957 and Economic and Social Councils Resolution 671 A (XXV)[45] established the Economic Commission for Africa (ECA), within the framework of the policies of the United Nations and subject to the general supervision of the Economic and Social Council (ECOSOC).

Economic and Social problems differ tremendously in the region and it's better considered at a regional level.

The legitimate establishment by Economic and Social Council of five regional Commissions has encouraged regionalism in no small measure.

Bowett observed that "the General Assembly has insisted upon decentralization of the economic and social activities of the United Nations, so that the regional Commissions have assumed increasing importance over recent years"[46].

All these proviso by the United Nations helped in establishing the legal basis for regionalism.

In addition, certain other bodies like the United Nations Conference on Trade and Development, (UNCTAD), United Nations Industrial Development Organization (UNIDO), and the World Trade Organization (WTO), have contributed in one way or the other towards the legal aspect of Regionalism.

It is also correct to claim that the dissatisfaction of Economic and Social Council (ECOSOC) on the part of the developing countries led to the creation of the above-mentioned agencies or organizations.

Also relevant is Resolution 2218(XXI) of 19th December, 1966 on United Nations Development decade for promoting Economic and Social progress and better standards of life.

United Nations Resolution 1826 (XVII) of 18th December, 1962 on Establishment of a United Nations Capital Development Fund (and its employment in the field of capital development) requested the committee to report to Economic and Social Council (ECOSOC) and transmit the report to the General Assembly for action.

Similarly, Resolution 1710(XVI) on United Nations Development Decade of 19th December, 1961 is a programme of international economic co-operation in accordance with the solemn undertaking embodied in the Charter of the United Nations.

In addition to the above legal instruments, of the United Nations, another resolution 2090(XX) was adopted in December, 1965 entitled "The role of the United Nations in

Training National Technical Personnel for the acceleration of the Industrialization of the developing countries.

United Nations General Assembly Resolution 1995 (XIX) provides that the terms of reference of United Nations Conference on Trade and Development (UNCTAD) to include:

> To review and facilitate co-ordination of activities of other institutions within the United Nations system in the field of International trade and related problems of economic development [47].

All members States of the United Nations and its specialized agencies are members of the United Nations Conference on Trade and Development.

Members are divided into four groups or regions.

Group A: The Asian Countries (with exception of Japan), Yugoslavia and the African countries.

Group B: The market economy developed countries (the Western European Countries and Australia, Canada, the United States, Japan and New Zealand).

Group C: The Latin American Countries and the Antilles.

Group D: The Russian and the other Communist Countries of Eastern Europe.

The less-developed countries of United Nations Conference on Trade and Development (UNCTAD) are known as the "Group 77" which was created on 15th June, 1964.

Conference decisions require a two-thirds majority but procedural matters a simple majority only. Board decisions are taken at simple majority.

United Nations Conference on Trade and Development, in its Resolution 45(III) of 18th May, 1972, stressed the urgency to establish generally accepted norms to govern international economic relations systematically and recognized that it is not feasible to establish a just order and a stable world as long as there is no charter to protect the rights of all countries, and in particular the developing countries.

United Nations General Assembly Resolution 2415(XXIII)[48] reaffirmed the UNCTAD resolution calling for a net annual transfer of 1% of the GNP of each developed country to the developing countries.

United Nations General Assembly Resolution 1715(XVI)[49] requested special fund, following consultations with participating governments but not later than June, 1962, to consider the desirability of establishing a service to be provided to the developing countries especially African countries.

United Nations Resolution 1717(XVI)[50] of December, 1961 on African Educational Development recognized the importance of planned and coordinated educational development, in promoting economic and social development in African countries.

All the aforementioned covenant, Charters, Resolutions have assisted in giving legitimacy and legal support to Regionalism especially in the developing regions of the world, which represent 70 percent of the global population, of which Africa is a prominent member.

2.7 CONCLUSION

The major forces behind regional trend are technology, nationalism and ideology. Technology played a major role in bringing the industrialized countries closer together while nationalism influenced the developing countries into coming together. There are so many drawbacks to regionalism in Africa.

Though faced with the reality of this panorama, Africa is beginning to seek new alternatives which will enable it to regionalise.

Economic Integration arrangement in the various sub-regions of Africa may well be the pillars on which a future united African Continent is built. Regional Economic Integration can take several forms like Free Trade area, Custom Union, Common Market and Economic Union.

African participation in the United Nations system has been prominent and ceaseless during the past three decades. Trade Creation and Trade Diversion are the significant results of Regional Economic Integration in Africa.

The United Nations system encourages regional co-operation both with symbols and with practical steps. United Nations through its Economic and Social Council established five Regional Economic Commissions across the world. These are:

(i) The Economic Commission of Europe (ECE)

(ii) The Economic and Social Council for Asia and the Pacific (ESCAP).

(iii) The Economic Commission for Latin America (ECLA)

(iv) The Economic Commission for Africa (ECA)

(v) The Economic Commission for Western Asia (ECWA).

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The terms of reference of each Commission serve as its statute or constitution.

Many Political units in Africa are small in size, and depend for their economic progress on co-operative regional and sub-regional efforts.

The Economic Commission for Africa (ECA) embracing " the whole continent of Africa, and other African Islands" promoted Economic and Social progress through co-operation in the entire region.

Economic Commission for Africa's fields of activity include economic co-operation, fiscal affairs, industries, natural resources, agriculture, housing and planning, transport and communications, human resources, population, science and technology, and statistics.

Legally, some proviso of the League of Nations, some proviso of the Charter of the United Nations and some Resolutions especially of the United Nations Economic and Social Council (ECOSOC) and United Nations Conference on Trade and Development (UNCTAD) have assisted in providing the legal framework of Regionalism.

The Economic Commission for Africa (ECA) both as an arm of the United Nations and as an African regional mechanism has at best had only a modest impact on reducing underdevelopment. That notwithstanding, the Economic Commission for Africa has been and remains a viable instrument at the service of the International Community, the African regional and sub-regional institutions, and individual African governments.

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CHAPTER THREE

THE NEW INTERNATIONAL ECONOMIC ORDER

3.1 INTRODUCTION

The post 1946 economic order is a reflection of the Second World War economic order. Its characteristics were as follows:

- The structuring of an international division of labour that puts Africa at a disadvantage.
- The establishment of an international trade circle for the exclusive benefit of the West.
- Polarized accumulation and the strengthening of African dependence on external economies.
- The total incorporation of Africa into a capitalist world-economy with its contradiction and misplaced values.
- The sub-ordination (or peripheralisation) of Africa to the political and economic needs of the West and the setting in motion of dependent growth and development.

All the foregoing took place within the Post 1946 Era.

The Capitalist machinery produced the celebrated Bretton Woods system that formalized and legitimized the old economic order[51].

The burden fell on the developing nations especially African nations. To reduce the burden the developing countries started demanding for a New International Economic Order (NIEO).

Their demands fell into six groups that are made up as follows:

Aids and Assistance Issues

(1) Setting binding and universal targets for development assistance.

(2) Providing technical assistance for development and eliminating the brain drain.

(3) Renegotiating the debts of developing countries.

(4) Undertaking special measures to assist land-lock, least-developed and Island developing countries.

(5) Using Funds from Disarmament for Developing.

International Trade Issues

(6) Revising tariffs and non-tariff barriers; extending the generalized system of preferences; allocation of proceeds from duties and taxes on imports; participation in world invisible trade.

(7) Adopting an integrated programme for commodities.

(8) Developing an international food programme.

(9) Adjusting the economic policies of developed countries to facilitate the expansion and diversification of developing countries' exports.

(10) Improving and intensifying trade relations between countries having different social and economic systems.

(11) Strengthening economic and technical cooperation among developing countries.

International Financial Issues.

(12) Using social drawing rights for development assistance and as the central reserve asset of the International Monetary System; promoting stable rates of exchange and protection from the effects of inflation.

(13) Assuring adequate participation by developing countries in World Bank and International Monetary Fund decision-making.

(14) Increasing the transfer of resources through the World Bank and International Monetary Fund.

Issues of Industrialization, Technology Transfer and Business Practices.

(15) Negotiating the redeployment of industrial productive capacities to developing countries.

(16) Establishing mechanisms for the transfer of technology to developing countries.

(17) Regulating and supervising the activities of transnational enterprises and eliminating restrictive business practices.

(18) Improving the competitiveness of natural resources vis-à-vis synthetics and ending their waste.

(19) Providing equitable access to the resources of the sea-bed and the ocean floor.

Social Issues.

(20) Achieving a more equitable distribution of income and raising the level of employment.

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(21) Providing health services, education, higher cultural standards and qualifications for the work force, and assuring the well being of children and the integration of women in development.

Political and Institutional Issues.

(22) Assuring the free choice of states of their economic system and foreign economic relations, their full permanent sovereignty over natural resources, and the right to nationalize foreign property.

(23) Compensating for adverse effects on the resources of states, territories and peoples of foreign occupation, alien and colonial domination or apartheid.

(24) Establishing a system of consultations at global, regional and sectoral levels with the aim of promoting industrial development.

(25) Restructuring the economic and social sections of the United Nations to deal more efficiently with world socio-economic issues.

The quest for this New International Economic Order started far back in the early 1970s.

3.2 UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

The first United Nations Conference on Trade and Development (UNCTAD I) was held in Geneva in the year 1964. The third world had hopes for United Nations Conference on Trade and Development (UNCTAD) looking to it as paving the way towards the goal of economic emancipation from the new-colonialism they saw implicit in the trade relationships then prevailing between the rich and poor countries. Underlying all other reasons for United Nations Conference on Trade and Development (UNCTAD) lies the poverty of the third world. The developing countries fuse great economic difficulties in their efforts to achieve a satisfactory level of economic development. These problems are seen by them as not of their making, and capable of resolution only through concerted world action.

United Nations Conference on Trade and Development (UNCTAD) should be seen as a charter of dissatisfactions and demands from the third world. It is one of the binding forces in the actualization of the New International Economic Order (NIEO), and therefore the general change between in North-South relationships.

The joint declaration of the group 77 was issued at the end of United Nations Conference on Trade and Development (UNCTAD). It read:

> The unity (of the developing countries in United Nations Conference on Trade and Development) has sprung out of the fact that facing the basic problems of development they have a common interest in a new policy for international trade and development.

The developing countries have a strong conviction that there is a vital need to maintain, and further strengthen, this unity in the years ahead, it is an indispensable instrument for securing the adoption of new attitudes and new approaches in the international economic field. [52]

United Nations Conference on Trade and Development (UNCTAD) adopted measures to increase the flow of financial resources to developing countries, and aimed to decrease the outflow of invisible payments from developing to developed countries. The conference adopted a target of aid to developing countries at 1 percent of the combined national incomes of the developed countries.

In 1960 United Nations adopted a target for the amount of capital transferred by developed countries to developing countries at 1 percent of combined National incomes of developed countries.

Since then there has been various United Nations Conference on Trade and Development (UNCTAD) sessions in different countries of the world, including United Nations Conference on Trade and Development (UNCTAD) V which was held in Manila in the Philippines from May to June 1979. All these are geared to ensuring that the New International Economic Order (NIEO) is realized.

3.3 **THE PROPOSAL** OF THE NEW INTERNATIONAL ECONOMIC ORDER

In September 1973, in Algiers, the Arab petroleum-exporting countries discussed the possible uses of oil as a political weapon. A new Arab-Isreali conflict broke out on 6th October and the Arab countries reduced the flow of oil to Europe and Japan and suspended exports to the United States, the Netherlands, and Portugal. The embargo against the United States was lifted in March 1974, that against the Netherlands in July 1974, and that against Portugal after a new regime instituted a policy leading to independence for African territories under Portuguese administration. But these measures marked a turning point for the world economy. Members of the Organisation of Petroleum-Exporting Countries (OPEC) undertook a long-term study of the collective fixing of oil prices and increased them periodically thereafter.

As a result of the oil crises, France proposed a world energy conference. On 31st January 1974, President Boumedienne of Algeria requested a special session of the General Assembly to consider the question of all raw materials and relations between developed industrial and developing states. Within two weeks, 70 nations endorsed his proposal. The special session was held in April-May 1974 and adopted a declaration and program of action on the establishment of a New International Economic Order at the sixth special session of the General Assembly. The Assembly's declaration and program of action called for a fundamental change in the international economic order, in the absence of which the gap between developing and developed countries would continue to widen. Such a change would require the industrialised countries to make adjustments in their policies, the economies for the

benefit of the poorer countries, which in turn were determined to control their own resources.

The program of action called for efforts to link the prices of exports of developed countries to the prices of their imports from developing countries. It suggested the formation of producers' associations, orderly commodity trading, increased export income for producing developing countries, and improvement in their terms of trade. It also looked to the evolution of an equitable relationship between prices of raw materials, primary commodities, food, manufactured and semi-manufactured goods, and capital equipment imported by them.

In the declaration, United Nations member states proclaimed their determination to work urgently for "the establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest, and cooperation among all states, irrespective of their economic and social systems, which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development in peace and justice for present and future generation".

Though the program and declaration were adopted without a vote and enthusiastically supported by almost all developing and socialist countries, most Western European and other industrialized states with market economies entered reservations, often very far-reaching. They warned against constraints to the flow of trade, which might result from the establishment of producers' associations and argued

that nationalization should be carried out in accordance with the existing rules of international law. The United States said that the two documents had been presented without mention of the world consensus and it should not be used in connection with the United States.

The target at which the less developed countries are aiming is what they describe as "A New International Economic Order".

As early as 1974, the United Nations General Assembly had drafted an action program for the establishment of such a "New Order" (which would give more consideration to the interests of the less developed countries. It would appear that international negotiations are not exactly pressed for time, when one considers not only that this "New Order" question has been examined by every possible international organization (e.g. GATT – now World Trade Organization [WTO]-, the World Bank group, International Monetary Fund [IMF], Food and Agriculture Organization [FAO], United Nations Industrial Development Organization [UNIDO]) but also that in December, 1975 a North-South conference (officially known as "Conference for International Economic Co-operation) was convened [53].

The New International Economic Order consists mainly in a demand for more cash and trade concessions from the developed countries.

The international monetary system would have to be adapted in such a way that the less developed countries would have more Special Drawing Rights at their disposal.

Aid to less developed countries however has nothing to do with the international monetary system.

Furthermore, the less developed countries have insisted on a maximum of assistance with the industrialized process e.g. by supplying capital, transmitting technology and granting preferential customs tariffs. [54]

Another factor that enhanced the proposal of the New International Economic Order was the Charter of Economic Rights and Duties of States in 1974: The Assembly adopted a charter of economic rights and duties of states at its regular session in 1974. The charter affirms that every state has the right freely to exercise full permanent sovereignty over its wealth and natural resources, to regulate foreign investment within its national jurisdiction, and to nationalize, expropriate or transfer the ownership of foreign property. The charter provides that appropriate compensation should be paid in cases of nationalization and that any controversies should be settled under the domestic laws of the nationalization states unless all states concerned agree to other peaceful means. It also sets forth the right of states to associate in organizations of primary producers.

In addition to the above factor, the developing nations of Africa, especially, do recognize that the principles of development in a United Nations Conference on Trade and Development (UNCTAD) context by far favour the developing nations. They also accepted that United Nations Conference on Trade and Development (UNCTAD) is the major organ for development. It is the developing countries greatest achievement in institution building within the United Nations framework. "The United Nations Conference on Trade and Development reflects most clearly the developing countries

determination to develop ourselves in a new pattern of trade and economic behaviour tailored to further the developing countries interest and economic growth. [55]

Although no specific objectives were laid down at the first conference, the general function of United Nations Conference on Trade and Development is to formulate, negotiate and implement measures to improve the development process.

United Nations Conference on Trade and Development [UNCTAD] is a permanent organ of the United Nations Organization. The United Nations Organization was established after the 2nd World War.

International co-operation is necessary to assist the efforts of the developing countries through correcting the distortions caused by the unfettered operation of market forces. A distributive and interventionist approach to the international economy is the best way to overcome the obstacles of the developing world. United Nations Conference on Trade and Development was founded on such reformist principles and the proposals for a New International Economic Order (NIEO) took as their starting point the reformist critique of the International Economic Order. [56]

Seventh Special Session: The United Nations Assembly held a seventh special session, devoted to development and international cooperation, in September 1975, immediately preceding that year's regular session. The polemical atmosphere in which the program and declaration on the new international economic order and the charter on the economic rights and duties of states had been adopted was replaced by a pragmatic one. Negotiations were carried on chiefly in private meeting between "contact groups" representing the developing countries and the Western European and

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other states with market economies. The market economy states at the time of the session were the buyers of approximately three quarters of the exports of the developing countries; consequently agreement among the two groups was essential to significant progress. At the close of the session, the Secretary-General of the United Nations, declared that it had been "about change rather than the smoother management of the status quo." The socialist, market economy, and developing countries all expressed satisfaction with the result.

These results were embodied in a 12-page resolution that proposed a large number of initiatives and was unanimously adopted by the Assembly. It reaffirmed the target, originally defined in the strategy for the second Development Decade, of 0.7% of the gross national product of developed countries to be devoted to the official assistance of the developing countries. It called for the accumulation of buffer stocks of commodities in order to offset market fluctuations, combat inflationary tendencies, and assure grain and food security.

Other measures are directed towards increased transfer of scientific and technological capacity to developing countries, the improvement of their access to the markets and capital of wealthier nations, and the diversification of their manufactured and semi-manufactured exports.

3.4 LEGAL IMPETUS TO THE NEW INTERNATIONAL ECONOMIC ORDER

3.4.1 BACKGROUND

The most important factor, however, influencing the contents of International Economic Law, was the accession to the world community of nations of a large number of liberated Asian and African States.

These new states advanced demands for development aid on an international scale, based on social justice.

They demanded for economic sovereignty, redistribution of wealth and a new system of international economic relations based on the equality and mutual interest of all States.

3.4.2 ECONOMIC SOVEREIGNTY

United Nations Assembly Resolution 1803 (XVIII) [57] recognizes that there should be permanent sovereignty of people over their natural wealth and resources in the spirit of international co-operation in the field of economic development, particularly that of developing countries.

The right is a basic constituent of the right to self-determination.

Another preambular paragraph noted that the creation and strengthening of the inalienable sovereignty of states over their natural wealth and resources reinforces their economic independence.

The Resolution then declares that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well being of the people of the State concerned;

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes should be in conformity with the rules and conditions, which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities;

3. In cases where authorization is granted, the capital imported and the earning on that capital shall be governed by the terms thereof by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources;

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest, which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of

the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of dispute should be made through arbitration or international adjudication;

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality;

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent, national development and shall be based upon respect for their sovereignty over their natural wealth and resources;

7. Violation of the rights of people and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace;

8. Foreign investment agreement freely entered into by, or between, sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

The notion of economic sovereignty and the principles of permanent sovereignty over natural resources tend to be treated as international jus cogens.

Friendmann observed: 'The emancipation of colonies and other dependent territories from conditions of subjection and stark inequality to independence and a position of greater equality of bargaining power is one such change, which is unlikely to disappear from the system of international law, despite the protest of those who wish to stabilize the international legal order at the stage it had reached when a small number of countries dominated the rest of the world". [58]

A detailed Analysis of Resolution 1803 reveals that it protects both the interests of the developed and developing countries.

Firstly, it protects the sovereignty of the developing countries and encourages International Capital Investments.

Secondly, it affirms the right of the developing countries to regulate and control the exploitation of their irreplaceable natural resources.

Thirdly, it emphasizes that economic independence is crucial for political independence of any nation.

According to resolution 3201, a New International Economic Order (NIEO) is to be based on:

> Equity, sovereign equality, interdependence, common interest and co-operation among all states, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and

ensure steadily accelerating economic and social development and peace and justice for present and future generations [59].

The relationship between the United Nations and the New International Economic Order is a paradoxical one. On the one hand, the calls for a New International Economic Order were first given global voice on the platforms of the United Nations through resolution 3201.

On the order hand, the failures of the United Nations and its network of intergovernmental agencies to foster global redistribution and restructuring are at least partially and casually linked to the plaintive call for a New International Economic Order

3.4.3 RESOLUTION 3201 [60] Declaration on the Establishment of a New International Economic Order.

On 1st May 1974 the Sixth Special Session of the United Nations General Assembly adopted Resolution 3201 (S-VI) entitled "Declaration on the establishment of a New International Economic Order.

This was devoted entirely to the development problems, which seriously affected Africa. It was at this special session that decisions were taken which highlighted the need for a New Order that would reduce the gap between the developing countries and the industrialized and technologically advanced countries.

Efforts are being made to establish certain guiding principles, which would serve as the basis of the new order. These are as follows:

(a) Sovereign equality of states.

(b) The broadest co-operation of all states based on equity where by the prevailing disparity in the world would be over.

(c) The right of every country to adopt its own economic and social system that it deems fit or most appropriate for its own development.

(d) Full, permanent Sovereignty of each State over its natural resources and all economic activities.

(e) The regulation and supervision of the transnational corporations that have been the major obstacle to the economic development of the countries in the technologically less developed areas.

This also implies measures in the interest of the national economy where such corporations operate.

(f) Just and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods exported by developing countries.

(g) The reformation and re-ordering of the international monetary system, so as to promote the development of the developing countries.

(h) Preferential and non-reciprocal treatment for the developing countries in all fields of International Economic co-operation.

In order to practicalise the above terms of Resolution 3201 and implement them accordingly, a Programme of Action on the establishment of a New International Economic Order was adopted.

This gave birth to Resolution 3202 (S-VI)[61], which was adopted towards the end of the Sixth Special Session of United Nations General Assembly of 1st May, 1974.

In this declaration, there were suggestions as to how Resolution 3201 could be realized.

By this programme of action, the African States expected a guarantee of economic and social progress and some degree of justice in their trade relation with the advanced countries.

3.4.4 CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES.

The Charter was adopted by the United Nations General Assembly as Resolution 3281 (XXIX) on 12th December, 1974; by a vote of 120 in favour; 6 against, and 10 abstentions [62].

Chapter 1 of this Charter provides for fundamentals of International Economic relations.

Economic as well as political and other relations among states shall be governed, inter alia, by the following principles.

(a) Sovereignty, territorial integrity and political independence of states.

(b) Sovereign equality of all states.

(c) Non-aggression.

(d) Non-intervention.

(e) Mutual and equitable benefit.

(f) Peaceful co-existence.

(g) Equal rights and self-determination of peoples.

(h) Peaceful settlement of disputes.

(i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development.

(j) Fulfilment in good faith of international obligations.

(k) Respect for human rights and fundamental freedom.

(l) No attempt to seek hegemony and spheres of influence.

(m) Promotion of international social justice.

(n) International co-operation for development.

(o) Free access to and from the sea by Land-Locked countries within the framework of the above principles.

Chapter II provides on Economic Rights and Duties of States.

This chapter is made up of twenty articles and it touches upon a wide variety of international economic subjects translated into the form of basic rights and duties of states.

Articles 2 to 8 [63] provides specifically for the interest of developing countries.

Also Articles 15 to 27 [64] laid special emphasizes for the protection of developing countries.

The preamble states that it is the fundamental purpose of the charter to promote the establishment of a New International Economic Order based on equity, sovereign equality, inter-dependence, common interest and co-operation among all states, irrespective of their economic and social systems.

Article 2 provides for the rights of each state to regulate and exercise authority over foreign investments, transnational corporations within its national jurisdiction and to nationalize, expropriate to transfer ownership of foreign property, in which case appropriate compensation should be paid by such a state.

The legal position of Article 2 of the Charter is that the developed countries are of the view that a state admitting foreign capital under an agreement must carry out such agreement in good faith. The developing countries admit that a state has an obligation

to fulfil its international obligations. Nevertheless, they contend that state contracts with aliens are not international treaties.

Furthermore, developing country is not inclined to give transnational corporations an international status and they did not consider transnational corporations as subjects of international law.

In addition to the above, Article 19 of the Charter provides for accelerated economic growth of developing countries and bridging the economic gap between developed and developing countries. Developed countries should grant generalized preferential, non-reciprocal and non-discriminatory treatment to developing countries in those fields of international economic co-operation where it may be feasible.

Much attention is also paid by the Charter proviso to the economic problems of developing countries, which are argued to expand trade with each other and the developed countries and asked to strengthen economic co-operation, and expand trade in general, a process that competent international organizations are called upon to support.

3.4.5 THE NEW INTERNATIONAL DEVELOPMENT STRATEGY

At its June/July, 1980 Session, the Committee of the whole Established under the General Assembly Resolution 32/174 [65] recommended that the Assembly consider at its special session two main items, dealing with the proposed New International Development strategy for the third United Nations development decade, and the global negotiations.

The International Development Strategy for the third United Nations Development Decade was adopted on 5th December, 1980 when the General Assembly proclaimed the Decade, to start on 1st January, 1981.

The strategy set out goals and objectives for the 1980's and policy measures for their implementation, supplementing and extending those for the second United Nations development decade (1970's) in the light of periodic reviews and appraisals and changing global socio-economic circumstances.

The eleventh special session of the United Nations General Assembly was held at the United Nations Headquarters, New York, from 25th August to 15th September, 1980.

The General Assembly at this special session assessed the progress made by the United Nations system towards establishing a New International Economic Order in accordance with Resolution 32/174 of December 1977 [66].

By that resolution, the Assembly had established an inter-sessional committee of the whole act as a focal point for monitoring progress, and on 14th December, 1979 [67], decided that the committee should act as the preparatory committee for global

negotiations relating to international economic co-operation for development, also to be launched at the Special Session. [68]

The Committee amongst others, recommended on the accelerated transfer of real resources to developing countries and on economic co-operation among developing countries.

3.4.6 UNCTAD RESOLUTION ON THE NEW INTERNATIONAL ECONOMIC ORDER.

It was hoped that by establishing United Nations Conference on Trade and Development (UNCTAD) under Article 22, [69] developing countries could retain more control over the conference. [70]

The United Nations Conference on Trade and Development (UNCTAD) resolution in various aspects of International relations has gone a long way in the implementation of the New International Economic Order.

It is worthy of note that United Nations Conference on Trade and Development (UNCTAD) has concerned itself with the status of developing countries in the international economic system and with the perceived need for structural changes.

Infact, United Nations Conference on Trade and Development (UNCTAD) produced the organisational and institutional mechanisms on which developing countries honed their common positions, developed overall strategies and internalised the intellectual underpinnings of the New International Economic Order (NIEO). This they eventually took to the floor of the United Nations General Assembly.

TRANSFER OF TECHNOLOGY

Since 1975 United Nations Conference on Trade and Development (UNCTAD) has been working on an international code of conduct on the transfer of Technology to less developed countries "On fair and reasonable terms and conditions"[71].

TRADE IN MANUFACTURING

In order to stimulate exports of manufactured goods from the less-developed countries to the industrial states, the Trade and Development Board adopted on 13th October 1970 the conclusions of the Special Committee on Preferences.

Many developed countries had established preferential systems in 1971.

Most of the Generalized System of Preference (GSP) Schemes were established for a ten-year period, although a few had no time limit. In 1981 the schemes approaching expiration were renewed for another ten-year period.

SHIPPING

In order to establish and strengthen the merchant carriers of less developed countries, a committee on shipping was set up in 1965. A convention on a code of conduct for Liner conferences (ship owners conferences) was adopted in 1974 and became effective on 6th October 1983.

COMMODITIES

United Nations Conference on Trade and Development (UNCTAD) adopted an Integrated Programme for commodities in order to establish and maintain "prices at levels which in real terms are equitable to consumers and remunerative to producers" and to reduce "excessive fluctuation in prices and in the volume of trade".

The programme refers to seventeen commodities ten of which (coffee, cocoa, tea, rubber, sugar, cotton, jute, sisal, copper, tin) are storable; the stocks were to be financed by a common fund of 6 billion dollars yearly.

The developing nations of Africa, especially, do recognize that the principles of development in a United Nations Conference on Trade and Development (UNCTAD) context is the best thus for the developing nations. They also accept that United Nations Conference on Trade and Development (UNCTAD) is the major organ for development. It is the greatest achievement in institution building with the United Nations framework.

The United Nations Conference on Trade and Development (UNCTAD) resolution on commodity problems and policies were given in number; They were all approved by the conference. These were UNCTAD Resolution 1611, 1711, 1811, 1911, 2011. [72]

> "The first resolution on commodity problems and policies (1611) discussed international action on seven specific commodities and requested ad hoc meetings on a number of other commodities.
>
> The second resolution (1711) urged comments and general approval on the Secretariats report concerning the substance and form of a general agreement on commodity agreements.
>
> The third resolution (1811) requested that United Nations Conference on Trade and Development (UNCTAD) co-ordinates its activities with other intergovernmental bodies.

The fourth resolution (1911) requested the co-operation of a number of international financial institutions in the preparation of a study on stabilization of commodity prices.

Finally, the fifth resolution (2011) asked the Secretary – General of United Nations Conference on Trade and Development to submit to the next session an outline of a first study of the possibility of defining the elements of a minimum agricultural income for producers of primary commodities. This resolution goes to the substance of the problem. It raises the question of what claim is made on minimum income, and whether commodity agreement are the most appropriate way to implement such claim".

The United Nations Conference on Trade and Development (UNCTAD) reflects most clearly the developing countries determination to develop their economies in a new pattern of trade and economic behaviour tailored to further development interests and economic growth in line with the New International Economic Order.

General Assembly Resolution 2415 (XXIII), reaffirmed the United Nations Conference on Trade and Development (UNCTAD) resolution calling for a net annual transfer of 1% of the GNP of each developed country to the developing countries, the Pearson report also suggested 1% of the GNP from the rich to the poor countries. [73]

Brownlie has listed important "law making" resolutions. Amongst them are Resolution 95 of 11 December, 1946, affirming "the principles of international law

recognized by the charter of the Nuremberg Tribunal and the judgment of the Tribunal".[74]

Resolution 1514 (XV) of 14 December, 1960, [75] that is the Declaration on the granting of independence to colonial countries and peoples; Resolution 1803 (XVII) of 14th December, 1962, [76] that is the Declaration on Permanent Sovereignty Over Natural Resources; the Declaration on the Elimination of All Forms of Racial Discrimination adopted on 20th November, 1963 and Resolution 2625 (XXV) of 24th October, 1970[77] that is the Declaration on Principles of International Law concerning friendly relations.[78]

What are binding effects on United Nations members of Resolution 1803 (XVII) of 14 December 1962 and 2625 (XXV) of 24 October, 1970. Are they important "law-making" resolutions? Is it in order to say that by adopting Resolution 2158 (XXI) of November, 1966, 3016 (XXVII) of 18 December, 1977; 3171 (XXVIII) of 17 December, 1973; 3201 (S-VI) of 1 May, 1974; 3202 (S-VI) of 1 May, 1974; and 3281 (XXIX) of 12 December, 1974; the General Assembly attempts to create new rules of International Economic Order? [79]

The binding effect on United Nations members of most of the above resolutions is still a controversy.

Some jurists affirm it has binding effect while some argue that it is only recommendatory.

What ever it may not be, it is clear that the United Nations resolutions constitute the post 1975 international Jus Cogens.

Subsection 3.5 of this chapter will throw more light into the legal status of this resolution.

3.4.7 OTHERS

Other legal instruments and conferences that encouraged the establishment of the New International Economic Order for the developing countries are:

- The Cocoyoc Declaration, Adopted by UNEP/United Nations Conference on Trade And Development at Cocoyoc, Mexico in October 1974.
- The Dakar Declaration of February 1975.
- The Lima Declaration of March 1975
- The Philippines proposal on principles of International Economic Development Law of December, 1975
- The Conference on International Economic Co-operation (known today as the North-South Dialogu.
- The United Nations Commission on International Trade Law (UNCITRAL), which is given a special mission in the unification in the fields of International Trade law with a worldwide approach.
- The United Nations Development Programme (UNDP).
- The United Nations Industrial Development Organization (UNIDO).
- At the 1974 Annual Meeting, a joint Ministerial Committee of the Board of Governors of the World Bank and the Fund on the Transfer of Real Resources to developing countries (Development Committee) was established.

3.5 LEGAL STATUS OF NEW INTERNATIONAL ECONOMIC ORDER IN AFRICA

United Nations Charter Article 10[80] provides that except as provided in Article 12, General Assembly may make recommendations to the members of the United Nations or to the Security Council or to both, on any such questions or matters.

White argued that "General Assembly resolutions normally have only recommendatory, or moral force as opposed to legal force". [81]

On the other hand, Brownlie a prominent international law scholar and jurist observed that

> In general, (UN) United Nations General Assembly resolutions are not binding on member states, but when they are concerned with general norms of international law, then acceptance by a majority vote constitutes evidence of the opinions of governments in the widest forum for the expression of such opinions. Even when they are framed as general principles, resolutions of this kind provide the basis for the progressive development of the law and the speedy condition of customary rules. [82]

Also Judge Lanterpacht of the International Court of Justice said "whatever may be the content of the recommendation and whatever may be the nature and the circumstances of the majority by which it has been reached, it is nevertheless a legal act of the United Nations, that members of the United Nations are under a duty to treat with a degree of respect appropriate to a Resolution of the General Assembly". [83]

Is it then possible for African countries to make legal claims against developed countries for the non-implementation of the demands of the New International Economic Order? Okoli C. C. opined,

> We assume that there is some value in applying a legal framework to this problem. We assume that the adversary fact-finding process will be of use in structuring claims. The presumption is made because we have no experience with legal development claims in the context of international commodity. At the same time, it is not presumption that is made with great ease[84].

The Statute of International Court of Justice, Chapter II, Article 38 provides the sources of international law, which the court may apply. And these are as follows; International Conventions, International custom, the general principles of law recognized by civilized countries (of which United Nations member countries fall into) and subject to article 59 of the statute, judicial decisions and teachings.

With the above facts, it is clear that whenever a resolution is passed by the General Assembly, it must affect the member countries either positively or negatively.

The Resolutions 3201 and 3202 are to the interest of the African countries and it made it possible for African states to demand for equitable economic system which will assist them to become industrialized and be in position to take advantage of the various opportunities available to them within the world's economic system.

Probably, African states are asking for some conditions which would be difficult for the developed countries to accept but the developed countries must not

neglect the impact of International Conventions in international relations especially the Charter of the United Nations.

United Nations Charter Chapter 9 Article 55[85] provides that "with a view to the creation of stability, well-being and equal rights, the United Nations shall promote economic and social development, solutions for international economic and social development, and respect for human rights".

Article 56[86] also provides that all members will "pledge" themselves to take joint action and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55. The United Nations and its members therefore are pledged to promote the well being of the developing countries and nothing more

General Assembly Resolution 3171 (XXVIII) provides that (a) Each state has and shall have "full permanent sovereignty "over its" wealth, natural resources and economic activities. (b) Each state has the right to regulate and exercise authority over foreign investment. (c) Each state has the right to regulate and supervise the activities of Trans-National Companies (TNC^s), which are forbidden to intervene in the internal affairs of host state. (d) Appropriate compensation must be paid by the "taking state". (e) That domestic courts are the final arbiters in cases of controversy over the quantum of compensation to Trans-National companies (TNC^s).

The Charter amongst all others promotes and protects the economic development and economic independence of developing countries especially African states.

It also provides for compensation to the developed countries by the African states in case of Nationalization of foreign industries.

This Charter therefore not only protects the developing countries but also protects and promotes the developed countries interest too.

It is therefore of significant importance that the binding force of this charter is never in doubt and both parties must respect and comply with its imports.

The demands of the developing countries especially Africa are articulated through some other United Nations Agencies like United Nations Conference on Trade and Development, United Nations Development Programme (UNDP), United Nations Industrial Development Organization (UNIDO), United Nations Institute of Training and Research (UNITAR), United Nations Subsidiary Organs with autonomous status. United Nations is mostly in the interest of the New International Economic Order as it affects the developing countries. It is worth mentioning that United Nations Industrial Development Organization (UNIDO) was upgraded to the position of a specialized Agency in April, 1979.

What then are the legal implications of these United Nations Specialized Agencies resolution on developing countries especially African States? Should they also be approved by the General Assembly as having a binding legal force?

Okoli C. C. is of the opinion that "With emphasis solely upon Pre-investment activities, United Nations Development Programmes (UNDP) has acknowledged that its most critical problem is still beyond its control. Thus the rich nations economic and

social policies directly affect the ability of the developing countries to expand their economic capacity"[87].

That notwithstanding Resolution 1826 (XVII) on establishment of a United Nations Capital Development Fund[88] was an attempt to bridge the North-South gap.

To effectively implement this a third programming cycle covering the period 1982-1986 as well as substantial new programme of Action for the 1980's of the developing countries was proposed in July, 1982.[89]

Secondly Resolution 2099 (XX) established the United Nations Institute for Training and Research (UNITAR)) entitled Technical Assistance to promote the Teaching, Study, Dissemination and Wider Appreciation of international law in particular in the developing countries.

The United Nations Resolution 2099 (XX) of December, 1965 was entitled the Role of United Nations in Training National Technical Personnel for the acceleration of the Industrialization of the developing countries.[90]

This emphasizes the great importance which the United Nations attaches to the training of developing countries in Science and Technology.

The United Nations provided the legal framework for the operations of all the above organs.

The legal status of their Resolutions stands on equal degree and standards with all other United Nations Resolutions. In Africa, the impact of the implementation of their Resolutions is felt in every member state.

It can therefore be correct to claim that their resolutions as far as African states are concerned are binding.

Is it correct to classify all these United Nations General Assembly, Agencies and Subsidiary Organs Resolutions as the Post 1975 Jus Cogens?

If these resolutions are acceptable and applicable by member states of the United Nations, it then stands as the post 1975 Jus Cogens.

As far as African states are concerned their Resolutions are to our interest and protection. We also want the implementation of the New International Economic Order as quickly as possible. We want the developed countries to meet our demands soonest possible time.

Therefore the Resolutions are acceptable and also applicable to African states. They stand as post 1975 Jus Cogens in Africa and other developing states, no matter how they look at it.

Okoli C. C. observed that

> Despite the renewed emphasis on negotiation, the legal effect of Resolutions still remains the crucial variable. Alternatives have been suggested. For example, the Soviets have suggested that General Assembly Resolutions are now a source of International law when adopted by states of the two socio-economic systems (communist and capitalist) and of all three main political groups (socialist, western and neutralist). A more cautious statement of the same position adds the provision that the General Assembly Resolution being

agreed to by all three main political groups should also be adopted without dissenting vote. [91]

3.6 CONCLUSION

The target at which the less developed countries are aiming is what is described as "A New International Economic Order".

The burden of the Post 1946 Era fell on the developing countries especially African States. To reduce the burden the developing countries started demanding for a NEW INTERNATIONAL ECONOMIC ORDER.

Their demands were of various categories, Aids and Assistance issues, International Trade issues, International financial issues; Issues of Industrialization, Technological Transfer, and Business practices, Social issues and of course Political and Institutional issues.

On 31st January, 1974, President Boumedieane of Algeria requested a special session to consider the question of all raw materials and relations between developed industrial and developing states. United Nations Assembly Resolution 1803 (XVIII) declared a permanent sovereignty of people over their natural wealth and resources. Also United Nations Assembly Resolution 3281 (XXIX) declared the Economic Rights and Duties of states in December, 1974.

On the 1st of May, 1974, there was a declaration on the establishment of a New International Economic Order through the United Nations Assembly Resolution 3201. On the eve of this day, a declaration of the programme of Action on the establishment of a New International Economic Order was adopted on Resolution 3202.

United Nations Assembly Resolution 32/174 established a committee, which recommended that consideration be given to the proposed New International Development Strategy and global negotiations.

In January, 1981 the United Nations Assembly proclaimed the decade to start on 1st January, 1981; United Nations Conference on Trade and Development held so many conferences that encouraged the implementation of the New International Economic Order.

Crucial Resolutions were made on Transfer of Technology, Trade in Manufacture, Shipping and commodities all in favour of the developing countries. Of paramount importance are United Nations Conference on Trade and Development Resolutions 1611, 1711, 1811, 1911 and 2011.

It is interesting to note the import of United Nations General Assembly Resolution 2415 (XXIII) which reaffirmed the United Nations Conference on Trade and Development (UNCTAD) Resolution calling for a net annual transfer of 1% of the Gross National Product of each developed country to the developing countries. Some United Nations General Assembly Resolutions made "laws" even before the declaration of the New International Economic Order (NIEO), so resolutions 3201 and 3202 should not be exceptions.

Notable Jurists and Lawyers like Judge Lanterpacht, Okoli C. C. acclaim that such resolutions are binding. Also the then soviets are of the opinion that such Resolutions are binding, and such resolutions be adopted without dissenting vote.

The New International Economic Order stands for global negotiation and proclaims the need for a new type of North-South relations, including improved terms of trade, aid and monetary transactions, more favourable to developing countries.

Its legal status in Africa is acceptable to all and binding, whether the developed countries agree or not.

To African states it is the Post 1975 Jus Cogens.

All the same, African states should improve their institutional contexts of regional and sub-regional organizations and strategies in the field of real African regional economic co-operation and integration, instead of relying solely on the implementation of the New International Economic Order by the North.

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CHAPTER FOUR

THE PHILOSOPHY OF AFRICAN REGIONAL ECONOMIC ORGANIZATIONS.

4.1. INTRODUCTION

The frustrations of some developed countries over the implementation of the New International Economic Order in Africa, and the failure of some development strategies in general, has won additional but contradictory ideology by African States. In short, it is not necessarily inconsistent to argue that the current dependency of developing countries especially African states on the New International Economic Order needs to be changed by simultaneously creating changes in the continental structure and generating greater national and regional competency in the economic and social realms.

In other words, economic and social development in Africa must come about through communal self-reliance and not merely reduced to dependency upon neo-colonial ties. It must also encourage autonomous state institution building and development along with "collective self-reliance".

The African self-reliance approach insists on a more naturally generated, self-contained development effort. It rather encourages a disengagement from the inter-national, notably capitalist system. To that effect, it opts, in the short-run, for a basic needs development strategy, and in the long run, for a greater diversification of

national economies, so as to satisfy through domestic production as many national needs as possible.

There has been a tendency for some African countries like Libya, Democratic Republic of Congo among others, to consider the establishment of a New International Economic Order, national self-reliance and regional co-operation as divergent development paths. Other African countries like Nigeria, Ghana, Morocco, Gabon etc. see the three approaches as complimentary.

Following the independence of many African countries, the already uncertain Pan-Africanist movement was further weakened by contrasting ideas on how best to implement intra-African co-operation.

In short, there was a federalist and functionalist interpretation of Pan-Africanism. The functionalist approach seemed a more acceptable form of co-operation among independent African countries.

The process of International Economic Integration is comparable to a federation whereby the component states in the Federal set-up surrender aspects of their sovereignty to the center for the good of all.

In conformity with the mood of time, development was identified with industrialization and the validity of the market approach to regional co-operation was uncritically accepted by African states.

Regional integration in Africa is part of a diplomatic strategy to improve the balance of forces between the continent and the rest of the global system.

The need for regional co-operation was probably more intensely felt in Africa than elsewhere in the Third World. Although needs were severe, the capabilities were low and the environment was un-conducive.

4.2. ABSENCE OF REGIONAL ORDER

Copson argued that "the persistence of conflict on the African continent is deeply rooted in the underdevelopment of African states .... Political and economic underdevelopment is a cause of international conflict". [92]

> The absence of regional order, the regularity of boundary disputes, the existence of regional power centers and diplomatic disagreements, in terms of national underdevelopment, the results of which are seen as insecure regimes, limited capabilities, economic stagnation, colonial boarders, regional underdevelopment (as evidenced in, for instance, the absence of strong organization), regional imbalances and local arm races.
>
> Some of these issues are responsible for the delay in the possible emergence of an African common market [93].

Perhaps even more concretely, attempting to integrate the administrative and economic affairs of states with differing colonial heritages raised serious obstacles. The colonial period had formed political and economic entities with few structural links between them. Most African countries had economies, which were competitive with rather than complementary to those of their neighbours. Even adjacent states commonly utilized different bureaucratic practices, different accounting systems, different monetary zones, few, if any, transportation and communication links existed;

instead links with metropolis were, after independence, transformed into bilateral relationships most appropriately described as neo-colonial. Thus, even building limited interstate relationships of a meaningful kind carried with it inherited and continuing obstacles, which were both serious and widespread.

All these obstacles notwithstanding African states stand to gain from legitimate and organized regional and inter-regional co-operation and integration.

Muzan A. O. opined that "every law of regional or International Organization need be worked at first from its constitutional ambit, that is from the framework of the Charter of the United Nations, for the Charter is the fundamental law of international and regional organization" [94].

United Nations General Assembly Resolution 1514 of 1960 adopted the declaration against colonialism and thus encouraged the beginning of a flood of newly independent states into the ranks of its members.

Also United Nations Charter Article 33(1) provided for regional organizations to settle disputes among members, which are enjoined in any case to try such devices before appealing to the Security Council.

This also implies that the United Nations system encourages regional co-operation and integration.

It also means that this Charter places on members of regional organizations the obligation to make every effort to settle local disputes in regional agencies before bringing them to the attention of the Security Council.

United Nations Charter Article 52(3) provides that the Security Council must encourage regional settlement.

The creation of regional commissions for economic co-operation within the United Nations framework clearly reflected the notion about the promise of regional co-operation.

4.3. THE ECONOMIC COMMISSION FOR AFRICA

4.3.1. BACKGROUND

The United Nations Economic and Social Council established the Economic Commission for Africa on 29 April 1958. Addis Ababa, Ethiopia was selected as the site for its headquarters. Like the United Nations, other regional commissions, Economic Commission for Africa (ECA) operates under the general supervision of the Economic and Social Council and of the General Assembly. The terms of reference of the Economic Commission for Africa (ECA) require:

(a) That the Commission initiates and participates in measures for facilitating concerted action to relieve the economic and technological problems of Africa.

(b) It makes or sponsors investigations into economic and technological problems of development.

(c) That it undertakes or sponsors the collection, evaluation and dissemination of economic, technological and statistical information.

(d) That it performs such advisory services as countries of the region may desire, provided that these do not overlap with those provided by other bodies of the United Nations (UN) or its specialized agencies.

(e) That it assists the United Nations Economic and Social Council, at its request, in discharging its functions within the region in connection with any economic problems including those in the field of technical assistance.

(f) That it assists in the development of coordinated policies for promoting economic and technological development in the region.

(g) And that it deals, where appropriate, with the social aspects of economic development and with the relationship between economic and social factors.

The terms of reference for the Economic Commission for Africa (ECA), like those of other United Nations regional commissions, implicitly include a dual mandate: act as part of the United Nations international structure, but also serve the special needs of the specific region. The mandate of the regional commissions has been sufficiently vague to allow each one to define its own personality, and to reflect the special needs of each region as well as to redefine needs within a region over time. The Economic Commission for Africa (ECA) has developed its institutional structure and programmatic personality without resolving the conflict arising from the competing and overlapping demands of the dual mandate. As a consequence, the Economic Commission for Africa (ECA) more than other United Nations regional commissions, has continually both mirrored and generated international and African trends of thought and action regarding regional cooperation and integration. Beyond its own intrinsic import as an institution, Economic Commission for Africa (ECA) constitutes a good focal point around which to pose a range of questions about the feasibility and viability of past, present, and future efforts regarding African regional organizations and about the fostering and hindering forces that the international economic and social structure imposes upon such efforts.

The Economic Commission for Africa (ECA) is not purely and totally an African Regional body. It is a United Nations Regional Economic Commission. By this token

a substantial part of the Economic Commission for Africa (ECA)'s budget and control are derived from the United Nations system.

Economic Commission for Africa despite all its past failures still constitutes one of the most viable and potentially potent forces for fostering regional co-operation on the African continent.

Perhaps the Economic Commission for Africa (ECA's) greatest contribution in Africa to date and one which continues into the present day, is its role as facilitator for inter-African institution building. Economic Commission for Africa played a very important role in the establishment of the East African Community (EAC), Economic Community of West African States (ECOWAS), Organization of African Unity (OAU), African Development Bank (ADB) and the South African Development Coordination Conference (SADCC).

In 1967, the United Nations Economic Commission for Africa (ECA) sponsored a series of regional meetings designed to build viable economic grouping within Africa. In one of such meetings held in Accra from April 27 to May 4, 1967, the idea of setting-up a permanent West African Economic Community was renewed and at the end of the meeting the draft articles of the Association was signed by thirteen West African countries.

Also at the fifth meeting which was the founding conference of the Organization of African Unity (OAU) in February, 1963 the African Economic Commission (ECA) extended its good wishes and even prepared a background document for the conference on Economic integration and co-operation.

In addition to the above developments, there was the signing of the Treaty establishing the African Economic Community (AEC) in Abuja in 1991.

Consequently the Organization of African Unity (OAU) secretariat as the designated secretariat of the African Economic Community (AEC) in close collaboration with the United Nations Economic Commission for Africa (ECA) gives added impetus to the treaty.

This treaty brought nearer to realization the dreams of the founding fathers of the OAU that Africa could become one economic space pooling together its human and material resources to raise the quality of life of its people and to meet their long cherished aspirations of ensuring the free movement of persons, goods and services within the continent. Thus the entry into force of the treaty could be considered as the hallmark of the success of the various but sometimes frustrating attempts to initiate co-operation among African countries.

Today greater regional community reliance is both desirable and necessary for Africa.

At 2nd Extra-ordinary Assembly of Organization of African Unity (OAU) Heads of states and Government devoted to economic matters, in Lagos Nigeria from 28-29th April 1980 and adopted the Lagos Plan of Action for the implementation of the Monrovia strategy for the economic development of Africa.

S.1 of the Lagos plan of action provides as follows:

> The effect of unfulfiled promises of global development strategies has been more sharply felt in Africa than in the other continents of the world. Indeed rather than result in an improvement in the economic situation of the continent, successive strategies have made the continent stagnant and become more susceptible than other regions to the economic and social crises suffered by the industrialized countries.
>
> Thus, Africa is unable to point to any significant growth rate or satisfactory index of general well being in the last twenty years.
>
> Faced with this situation and determined to undertake measures for the basic restructuring of the economic base of our continent, we resolve to adopt a far-reaching regional approach based primarily on collective self-reliance.

This proviso confirms that the African states were not satisfied at all, with the performance of the Economic Commission for Africa for the past twenty years. The new strategy in the plan is regional approach based primarily on collective self-reliance.

S.2 of this preambular part of the plan provides that:

Thus following a series of in-depth consideration of the economic problems of the continent by our ministers and by groups of experts, we adopted at our 16th ordinary session held in Monrovia, Liberia in July, 1979 the Monrovia declaration of commitment of the Heads of states and Government of the Organization of African Unity (OAU) on the guidelines and measures for national collective self-reliance in economic and social development for the establishment of a New International Economic Order".

And S.3 provides that "In adopting the declaration we recognize the need to take urgent action to provide the political support necessary for the success of the measures to achieve the goals of rapid self-reliance and self-sustaining development and economic growth," and declare as follows:

(i) We commit ourselves individually and collectively, on behalf of our governments and peoples, to promote the economic and social development and integration of our economies with a view of achieving an increasing measure of self-sufficiency and self-sustaining.

(ii) We commit ourselves individually and collectively on behalf of our governments and peoples to promote the economic integration of the African region in order to facilitate and reinforce social and economic intercourse.

(iii) We commit ourselves, individually and collectively, national, sub-regional and regional institutions which will; facilitate the attainment of objectives of self-reliance and self-sustainment.

The above proviso is self-explanatory and it encourages the establishment of African indigenous institutions at all levels. It also provides that it is only through these regional and sub-regional institutions that Africa will attain self-reliance and self-sustainment.

Article 271 declared that

> The Assembly of Heads of state and Government endorses the conclusion and recommendations for the conference of African least Developed countries held between 17-22nd March 1980 at Addis Ababa on the problem and perspectives of the least Developed African countries.

Those conclusions and recommendations were based on a report of experts appointed by United Nations Conference on Trade and Development (UNCTAD) Secretariat in accordance with a decision taken in United Nations Conference on Trade and Development (UNCTAD) V, the report offers strategies, priorities and programmes for the least developed African countries.

S.278 provides that:

> As far as the role of Economic Commission for Africa (ECA) during the Third United Nations Development Decade within the framework of the African strategy in the 1980's is concerned, Economic Commission for Africa as the main organ of the United Nations in Africa, and in close co-operation with the Organization of African Unity (OAU) is responsible for initiating and participating in measures for facilitating concerted action for the socio-economic development in Africa for the Third United Nations Development

> Decade and the mandate given to regional commissions by the General Assembly in its resolution 32/197 and 34/206 it is imperative that Economic Commission for Africa (ECA) in collaboration with Organization of African Unity (OAU) be totally involved in the development process of African least developed countries particularly since about two thirds of the world's least developed countries are in Africa and comprise almost half of the membership of member states.

Legally, the Lagos plan of action exposed the lapses of the Economic Commission for Africa (ECA) and created the awareness amongst African states to establish its regional institution and thus economic development of African states.

4.3.3. THE LEGAL IMPACT OF LAGOS PLAN OF ACTION

Section A(1) provides as follows

> We reaffirm our commitment to set-up by the year 2000, on the basis of a treaty to be concluded, an African Economic Community (AEC) so as to ensure the economic, social and cultural integration of our continent. The aim of this community shall be to promote collective, accelerated, self-reliant, and self-sustaining development of member states, co-operation among these states and their integration in economic, social and cultural fields.

Sub-section (2)(i)

> To appoint as quickly as possible, a drafting committee at the ministerial level to prepare the draft of the treaty establishing the African Economic Community.

The Lagos plan of action and the final Act of Lagos were the genesis of the Abuja treaty in June, 1991 for the establishment of the African Economic Community (AEC).

By this treaty, African Economic Commission (AEC) will make Africa become one space pooling together its human and material resources to raise the quality of life of its peoples and to meet their long cherished aspirations of ensuring the free movement of persons, goods and services within the African continent.

4.4. AFRICAN ECONOMIC COMMUNITY (AEC)

4.4.1. BACKGROUND

The call for economic cooperation in Africa is emphatic and total. This is because African states have realized that African economic integration is a rational strategy for the development of the continent.

It was against this background that the Lagos plan of Action and the final act of Lagos can be referred to as the genesis of the treaty. Also the eleventh extraordinary session of the Organization of African Unity (OAU) Council of Ministers held in Kinshasha, Democratic Republic of Congo in December, 1976 recommended to the Organization of African Unity (OAU) "to establish an African Economic Community; an objective which should be attained within a period of 15 to 25 years and in successive stages"[95].

The Abuja treaty establishing the African Economic Community was signed in June, 1991 by member states of the community.

4.4.2. LEGAL ANALYSIS OF SOME SALIENT FEATURES OF THE TREATY

The Treaty takes the "Heads of State" form, a term ascribed in the law of treaties to any treaty that begins with the phrase; the high contracting parties. The significance of this is that the Treaty is an agreement between the African Heads of States and Government of the member states of the community and this fact underscores the seriousness and solemnity" with which the Treaty is to be regarded by the concerned parties.

ARTICLE 2: Provides for the establishment of the community. Accordingly, the high contracting parties hereby establish among themselves an African Economic Community hereinafter referred to as "The Community".

ARTICLE 3(5) provides that the parties to the treaty shall have respect for the legal system of the community. This is an important part of the legislation for it implies that member states should adopt dual legal system: The municipal law and the law of the community. It is worthy to note that the success or otherwise of the experiment of integration in any given situation depends on the degree with which the cooperating states are willing to surrender elements of their sovereignty for the good of the community.

How far member states of the African Economic Community (AEC) have imbibed this legal principle will go a long way in ensuring the success of this treaty.

ARTICLE 4(1) provides for the objectives of the community as follows:

Firstly, to promote economic, social and cultural development and the integration of African countries in order to increase economic self sustained development.

Secondly, to establish on continental scale, a frame work for the development, mobilization and utilization of the human and material resources of Africa in order to achieve a self-reliant development.

Thirdly, to promote co-operation in all fields of human endeavour in order to raise the standard of living of African peoples and maintain and enhance economic stability, foster close and peaceful relationship among member states and contribute to the progress, development and the economic integration of the continent.

Fourthly, to co-ordinate and harmonize policies among existing and future economic communities in order to foster the gradual establishment of the community.

This Article laid serious emphasis on the promotion and realization of self sustained development in Africa.

It also talked about the promotion of cooperation, stability and peace in Africa.

This Article gives managerial power to African Economic Community (AEC) for the co-ordination of other similar bodies in Africa such as the Regional Economic Communities (REC). In the meantime the Regional Economic Communities (REC) have taken measures to bring their treaties in line with the African Economic Communities (AEC) Treaty. This was done in the revised treaty of Economic Community of West African States (ECOWAS), and the Southern African Development Coordination Conference (SADCC) Treaties. The key to the success of the African Economic Community (AEC) will depend on coordinated action at the level of the Regional Economic Communities (REC). To achieve this there is urgent need to institutionalize the relationship between the African Economic Community (AEC) and the Regional Economic Communities (RECs).

ARTICLE 4(2) provides for fifteen (15) actions to be taken by the community in order to achieve the objectives of the community.

This article ends with an omnibus provision authorizing the community to undertake any other activity the member states might decide to jointly undertake with the view of achieving the said objective.

Legal experts have criticized the omnibus provision on the ground that it would have granted power to the community to take whatever action that is reasonably incidental to attainment of its objective.

ARTICLE 5; embody general undertaking. Member states undertake to create favourable conditions for the development of the Community and the attainment of its objectives particularly by harmonizing their strategies and policies. They shall refrain from any unilateral action that may hinder the attainment of the said objectives.

ARTICLE 6, provides for the modalities for the establishment of the community. Accordingly, the Community shall be established gradually in six (6) stages of variable duration over a transitional period not exceeding thirty-four (34) years.

ARTICLE 6(2) provides that at each such stage, the specific activities to be assigned and implemented concurrently are as follows-

FIRST STAGE

Strengthening of existing regional economic communities and within a period not exceeding five (5) years from the date of entry into force of this treaty, establishing economic communities in regions where they do not exist.

SECOND STAGE

(i) At the level of each regional economic community and within a period not exceeding eight (8) years, stabilizing tariff barriers and non tariff barriers, custom duties ad internal taxes existing at the date of entry into force of this Treaty; there shall also be prepared and adopted studies to determine the time-table for the gradual removal of tariff barriers and non

tariff barriers to regional and intra-community trade and for the gradual harmonization of custom duties in relation to third states.

(ii) Strengthening of sectoral integration at the regional and continental levels in all areas of activities particularly in the fields of trade, agriculture, money, and finance, transport and communications, industry and energy.

(iii) Coordination and harmonization of activities among the existing and future economic communities.

THIRD STAGE

At the level of each regional economic community and within a period not exceeding ten (10) years of the establishment of a Free Trade Area through the observance of the time-table for the gradual removal of tariff barriers and non-tariff barriers to intra community trade and the establishment of a Custom Union by means of adopting a common external tariff.

FOURTH STAGE

Within a period not exceeding two (2) years, coordination and harmonization of tariff systems among the various regional economic communities with a view to establishing a Custom Union at the continental level by means of adopting a common external tariff.

FIFTH STAGE

Within a period not exceeding four (4) years establishment of an African Common Market through

(i) The adoption of a common policy in several areas such as agriculture, transport, and communications, industry, energy and scientific research.

(ii) The harmonization of monetary, financial and fiscal policies.

(iii) The application of the principle of free movement of persons as well as the provision herein regarding the rights of residence and establishment and

(iv) Constituting the proper resources of the community as provided for in paragraph 2 of Article 82 of this treaty.

SIXTH STAGE

Within a period not exceeding five (5) years.

(i) Consolidation and strengthening of the structure of the African Common Market, through including the free movement of people, goods, capital and services as well as the provision herein regarding the rights of residence and establishment.

(ii) Integration of all the sectors namely: economic political, social and cultural establishment of a single domestic market and a Pan-African Economic and Monetary Union.

(iii) Implementation of the final stage for the setting up of the structure of the Pan-African parliament and election of its members by continental universal suffrage.

(iv) Implementation of the final stage for the harmonization and coordination process of the activities of regional economic communities.

ARTICLE 6(3) provides that all measures envisaged under this treaty for the promotion of a harmonious and balanced development among member states, particularly, those relating to the formation of multi-national projects and programmes, shall be implemented concurrently within the time period specified for the attainment of the objectives of the various stages outlined in paragraph 2 of this article.

ARTICLE 6(4) provides that the transition from one stage to another shall be determined when the specific objectives set in this treaty and pronounced by the Assembly for a particular stage, are implemented and all commitments fulfilled. The Assembly, on the recommendation of the council, shall confirm that the objectives to a particular stage have been attained and shall approve the transition to the next stage.

ARTICLE 6(5) provides that notwithstanding the provisions of the preceding paragraph, the cumulative transitional period shall not exceed forty (40) years from the date of entry into force of this treaty.

As much as the treaty defines the six stages that must be followed, there may be a need to re-examine the time table spelt out in it, in order to speed up the implementation process in view of the globalization and liberalization of the world economy, the introduction of competition and the formation of regional economic blocks.

The re-evaluation of the time table means that new approaches should focus on the closer co-ordination and harmonization of the activities of the Regional Economic Commissions (RECs), and of course taking stock of what is happening at Regional Economic Commission (REC) and the stage it has reached in the implementation of its programmes.

LIBRARY

4.5. ECONOMIC AND SOCIAL COMMISSION

4.5.1. COMPOSITION AND PARTICIPATION

According to Article 15,

- The Commission shall be the Economic and Social Commission of the Organization of African Unity (OAU).
- The Commission shall comprise ministers responsible for economic development, planning and integration of each member state. They may be assisted as and when necessary by other ministers.
- Representatives of Regional Economic Communities shall participate in meetings of the Commission and its subsidiary organs. The word "shall" implies that the Administrative Heads of the Regional Economic Commissions (REC) must participate in the deliberation of the commission and its subsidiaries. The modalities and conditions of their participation are yet to be spelt out.

4.5.2. FUNCTIONS

The Commission shall carry out the following functions, as provided under Article 16. Firstly, prepare, in accordance with the Lagos Plan of Action and the final Act of Lagos programmes, policies and strategies for cooperation in the fields of economic and social development among African countries on the one hand, and between Africa and the international community on the other, and make appropriate recommendations to the Assembly through council.

Secondly, coordinate, harmonize, supervise, and follow-up the economic, social, cultural, scientific and technical activities of the secretariat of the commission and any subsidiary.

Thirdly, examine the reports and recommendations of the communities and submit the same, together to the Assembly, through the council and ensure their follow-up.

Fourthly, make recommendations to the Assembly, through the council with a view of coordinating and harmonizing the activities of the different regional economic communities.

Fifthly, supervise the preparation of international negotiations, assess the result thereof and report thereon to the Assembly through the council, and

Finally, carry out all other functions thereto by the Assembly or the council.

It seems that the provision for the organ of the Assembly of Heads of States and government makes it unnecessary because there is in existence the council of ministers. Also the Economic and Social Council Commission constituted is equally unnecessary.

ARTICLE 17 provides that "the commission shall meet at-least once a year …". This also makes it the more inappropriate as a legislative organ of an economic community.

ARTICLE 88(3) provides that the community shall coordinate, harmonize and evaluate the activities of existing and regional economic bodies, such as Economic Community of West African States (ECOWAS), Central African Customs and Ečonomic Union (UDEAC), East African Community (EAC), and the Southern African Development Coordination Conference (SADCC).

This is a very encouraging provision in terms of sub-regional integration and the New International Economic Order.

ARTICLE 93(2) provides that any incompatibility between a prior agreement involving a member state of the community and the treaty shall be resolved in favour of the Treaty. This gives supremacy to the community law over the municipal law. This is buttressed by the case of European Economic Community (EEC) V. Italy [96] where the court held that "no appeal to provisions of internal law of any kind whatever can prevail" over community law.

4.6. LEGAL PERSONALITY

ARTICLE 98(1) provides that the community shall be an integral part of the organization of African Unity.

ARTICLE 98(2) and (3) provide for the legal status of the community, the two sub-clauses generally provide that the community shall be represented by its Secretary-General, who to this end may enter into contract or be a party to legal proceeding, and subject to prior approval of the council of ministers, may acquire and assign moveable and immovable property, borrow money and accept donation, bequests and gifts of every kind on behalf of the community.

ARTICLE 8 which provides that the Assembly of the Heads of State and Government of the Organization of African Unity (OAU) shall be the supreme organ of the community.

This also implies that the Secretary-General, should report to the Assembly of the Heads of State and Government of the Organization of African Unity (OAU).

It is also worth mentioning that ARTICLE 98(1) stipulates that the community shall be an integral part of the Organization of African Unity (OAU).

All these provisos have one way or the other given some legal impetus in support of the New International Economic Order.

4.7. THE AFRICAN ECONOMIC COMMUNITY (AEC) TREATY IN RELATION TO THE NEW INTERNATIONAL ECONOMIC ORDER.

4.7.1. BACKGROUND

In discussing the treaty as it relates to the New International Economic Order, attention should be focused on the following factors in their legal perspective.

- The need for the promotion of co-operation among developing countries like African countries.
- The achievement of the above, with special emphasis on self-reliance.
- The fundamental problems of raw material and primary products as related to trade and development.
- The realization that the benefits of technological progress are not shared equitably, as the developing countries do not benefit proportionally considering their large global population and land expanse.
- The recognition and strengthening of existing regional blocks.

4.7.2. PROMOTION OF CO-OPERATION AMONG DEVELOPING COUNTRIES OF AFRICA

ARTICLE 4(1) (a) of the African Economic Community (AEC) Treaty provides that the objective of the community shall be "to promote economic, social and cultural development and the integration of African economic self-reliance and promote an endogenous and self sustained development.

And ARTICLE 4(1) (c) similarly provides "to promote co-operation in all fields of human endeavour in order to raise the standard of living of its people, and maintain and enhance economic stability, foster close and peaceful relations among member states and the economic integration of African continent".

These provisions expressly recognize the need for the promotion of co-operation and integration in African continent.

The Treaty also provides for the elimination of customs and similar duties between the member states [97]. This allows for a Free Trade area [98] and also establishes a customs union among member states by allowing for a common tariff to be adopted by all member states in trade relations with the international society.

The Treaty also provides for the free movement of people in Article 43(1), which provides that "member states agree to adopt individually, at bilateral or regional levels, the necessary measures, in order to attain progressively the free movement, right of residence and establishment of their nationals within the community." Article 43(2) further enhances the above provision by stipulating that "for this purpose, member states agree to conclude a protocol on the free movement of persons, right of residence and establishment, annexed to this treaty".

The member states not only agree on free movement of persons but also on the right of residence and establishment. They also agree to abolish any obstacles or impediments by this proviso.

4.7.3. HARMONISATION OF POLICIES

MONETARY AND FINANCIAL POLICIES

ARTICLES 44(1) and 44(2) provide for the harmonization of monetary, financial and payment policies of the member states. To this end member states should consult regularly on monetary and financial matters, use their currencies to settle commercial and financial transactions.

CAPITAL

ARTICLE 45 provides for free movement of capital within member states, and transfer of capital funds. In this regard a fund for co-operation, compensation and development is established.

FOOD AND AGRICULTURE

The harmonization of policies on Food and Agriculture is provided in chapter VIII Article 46 of the Treaty in six subsections. This article [99] also provides for the establishment of African commodity market so as to protect the prices of African export commodities in the international market.

INDUSTRIALISATION

The treaty also provides for the harmonization of economic and industrial policies of African states. [100]

Accordingly, they should strengthen and promote joint industrial development base at both regional and community levels.

Additionally, ARTICLE 49 lists some priority basic industries that should be fully developed in other to ensure collective self-reliance and modernization of the priority sectors of African economy. These include:

- Food and agro-based industries.
- Building and construction industries.
- Metallurgical industries.
- Mechanical industries
- Electrical and electronics industries
- Chemical and petro-chemical industries
- Forestry industries
- Energy industries
- Textile and leather industries
- Transport and communications industries
- Bio-technology industries.

OTHERS

These include Science and Technology, [101] Energy and Natural Resources, [102] Environment [103], Transportation [104], Post and Telecommunication [105] etc.

A close examination of the African Economic Commission (AEC) Treaty shows that it is a most realistic and programmatic one that tallies with the provision in the United Nations programme of Action on the establishment of a New International Economic Order which recognizes that "collective self-reliance and growing co-operation among

developing countries would go a long way in strengthening their role in the New International Economic Order.

In addition to above, Article 37 provides for the most favoured nation treatment by directing member states of the community to accord each other any privilege or favour granted to any other member state.

ARTICLE 36 prohibits the practice of "dumping" within the community.

This implies equal treatment, which is also a provision of the New International Economic Order.

ARTICLE 88 provides for the relations between the community and regional economic communities. The community shall coordinate the existing and future regional economic communities. This implies that there is also regionalism within the African continent. This also means that the Treaties establishing regional economic communities were entered into, and became effective before the African Economic Community Treaty was even signed.

Such Treaties include those establishing the Economic Community of West African States (ECOWAS), Central African Customs and Economic Union (UDEAC), East African Community (EAC) and Southern African Development and Coordination Conference (SADCC).

With the establishment of these functional Regional Economic Communities and their inherent enlarged market and consequent expansion in industrial production, taking advantage of economies of scale, industrial growth and technological advancement in the region will be enhanced with a view to distributing more

technological progress which at present is not shared equitably by all members of the international community.

This is another aspect of the African Economic Commission (AEC) treaty with regards to encouraging and implementing the New International Economic Order.

The most active Regional Economic Community in Africa as at today is the Economic Community of West African States (ECOWAS) that has its Secretariat in Abuja-Nigeria.

4.8. CONCLUSION

African states, notwithstanding, the frustrations by some developed countries on the implementation of the New International Economic Order have not relented in their efforts in the search for a New International Economic Order (NIEO).

Africa is not only the largest regional sub-system in terms of territorial size and number of states; it is also the least industrialized and one characterized by most conflicts, ambiguities, contradictions and inequalities.

The need for regional co-operation was probably more intensely felt in Africa than elsewhere in the Third world.

Intra-African co-operation has been weakened by the contrasting ideas and policies among independent African countries.

Regional integration in Africa is part of a diplomatic strategy to improve the balance of forces between the continent and the rest of the global system.

United Nations General Assembly Resolution 1514 of 1960 adopted the declaration against colonialism.

Also the United Nations charter Article 33(1) provided for regional organizations to settle disputes among members.

The creation of the Economic Commission for Africa (ECA) by the United Nations reflected notion about the promise of regional co-operation.

The Economic Communities for Africa (ECA) acted as a facilitator for inter-African institution building like African Economic Community (AEC), Organization of

African Unity (OAU), East African Community (EAC) and the Economic Community of West African States (ECOWAS).

The Lagos plan of Action and final Act of Lagos were the genesis of the Abuja treaty in June, 1991, for the establishment of the African Economic Community (AEC).

The African Economic Community (AEC) treaty is made up of twenty-two chapters with one hundred and six Articles on various issues.

For instance, chapter 5 provides for custom union and liberation of trade and

Chapter 6 provides for free movement of persons, rights or residence and establishment.

While chapter 10 provides for transport, communication and tourism within the community.

All these provisions in the African Economic Community (AEC) treaty were made in relation to the search for the New International Economic Order (NIEO). African states should co-operate and form a solid and united body to push for the establishment of a New International Economic Order (NIEO).

African states cannot achieve significant success in the search for a New International Economic Order (NIEO) merely, by expecting the developed countries to give up some of its privileges.

African Regional Integration, co-operation and institutional building such as the African Economic Community (AEC) will strengthen the existing trade relations

between African states and this will give a positive result to the search for the New International Economic Order (NIEO).

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CHAPTER FIVE

AFRICAN REGIONAL GROUPS AND THE NEW INTERNATIONAL ECONOMIC ORDER

5.1. INTRODUCTION

The Regional Economic Communities constitute the building blocks of the continental African Economic Community (AEC).

In every region of the world there is a growing interest for economic integration leading to the ultimate goal of regional and sub-regional economic union. Many neighbouring countries strive to maintain some degree of economic co-operation. The objective being the formation and strengthening of sub-regional and regional groupings so as to achieve growing awareness of the global inter-dependence of mankind in matters of economic well being and the promotion of international understanding.

The United Nations regional commissions were established in recognition of the fact that a certain range of economic problems are best approached at regional and sub-regional levels. Since the solutions to these frequently entail measures that have repercussions on the world economy as a whole, the commissions are enjoined to act "within the frame work and policies of the United Nations."

The Economic Commission for Africa has been an effective catalyst and midwife to complex long-term efforts to improve continental infrastructure without which

interstate or sub-regional communications and development of all sorts will continue to be handicapped.

Whether in connection with the Trans-African Highway or Pan-African Telecommunications, the Economic Commission for Africa has played an important role nursing these enterprises through technical, financial, and political crises.

The development of a Pan-African Documentation and Information Systems (PADIS) was recommended by the African Economic Commission in 1980 [106].

These are illustrations of the very useful role that the Economic Commission for Africa (ECA) has played and continues to play as a catalyst and facilitator of regional and sub-regional development and economic integration.

The United Nations has, through its various agencies and special sessions urged developing countries to promote regional and sub-regional integration and co-operation in the fields of economic development. In Africa the United Nations has through the Economic Commission for Africa since 1955, recommended that member states of the Commission should establish as soon as possible on a sub-regional basis an inter-governmental machinery for harmonizing their economic and social development [107].

- The United Nations Resolutions on the International Development Strategy for the second United Nations Development Decade urges developing countries to continue their efforts to negotiate and put into effect schemes for regional and sub-regional integration among themselves.

- The sixth special session of the United Nations General Assembly held in May, 1974, adopted the declaration on the establishment of a New International Economic Order [108] which recognized that collective self reliance and growing co-operation among developing countries would further strengthen their role in the New International Economic Order (NIEO).

Other proposals that developed the idea of regional co-operation and self-reliance which represents genuine desires for a restructuring of international economic relations, include:

- The Cocoyac Declaration, [109]
- The declaration and action programme adopted at the conference of developing countries held in Darker in 1975;
- The declaration and plan of action on industrial development issued at the end of the Second General Conference of the United Nations Industrial Development Organization (UNIDO) held in Lima in March 1975.
- The charter of economic rights and duties of states.

These proposals also offer a legal basis for co-operation among developing nations on the one hand and between the developed and developing nations on the other hand for the establishment of the New International Economic Order.

The beginning of the idea of a regional economic grouping in West Africa can be traced back to the initiatives emanating from the United Nations Economic Commission for Africa (ECA) which made it abundantly clear that a most important key to economic progress in Africa lies in economic co-operation between African

countries. [110] The Economic Commission for Africa (ECA) envisaged four regional groupings of African countries with countries in each group constituting potential participants in the economic union of the group. These are the West African group, East African group, North African group and Central African group. The West African group consists of fifteen nations (Benin, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Mauritania (has recently [2000] given appropriate notice of its intention to quit ECOWAS). Niger, Nigeria, Senegal, Sierra-Leone, Togo, and Burkina Faso.

5.2 ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

5.2.1. BACKGROUND

In 1967, United Nations Economic Commission for Africa sponsored a series of regional meetings designed to build viable economic groupings within Africa. In one of such meetings held in Accra from April 27, to May 4, 1967, the idea of setting up a permanent West African Economic Community was renewed and at the end of the meeting they drafted Articles of Association of the proposed community in West Africa. The proposed Articles of Association provided for interim council of Ministers as a transitional arrangement pending the formal establishment of the community.

This proposed Article of Association were signed by Dahomey (New Benin), Ghana, Ivory Coast, Liberia, Mali, Mauritania, Nigeria, Senegal, Sierra-Leone, Togo and Burkina Faso and later Gambia.

There was also a conference of Heads of states held in Monrovia in April 1968 at which the co-operating states adopted a protocol establishing the West African group, and incorporating as an integral part the Articles of Association of the proposed West African Economic Community.

Assignments were given to Nigeria and Guinea to prepare a document on priority studies, while Liberia and Senegal were assigned with the drafting of the treaty and protocol on custom union.

After consultations with other West African states the Lome meeting was convened for 10^{th} –15^{th} December, 1973.

This Lome meeting was attended by delegates from Dahomey (New Benin), Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra-Leone, Togo and Upper Volta.

At this meeting, the states unanimously, agreed on the basic issues of the sub-regional economic community, including trade, customs, harmonization of financial and monetary policies, utilization of natural resources, infrastructural links, communications and energy.

The Treaty establishing the Economic Community of West African States was signed on 28th May, 1975 by fifteen West African States astride Franco-phone and Anglophone frontiers. These countries are – Dahomey (now Benin), Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra-Leone, Togo and Upper Volta.

> The signing of this treaty was a big achievement over the years and was as a result of strenuous efforts to respond to repeated recommendation of the United Nations bodies, especially, the United Nations Economic Commission for Africa, to stress, inter alia, sub-regional co-operation as a means of fulfilling the aspirations of developing nations. [111]

The Economic Community of West African States (ECOWAS) Treaty represents the aspiration and yearnings of the people within the West African sub-region for the promotion of co-operation and development in all fields of economic activity. It also provides the framework within which collective self-reliance and co-operation among

member states of the community could be given concrete expression in line with the New International Economic Order.

5.2.2. THE LEGAL RELEVANCE OF ECOWAS TREATY TO THE NEW INTERNATIONAL ECONOMIC ORDER.

In investigating the legal relevance of the Economic Community of West African States (ECOWAS) Treaty to the New International Economic Order, attention is to be drawn on the following:

- Co-operation and self-reliance;
- Industrialization;
- Trade liberalization;
- Monetary and fiscal policies;
- Movement of goods and persons.

Economic Community of West African States (ECOWAS) treaty contains 65 Articles arranged in 14 chapters with its central objectives as the promotion of co-operation and development in virtually all fields of economic activity, particularly in the fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions and social and cultural matters, for the purpose of raising the standard of living of its people, of increasing and maintaining economic stability, of fostering closer relations among its members and contributing to the progress and development of the African continent.

The Treaty provides for a programme of liberalisation of trade and realisation of Custom Union, within the community over a period of 15 years. The first two years

being devoted to organizational questions and fact gathering. The following eight years to see the gradual reduction or elimination of import duties, the free movement of people, service and capital

5.2.3. LIBERALISATION OF TRADE.

Article 12, provides for the liberalization of trade within the community to be progressively established within a fifteen year period.

A Custom Union in the community was created with subsequent, gradual elimination of custom duties between member states. [112]

Also Article 14, provides for a Common Custom Tariff by member states, in respect of all goods imported into the member states from third world countries.

In the Treaty there was also the special treatment clause for member states who import goods from the territory of another member state that originate in the member state. [113]

This shows that the Economic Community of West African States (ECOWAS) Treaty is in line with the United Nations declaration on the New International Economic Order by promoting co-operation, self-reliance and development in all fields of economic activities, among member states. This also recognizes that the West African countries will further strengthen themselves in the search for the New International Economic Order.

5.2.4. MOST FAVOURED NATIONS TREATMENT

Article 20, provides for the Most Favoured Nations treatment by enacting that member states shall accord to one another in relation to trade between them and in no case shall

tariff concessions granted to a third country under an agreement with a member state be more favourable than those applicable under this treaty.

Also, Article 21 provides that member states shall refrain from enacting legislation, which directly or indirectly discriminates against the same or like products of another member state.

This means that any privilege or favour granted by one member state shall equally apply to other member states. This in other words means equity and equality, which also is one of the principles of the New International Economic Order for the developing countries.

5.2.5. MOVEMENT

Freedom of movement and residence is provided for, under chapter 4, in Article 27. Its provision includes "Community Citizenship" in which case citizens of member states may not need visas in moving from one member state to the other.

The Economic Community of West African States (ECOWAS) region is the only area in the continent, which has implemented the protocol on free movement of persons. The ability of the nationals of member states to move freely across national boundaries without visas has contributed immensely to boosting trade volume and economic activities as well as to creating a community spirit throughout the region.

This is co-operation and it is in line with the New International Economic Order, which recognizes growing co-operation among developing countries.

5.2.6. CO-OPERATION IN MONETARY AND FINANCIAL MATTERS.

The Treaty envisages harmonization of monetary, financial and payment policies of the member states.

The Trade, Customs, Immigration, Monetary and Payment Commission were established to consult and regulate among member states on monetary and financial matters under Article 36.

Article 38, established the Community of West African States Central Bank that shall make recommendation on monetary clearing systems of payment in the community.

Also to be harmonized is Agricultural Policies and Evolution of a common Agricultural policy as provided in Articles 34 and 35 respectively.

5.2.7. INDUSTRIALIZATION

Articles 29, 30 and 31 make provision for the exchange of information on major industrial policies, imposed some relevant obligation on member states;[114] harmonization of Industrial incentives and industrial development plans, [115] Personnel exchange, training and Joint venture by member states. [116] Generally, member states shall strengthen industrial co-operation, training and harmonization of their policies for the purpose of fostering the changes necessary for enhancing social and economic progress and the development of the community.

The member states are committed to industrial development and harmonization in three stages.

A fund for co-operation, compensation and development is set-up to promote and finance development projects, provide compensation to member states which suffer

losses as a result of the location of industries and liberalization of trade within the community, and guarantee foreign investments made in pursuance of the provision of the Treaty [117].

A lot has been achieved in terms of liberalization in this community but more is planned and yet to be achieved. Economic Community of West African States (ECOWAS) is vigourously pursuing the aspirations of the New International Economic Order on co-operation and communal self-reliance.

5.3 THE SOUTH AFRICAN DEVELOPMENT CO-ORDINATION CONFERENCE (SADCC)

5.3.1. BACKGROUND

Economic co-operation among independent African states in Southern Africa is specifically motivated by their opposition to the apartheid regime in South Africa. Their initiatives have to confront the dominating role, which South Africa occupies in the political economy of Southern African.

The institutional foundations for a new integrated economic unit of Southern African states were first laid in a meeting of the "front-line" states, Angola, Botswana, Mozambique, Tanzania and Zambia held in Arusha, Tanzania in July 1979.

The Arusha meeting was followed by the 1st April, 1980 Lusaka economic summit which was attended by the nine Heads of government of Angola, Botswana, Mozambique, Tanzania, Zambia, Lesotho, Malawi, Swaziland, and Zimbabwe.

The Lusaka Economic summit produced the historic declaration "Southern Africa Towards Economic Liberation[118] which has become the blue-print for the South African Development Co-ordinating Conference.

This declaration commits the countries of the region to work harmoniously to integrate their economies and gradually to reduce their dependence particularly, but not only, on the Republic of South Africa. Accelerated economic development and regional self-reliance are the twin objectives of the Declaration. The declaration also contains an appeal for external co-operation and international support. Southern Africa

Development Co-ordination will be achieved if development takes place within the context of global co-operation.

5.3.2. INSTITUTIONAL FRAMEWORK

At the second summit of South African Development Co-ordination Conference (SADCC) held in Harare in July, 1981, agreement was concluded on an institutional framework, which includes summit meetings, a council of ministers, a standing committee of officials' functional commissions and a secretariat. The final communiqué issued after the Salisbury summit said "South African Development Coordination Conference (SADCC) has eschewed the creation of large and unwieldy bureaucracy in favour of a system which places responsibility for the implementation of its programme on the Government of member states". [119]

5.3.3. THE SECRETARIAT

The secretariat of South African Development Coordination Conference (SADCC) is based in Gaberone, Botswana. It was established in July, 1982 and a Zimbabwean nominated the first officer-in-charge (the Executive Secretary), there were also other three professional and four support staff.

The South African Development Coordination Conference (SADCC) secretariat is purely administrative body established for the general service of the South African Development Coordination Conference (SADCC) and for liaison with its specialized institutions. The secretariat ensures the smooth functioning of ministers with administrative support.

5.3.4. THE SUPREME BODY

The supreme body of South African Development Coordination Conference (SADCC) is the summit meeting. Membership of the supreme body of South African Development Coordination Conference (SADCC) is drawn from the member states of South African Development Coordination Conference (SADCC) including South Africa recently. It is responsible for the general direction and control of the performance of the functions of South African Development Coordination Conference (SADCC) and the achievement of its objectives.[120] It meets at least once a year.

5.3.4. THE COUNCIL OF MINISTERS

This is the body charged with the overall policy of the South African Development Coordination Conference (SADCC), its general co-ordination, the supervision of its institutions, and the supervision of the execution of its programmes.[121]

The Council of Ministers may if need arises appoint Ad-hoc Committees of Ministers for particular programme areas. The Council has a standing Committee of officials to assist it in its business, and may appoint Sub-Committees of officials for particular programme areas if need arises.

The Council also convenes the annual consultative conference with South African Development Coordination Conference (SADCC) international development co-ordination partners. Decisions taken by the Council of Ministers are subject to the approval of the summit meeting.

5.3.6. THE FUNCTIONAL COMMISSIONS

The functional commissions of South African Development Coordination Conference (SADCC) are the commissions for sectoral areas; which were located in the member states assigned major responsibility for the area of co-operation; each state therefore would gain a share in the revenues spent in support of regional activities.

By the end of 1981, only one such commission, the Southern African Transport and Communications Commission (SATCC) based in Maputo was established. The Southern African Transport and Communication Commission (SATCC) objectives are to contribute to the fulfilment of South African Development Coordination Conference (SADCCs) four-point strategy by promoting rational and integrated utilization of the transport and communication systems existing in the region: by promoting new development programmes and projects, and the modernization of existing systems; and by seeking participation of the independent states in the region.

Today there are other functional commissions on Agriculture, Commerce and Industries in the sub-region.

These institutions will provide South African Development Coordination Conference (SADCC) with effective and flexible mechanism for regional consultation, co-operation, development and self-reliance in the South African Development Co-ordination Conference (SADCC) States.

5.4 THE SOUTH AFRICAN DEVELOPMENT CO-ORDINATION CONFERENCE AND THE NEW INTERNATIONAL ECONOMIC ORDER (NIEO): LEGAL CONSIDERATION

5.4.1. DECLARATION

The declaration was made by the Heads of State of member nations. It reads:

> We, the undersigned, as the Heads of Government of majority-ruled States of Southern Africa, offer this declaration to our own people, to the peoples and Government of the many countries who are interested in promoting popular welfare, justice and peace in Southern Africa and to the international agencies who share this interest. In it, we state our commitment to pursue policies aimed at the economic liberation and integrated development of our economies and we call on all concerned to assist us in this high endeavour.[122]

This declaration supports the developing countries demand for a New International Economic Order (NIEO) because it refers to economic liberation and justice for the South African States.

5.4.2. OBJECTIVES

The development objectives to be pursued by the co-ordinated action of the South African Development Coordinating Conference (SADCC) member countries are defined as follows:[123]

Firstly, the reduction of economic dependence, particularly, but not only, on the Republic of South Africa;

Secondly, the forging of links to create a genuine and equitable regional integration.

Thirdly, the mobilisation of resources to promote the implementation of national, inter state and regional policies; and

Fourthly, concerted action to secure international co-operation within the framework of the strategy for economic liberation.

These objectives are in line with declaration of the New International Economic Order (NIEO) and the charter of economic rights and duties of states, which provides for sovereign economic rights of state.

The Lusaka economic declaration is a remarkable policy statement reflecting the ever-evolving African strategy in achieving economic independence not only in Southern Africa but also in the developed countries of the world; through regional and coordinated efforts. It is also a foundation for the development of the New International Economic Order in Southern Africa.

5.4.3. REDUCTION OF DEPENDENCY ON THE REPUBLIC OF SOUTH AFRICA.

Southern Africa is dependent on the Republic of South Africa as a focus of transport and communications, an exporter of goods and services and as an importer of goods and cheap labour.

This dependence is not a natural phenomenon nor is it simply the result of a free market economy.

The reduction of dependence on South Africa is central to the achievement of economic development, and advancement of the dignity and the basic human needs of the people of Southern Africa.

This also follows the principles of the New International Economic Order on self-dependence and economic sovereignty of all the developing nations.

The strategies of the South Africa Development Co-ordination Conference (SADCC) States represent a blue print for regional self-sufficiency in industrialization, energy (fuel, coal and hydro-electricity) communications, transport and agriculture. In pursuit of regional self-sufficiency, South African Development Coordination Conference (SADCC) has mapped out one hundred and six (106) capital projects in the sub-region.

5.4.4. LIBERATION: POLITICAL AND ECONOMIC

The declaration on economic liberation provides as follows-

> Our urgent task now is to include economic liberation in our programmes and priorities, in the interest of the people of our countries, it is necessary to liberate our economies from their dependence on the Republic of South Africa to overcome the imposed economic fragmentation and to co-ordinate our efforts towards regional and natural economic development. This will be as great for Namibia as it is for all the independent states of the region.[124]

The South African Development Coordination Conference (SADCC) countries view their programme of action as part of the liberation struggle in Southern Africa, which with the independence of Zimbabwe, will shift its focus to Namibia and later on to South Africa itself. The privacy given to regional economic co-operation and economic liberation by the nine states is supported by the rest of Africa and it reflects the shift towards pre occupation with economic survival on a continental scale. As an emphasis to this assertion, the Lusaka summit was attended by both the then Economic

Commission for Africa (ECA) Executive Secretary, Prof. Adebayo Adedeji and then Organization of African Unity Secretary General, Edem Kodjo.

The South African Development Coordinating Conference fits neatly within the New International Economic Order and the charter of economic rights and duties in the area of economic liberation.

5.4.5. STRATEGIES AND PRIORITIES

> "We will identify areas in which, working in harmony, we can gear national development to provide goods and services presently coming from the Republic of South Africa and weave a fabric of regional co-operation and development. The Key to this strategy is transport. We will therefore create a Southern African Transport and Communications Commission to co-ordinate the use of existing systems and the planning and financing of additional regional facilities.[125]

It was agreed at Lusaka that South African Development Coordinating Conference (SADCC) would not engage in elaborate institution building, but would concentrate on practical efforts to implement projects beneficial to regional development.

To this effect, areas of common interest were identified and individual member countries were given the mandate to prepare draft programmes and propose projects for consideration by South African Development Coordinating Conference (SADCC).

The area of transport and communication has been given highest priority by South African Development Coordination Conference (SADCC). It was recognized that the

improvement of such links is fundamental to the implementation of projects in other important areas such as food, security, industrial production and trade.

> No serious degree of economic integration can be achieved within the region as while until it becomes significantly easier, faster and cheaper to move messages, persons and goods than it is today.[126]

Transport and Communication will be a major focus of regional action. The co-ordination of transport facilities to meet the needs of land locked states is crucial. Transport and communication development, therefore, is the area in which South African Development Coordination Conference (SADCC) countries started identifying projects immediately after the Arusha conference.

The areas of co-operation (and their Coordinators) agreed upon in the programme of action formally adopted in Lusaka are as follows:[127]

- The creation of a Southern African Transport and Communications Commission (SATCC) based in Maputo, Mozambique.
- Regional food security in Zimbabwe.
- Coordinated control of foot and mouth disease in cattle on a regional basis in Botswana.
- Establishment of a regional sub-centre of the International Crops Research Institute for the Semi-Arid Tropics in Botswana.
- Regional Industrial Development in Tanzania.
- Formulation of a regional energy conservation policy in Angola.

- Sharing of national training facilities and assessment of need and properties for co-operation in manpower training in Swaziland.
- Establishment of a Southern African Development fund in Zambia.

Subsequent South African Development Coordination Conference (SADCC) Conferences held in 1981 identified additional areas of co-operation to be incorporated into the programme of action.

- Forestry, fisheries and Wildlife in Malawi.
- Regional mining development in Zambia.
- Soil conservation and land utilization in Lesotho and Zambia.

5.4.6. REGIONAL CO-OPERATION AND COLLECTIVE SELF-RELIANCE

All South African Development Coordination Conference (SADCC) member states are also members of the non-aligned countries.

In a number of ways the initiative embarked upon by South African Development Coordination Conference to develop regional co-operation in Southern Africa reflects the principles adopted by the non-aligned countries and contribute to their implementation.

The focus of South African Development Coordination Conference (SADCC) on practical action is in line with an increasing concern of the New International Economic Order (NIEO) generally with the promotion of collective self-reliance. [128]

It is interesting to note that today South Africa has been admitted into the membership of South African Development Community.

It could be recalled that during the apartheid regime in South Africa, it tried to dominate and influence the other Southern African countries.

This fear of domination was one of the reasons that led to the Lusaka Declaration by the other Southern African countries, which resulted to exclusion of South Africa in the community.

Today South Africa is ruled by the "black" majority as opposed to the apartheid South Africa.

This change in government was welcome by the other Southern African countries that are members of the South African Development Coordination Conference (SADCC), hence the admission of South Africa into this community.

The entry of South Africa into the community has enlarged the community both in membership and size of market.

This will mean a better "Trade creation" and market for the community. It also implies a harmonization of trade policies of all Southern African countries without exception.

When policies are harmonized, free trade created, it will eventually result into peace in the region that will lead eventually to world peace.

5.5 CENTRAL AFRICAN CUSTOM AND ECONOMIC UNION (UDEAC)

5.5.1. BACKGROUND

Reginald and Seidman opined

> The only way to achieve the economic reconstruction and development essential to fulfil the aspirations, needs and demands of the peoples of Africa is through a substantial shift to continental planning, so as to unite increasingly the resources, markets and capital of Africa in single substantial economic unit.[129]

The Central African States are convinced that there exist in their region enough forces that could pull them together into a single unit. Geographical contiguity of communities encourages them to unite and pursue common goals more successfully.

In Central African region the geographical proximity of the Central African Customs and Economic Union (UDEAC) states is an asset for an economic integration arrangement.

The initiative to regroup the Central African Countries into a single regional unit has its beginnings in the colonial era.

France by decree of 15th January, 1910 created the "Afrique Equatorial Francaise (AEF), which comprised the Central Africa Republic, Chad, Gabon and Congo.

In 1958, the member states of Afrique Equatorial Francaise (AEF) opted for individual self-government and thereby jointly accepted to operate services under the 1910 decree.

Through the Brazzaville Treaty of the 23rd June, 1959, [130] a customs union (Union Douaniere Equatorial – UDE) was signed by the 7th December 1959, the Libreville treaty modified the treaty of 1959. This treaty provided for

- The establishment of a common external tariff and import duties,
- The harmonization of the economic and social development plan.

Later there was a need to enlarge the membership of this regional economic grouping to include neighbouring Cameroun, or former United Nations Trusteeship administered by France and unattached to either the French Equatorial or West African Federation

By 1961 Cameroun became a member of Union Douaniere Equatorial (UDE), which altered the name of the association to Union Douaniere Equatoriale Et Du Cameroun (UDEAC).

This was ratified by the Presidents in December, 1964 by signing the Brazzaville Treaty [131] which created the Customs and Economic Union of Central Africa (UDEAC). This treaty further provided for the elimination of restrictions on commodity movement between member states, the setting up of a common external tariff against third countries. It also provided for the removal of barriers to factor movements including some decree of the harmonization of national economic policies, particularly in the areas of industrial, investment and transportation development.

In April 1968, the Central African Republic and Chad withdrew to join Zaire in the Union of Central African States (UEAC). However, in December, 1968, the Central African Republic rejoined the Union Douaniere Equatoriale Et Du Cameroun

(UDEAC). In October, 1974, delegates from Cameroun, Congo Peoples Republic, Gabon and the Central African Republic met to discuss the codification of Customs regulations to facilitate the economic integration of the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) members.

In December, 1974 at the tenth Summit or Conference of the Union held in Yaounde, Cameroun, the Heads of State agreed on the revision of the treaty. The organization had concentrated in building-up a custom union in its first decade but henceforth would work for the economic integration of the member states.

5.5.2. OBJECTIVE

The treaty aims at establishing a single customs territory, allowing free movement of people, goods and capital.

The states also aim at rationalizing and harmonization of their tariffs, tax systems, industrialization and transport policies, and development plans in order to promote the balanced development and diversification of the economies in the area.

The treaty provides for conditions of general guarantees, categories of investment for preferential treatment, approved procedure and economic advantages. A solidarity fund was also created from which compensation would be paid to the landlocked Central African Republic for losses suffered as a result of the implementation of the objectives of the union.

Finally, the treaty tries to promote the gradual and progressive establishment of a Central African Common Market.

5.5.3. INSTITUTIONAL FRAMEWORK

Three institutions were created for the running of the union. These are- Council of Heads of State, the Management Committee, and the General Secretariat.

5.5.3.1. THE COUNCIL OF THE HEADS OF STATE

The Council of Heads of State is the supreme organ of the union and has a wide range of supervising and initiating functions including the determination and co-ordination of the customs and economic policies of the member-states, the supervision of the Management Committee and the appointment of the Secretary-General.

The Management Committee is responsible for examining various Union Douaniere Equatoriale Et Du Cameroun (UDEAC) problems and making proposals for the council of Heads of State for final decisions. It is composed of the Ministers of Finance and the Ministers of Economic Development of their respective states.

5.5.3.2. THE GENERAL SECRETARIAT

The General Secretariat is headed by a Secretary-General whose role is limited to general administration and implementation of the decisions of the Heads of State.

The Secretary-General is under the direct authority of the president of the council. The General Secretariat manages the solidarity fund which was an inclusion in the preamble to the 1964 Treaty and set-up to help reduce the existing economic and social disparities between the more developed member states like Cameroun and Gabon and the less developed ones like the Central African Republic and Chad.

5.6 UNION DOUANIERE EQUATORIALE ET DU CAMEROUN (UDEAC) AND THE NEW INTERNATIONAL ECONOMIC ORDER

5.6.1. EQUITY AND COMPENSATION

While the preamble of the 1964 Union Douaniere Equatoriale Et Du Cameroun (UDEAC) Treaty makes clear the intention to compensate the less industrialized member states for their economic disadvantage and ensure in the future, an equitable distribution of the benefits derived from integration effort, Article 38 which set-up the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) solidarity fund makes no reference to those broader goals of equity and compensation.

5.6.2. THE SINGLE TAX SYSTEM AND INDUSTRIAL HARMONIZATION

Articles 59 and 60, of the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) Treaty set up a single tax system. Goods manufactured in Union Douaniere Equatoriale Et Du Cameroun (UDEAC) states and sold in more than one of its member states are subject to a single tax, whose rates are fixed collectively by the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) Management Committee.

This must keep to the original conception of the single tax system designed to

(a) Stimulate industrialization by enhancing the competitive position of local manufactures relative to foreign imports through a reduction in the overall rates of taxation when compared to the common external tariff; and

(b) To provide each of the member-states with the possibility of recovering a certain percentage of the revenues it otherwise would have earned through tariffs imposed on third party imports.

Article 28 of the 1964 Treaty made clear that the imposition of all other duties and taxes on intra-regional imports or exports was prohibited.

5.6.3. AGRICULTURE AND NATURAL RESOURCES

Article 45 of the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) 1964 Treaty provided for regional co-operation in agriculture, natural resources, technology, posts, telecommunications, transportation and energy.

5.6.4. ECONOMIC UNION

In its provisions for an economic union, the 1974 Union Douaniere Equatoriale Et Du Cameroun (UDEAC) Treaty goes considerably beyond the 1964 Treaty in widening the scope of regional integration. The treaty reveals that few new policy instruments or institutional mechanisms were created to realize these new objectives. Fundamentally, the 1974 Treaty remains wield for the belief that trade liberation is the key means to bring about closer regional integration.

Article 28 of the 1974 Union Douaniere Equatoriale Et Du Cameroun (UDEAC) treaty provides that "free trade will be effected for all raw materials and unprocessed agricultural commodities produced and marketed within the region."

Article 66 of the 1975 Treaty created the UDEAC Bank. The Banque de Development des Etasts del'Africa Centrale (BDEAC) which was officially launched on 3rd December, 1975. Its members included the four Union Douaniere Equatoriale Et Du Cameroun (UDEAC) member states and Chad. Its headquarters is in Brazaville and its Director-General was a Central African.

The purpose of the bank is to efficaciously promote the integration of the region and the harmonious development of the states of the union as well as to contribute to a reduction in existing disparities in development.

As far as Union Douaniere Equatoriale Et Du Cameroun (UDEAC) states are willing to bind themselves by means of a treaty in order to effect certain joint projects and programmes, it represents a major leap forward in the direction of concerted development and self-reliance.

This is in line with the principles of the New International Economic Order (NIEO). Increased co-operation among the African states is required in order to promote intra-African trade, industrialization and economic development in general. This will encourage African states to buttress their demands for the New International Economic Order (NIEO).

5.7 THE EAST AFRICAN COMMUNITY: A POST MORTEM

5.7.1. INTRODUCTION

The United Nations, particularly through its various regional commissions has for many years been encouraging regional integration and co-operation.

The United Nations Economic Commission for Africa is an important device for promoting development, especially industrial development, in the developing countries of Africa, but no where has there been even a proposal for a scheme covering so wide a range of activities within so highly organized a system, as that of the East African Community (EAC). Yet within a decade the scheme has collapsed, leaving the wreckage of the arrangements in such an atmosphere of hostility and recrimination that two years later the boarders between Kenya and Tanzania remain closed.

Experimentation and failure are important components of the learning process of individuals, communities and countries.

The East Africa experience should be a guide in our effort to re-examine the basic tenets of the practice of regional co-operation among developing countries. It will also help us to raise questions and draw conclusions that may be relevant to this research and other African regional groupings

5.7.2. BACKGROUND OF THE EAST AFRICAN COMMUNITY (EAC)

The East African Community (EAC) was established in 1967 by a Treaty for East African Co-operation between Kenya, Tanzania and Uganda.

The Treaty was widely regarded as an instrument for achieving economic development and progress through co-operation.

The community formally came into existence in December, 1967.

The Preambles and Articles 1-4 of the East African Community Treaty provides for the Central purpose and aim of the community.

> To strengthen and regulate the industrial, commercial and other relations of the partner states to the end that there should be accelerated harmonious and balance benefits of which shall be equitably shared.

The 1967 Treaty set out

- To establish a regional common market.
- To ensure an equitable distribution between the signatories of the benefit of balanced industrial development.
- To secure the maintenance of customs unions and excise tariffs.
- To provide a framework of the progressive harmonization of regional economic and monetary policies.
- To provide for the establishment at a later stage of common agricultural and transport policies.

Article 20 of the Treaty was the most controversial and difficult provision of the Treaty and undoubtedly those with relation to the transfer tax system.

The Preamble provisions stress the wish of all the parties to establish close and continuous co-operation on the spirit of international solidarity and based upon complete equality of the signatories.

There is also a significant reference to the wish of the parties to establish "a new model for relations between developing and developed states which will be compatible with

the desire of the international community for a more equitable and more balanced economic order.

5.7.3. EAST AFRICAN COMMUNITY (EAC) AND THE NEW INTERNATIONAL ECONOMIC ORDER (NIEO).

5.7.3.1. THE TREATY

The Treaty was intended to put co-operation between the partner states on a firm footing of mutual advantage and not simply on paper over the cracks in the old structure of colonial relationships. This implies equity and fairness, which confirms with the quest of the New International Economic Order (NIEO).

5.7.3.2. CUSTOM UNION

The integration arrangement has comprised a customs union with a common external tariff and free trade between the countries, common customs, and income tax administration, common transport and communication services, (railway, harbours, posts, telecommunications, airways) a common university, common research service, and a common currency.

5.7.3.3. CO-OPERATION AND SELF-RELIANCE

The treaty set-up a formal structure for administering community institutions and provided measures to achieve an acceptable distribution of the benefits of co-operation between the states.

The Treaty introduced transfer tax to give limited protection for industries in the less developed states against competition from those in the more developed.

The Treaty also created the East African Development Bank (EADB), which was to allocate its investments disproportionately in favour of Tanzania and Uganda.

5.8 CAUSES OF THE EAST AFRICAN COMMUNITY DISINTEGRATION.

5.8.1 INSTITUTIONAL WEAKNESS

The East African Community (EAC) Treaty established a complicated institutional structure to administer and control the community.

The control of the community rested on the Authority made up of the three Presidents. The community collapsed when relations between the three presidents got soured and the source of initiative for the continuation and the development of the co-operation died too.

East African Community (EAC) had a secretariat and so many councils at which discussions took place between representatives of the partner states. It also had East African Ministers and Assistant Minister of each partner states.

The effect of these bodies was that the Secretary-General was left with little or no power at all, with all decisions regarding the specific agreement of partner states.

Despite all its complexities, the East African Community (EAC) lacked autonomous body with at least power of initiative and supervision.

5.8.2 OMISSIONS FROM THE TREATY

The omission from the Treaty of detailed proviso for road transport became a disruptive issue on the community.

A number of issues concerning transport and the related issue of tourism caused tension between the partner states.

This soured relationship between Kenya and Tanzania, made Tanzania to close the boarder to Kenya's heavy vehicle and it even finally led to the then general boarder closure.

Also omitted from the Treaty was the issue of state trading. Rules were made rather than drawn-up regulations of state trading though they have not been only difficult but impossible to enforce. It would have been encouraging if state trading were turned into an integrating factor, rather than disintegrating force.

Thirdly, was the balance of payment problems?

Articles 43 and 45 of the Treaty meant that the signatories have conferred upon the East African Community the legal capacity and judicial personality required to perform its function, there is no doubt that the primacy of the law of the community has not been secured. In the case of East African Community V. the Republic of Kenya,[132] the Court of Appeal of East Africa (itself a continuation of the court established under the earlier East African Common Service Organization and a judicial organ of the East African Economic Community declared that:

"the constitution of Kenya is paramount than any law, whether it be of Kenya, of the community or of any other country which has been applied in Kenya, which is in conflict with the constitution is void to the extent of the conflict". [133]

5.9 CONCLUSION

The July, 1979 Monrovia Declaration of Commitment of the Heads of state and Government of the Organization of African Unity (OAU) on guidelines and measures for national and collective self-reliance in social and economic development for the establishment of a New International Economic Order provides as follows-

> It is hereby proposed, taking into account previous analysis, to divide the African region into four sub-regions corresponding respectively to West Africa (Economic Community of West African States), East Africa (East African Community), Central Africa (Union of Central African States) and North Africa (Economic Community of North Africa).[134]

This plan advocated for four sub-regional communities to be created in Africa from the existing structure. Notwithstanding the demise in 1977, of the East African Community, a call has been made for a new bloc to be called East African Co-operation (EAC) bringing back together Kenya, Tanzania and Uganda.

The Economic Community for West Africa not withstanding all the wars in Liberia and other trouble spots in West Africa has been waxing very strong. This has grown to military co-operation known as Economic Community of West African States Monitoring Group (ECOMOG).

Economic Community of West African States (ECOWAS) has already started its implementation of the free movement of people in the sub-region.

In the year 2000, Economic Community of West African States (ECOWAS) introduced a single currency among all its members through its Economic and Monetary Union of West Africa (UEMOA).

Articles 1-5 of Economic Community of West African States (ECOWAS) Treaty introduced as single currency among the members of the Economic Community of West African States (ECOWAS). The central objective of Economic Community of West African States (ECOWAS) is to substantially create development in the sub-region.

At the 1996, Economic Community of West African States (ECOWAS) summit held in Abuja, Nigeria, the Monetary Agency of West Africa was created to replace the West African clearing house. The Summit also took important decisions on the harmonization of economic and financial policies: Industrialization and trade liberalization is strengthened, with special emphasis on the gas project.

Article 32 of the Economic Community of West African States Treaty provides for the Council of Ministers to

> Take steps to reduce gradually the community's economic dependence on the outside world. This will enhance the economic opportunity of the West African States so as to enable them reduce the pattern of external dependence.

Mytelka, argued that

> As the European reconstruction took off in the late 1950s and spectacular growth appeared somehow related to the existence of a common market, leaders in equatorial Africa as well as elsewhere in the Third World came to believe that

the solution to the economic problems of their countries lay in the transfer of integrative processes and institutions to their region.[135]

The Union Douaniere Equatoriale Et Du Cameroun (UDEAC) Treaty signed in 1964 is an evidence to show that closer economic co-operation and integration has been set-up in Central Africa. Members of the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) have bound themselves by series of treaties in order to effect certain joint projects and programmes. This means an achieved concerted development for Union Douaniere Equatoriale Et Du Cameroun (UDEAC) states.

In Central African Region, Union Douaniere Equatoriale Et Du Cameroun (UDEAC) is grappling with the serious task of rallying all the member states in order to face the challenge of economic and social development of the region particularly the building of infrastructures to support co-operation and integration. This will also help in their search for the New International Economic Order.

In the signing of the Treaty of Lusaka in 1979 establishing the South African Development Coordination Conference (SADCC) the signatories agreed upon the following immediate objectives; namely, the establishment, of a customs union between the five countries.

- The co-ordination and harmonization of national policies on industrial development, agricultural structure, finance and infrastructure and
- The creation of a common market.

The 16th South African Development Coordination Conference (SADCC), Summit held in Maseru in the Kingdom of Lesotho approved the texts for four protocols, which

were signed on the occasion. The protocols provide a framework of harmonizing national policies on trade liberalization that is gradual removal of tariff and non-tariff barriers and a total trade liberalization by the year 2004.

Other areas of co-operation approved by the summit are in combating illicit drug trafficking, energy, transport and communication.

African sub-regional groups should have learnt their lessons from the events that led to the demise of the East African Community (EAC).

These include:

- Complicated institutional structure in the community.
- Lack of autonomous body for the Community.
- Inadequate drafting of community treaty.
- Lack of respect for community treaty.
- Not honouring their obligations in the community treaty.
- Balance of payment problems.
- Membership and the extent of the community area were small.

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Some of these deficiencies are also the factors inhibiting some existing African sub-regional groups from attaining to their overall objectives. The Economic Community of West African States (ECOWAS) has maintained the lead in African sub-regional integration and should be emulated by other existing African regional blocs.

In North Africa Region there is every hope that the Arab-Mahgreh Union (UMA) is striving towards regional integration despite its temporary problems of not being able to maintain links with the efforts of the Organization of North African Unity (ONAU)

and other Regional Economic Communities in bringing the African Economic Community into formation.

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CHAPTER SIX

CONCLUSION

6.1 SUMMARY

This dissertation has basically focused on legal perspective of the Economic Commission for Africa, the African Economic Community, other African regional groupings, and their search for the New International Economic Order (NIEO). The United Nations pre-occupation with economic development is rooted in the sharp division of its membership between rich and poor nations. Has this division threatened world peace and security?

A proper world legal system must be created in order to reduce the gap in economic development between the developing and the developed world. Africa alone has seventeen out of the twenty-five least developed countries in the world.

The United Nations and its agencies have made various attempts and adopted many strategies in order to rectify the imbalance between the developing and developed countries of the world through the establishment of:

- The United Nations Regional Economic Commission
- The United Nations development decade.
- The United Nations Conference on Trade and Development (UNCTAD)
- The World Trade Organization (WTO) meetings.
- North-South dialogue
- The proposal for a New International Economic Order.

Africa is a developing continent that recognizes that collective self-reliance would further strengthen its search for a New International Economic Order.

The United Nations has at its various agencies and special sessions encouraged developing nations to promote regional integration and co-operation in the fields of economic development.

6.1.1 REGIONALISM

Technology, nationalism and ideology are the major forces behind regionalism. Technology played a major role in bringing the developed countries closer together while nationalism influenced the developing countries in coming together.

African participation in the United Nations system has been prominent and ceaseless during the past three decades. Economic integration arrangement in Africa may well be the pillars on which united African continent is built.

Economic integration can take several forms like Free Trade Area, Custom Union, Common Market and Economic Union.

In Africa, as in other parts of the third world, regional experiments have produced few satisfactory results.

Regional economic integration in Africa has resulted to trade diversion instead of trade creation. This is due to the unfavourable conditions for regional economic integration in Africa.

Nevertheless gains from integration are not derivable from trade creation only. There are some prospective gain from regional economic integration, which touches on the

more fundamental problem of Africa such as industrialization, profitable investment and of course economic growth.

Article 21 of the league covenant [136] and Article 52 of the United Nations Charter [137] provided a good legal framework for regionalism. Also, the United Nations Economic and Social Councils Resolution 671A (XXV) [138] establishing the Economic Commission for Africa is another legal landmark that encouraged regionalism especially in Africa.

Besides, Economic and Social problems differ tremendously in the regions, and are better considered at a regional level.

The United Nations system encourages regional co-operation both with symbols and with practical steps. This was evidenced by the establishment through its Economic and Social Council of five regional economic commissions including the Economic Commission for Africa.

The Economic Commission for Africa was established through the United Nations Economic and Social Council Resolution 671A (XXIV) of 29th April, 1958, with an express and unambiguous terms of reference. The effectiveness of the Economic Commission for Africa has posed a continental controversy. The Economic Commission for Africa has been effective in the following areas:

- Plays the role of a midwife during the birth and early infancy of most African regional organizations.
- It gives frequent support, supervision and even technical advice to African regional institutions.

- It has contributed to improved African Continental infrastruture.

Notwithstanding, all the above achievements, how far, the Economic Commission for Africa (ECA) has been able to accomplish its terms of reference is a question too difficult for it to answer.

The following are some of its weaknesses:

- Persistent organizational deficiency with fuzzy ideology.
- Not purely an African institution though Africanizing rapidly. It was often said that a United Nations agency could not serve strictly African needs.
- The Economic Commission for Africa has not been able to strengthen the existing trade relations between the developed countries and the African countries.

It is hoped that in future self-reliance as a theme and pragmatism as a method will continue to foster African regional co-operation and that the Economic Commission for Africa (ECA) will play the role of a catalyst with an improved and efficient organizational work output; pull African states together and be in the forefront for the search of the New International Economic Order.

6.1.2 THE NEW INTERNATIONAL ECONOMIC ORDER

The quest for a New International Economic Order by the developing countries including African countries should complement African regional and sub-regional co-operation, integration, regional self-reliance and development.

Anell and Nygren argued that:

> The New International Economic Order refers broadly to the rules of the game which regulate the economic co-operation of sovereign states in various spheres and which are sustained by the existing distribution of power. [139]

African states had used every available opportunity to search for the establishment of the New International Economic Order (NIEO). African states position is based on equitable economic system, which will make it possible for African states to be industrialized. African states not only want political independence but a hundred percent economic independence.

Furthermore, African states want the developed countries to give up some of their privileges in their search for New International Economic Order (NIEO). This has resulted in some problems because African states are asking for certain conditions which most of the developed countries will find difficult to accept.

The sixth special session of the United Nations General Assembly, which was held in April-May, 1974, was devoted entirely to the development problems of Africa.

At this special session, decisions were taken which highlighted the need for a new order that would reduce the gap between the developing countries and industrialized and technologically advanced countries. Towards the end of the special session, a

Declaration and Programme of Action for the establishment of a New International Economic Order was adopted by resolutions 3201 (S-VI) and 3202 (S-VI) respectively on the 1st May, 1974.

The fact that the charter shall constitute an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality, and interdependence of the interests of developed and developing countries is of the essence. By this resolution African states expected a guarantee of economic and social progress and some degree of justice in their trade relations with the advanced countries.

On the 12th December, 1974, the 29th Regular session of the United Nations General Assembly adopted a Charter of Economic Rights and Duties of states. The preambular section of this charter affirmed the need for strengthening international co-operation and international co-operation for development. It declared that the fundamental purpose of the charter is to promote the establishment of the New International Economic Order based on equity, sovereignty, equality, interdependence, common interest and co-operation among all states, irrespective of their economic and social systems. The United Nations Charter of Economic Rights and Duties of states may be regarded as the first step in the codification and development of the New International Economic Order (NIEO).

The United Nations seventh special session in 1975 reaffirmed the fundamental purposes of the New International Economic Order, especially the imperative need of redressing the economic imbalance between the North and South. This was to be

achieved in part through equalization of per capita incomes between the rich and poor countries.

Also in 1975 the Conference on International Economic Co-operation (CIEC) North-South dialogue was started in Paris, France, to discuss mainly the energy problems between the industrialized and developing countries. The developing countries opposed the discussion on the energy problems alone and broadened it lower to raw materials development and financing.

In 1978, the United Nations Commission on international trade law decided to establish the working group on legal implications of the New International Economic Order (NIEO). Efforts have been made by the United Nations Commission on international trade law on ensuring that the goals and objectives of the New International Economic Order (NIEO) are realized.

Most developed countries like the United States of America (USA), and France do not believe in the New International Economic Order (NIEO). They feel it is an African internal issue and should be tackled internally in Africa. This has caused some global problems. A problem between the developed and developing countries or North-South dialogue. The legal issue involved is to weigh the strength of the legal binding effect of resolutions 3201 and 3202. And of course the Charter of Economic Rights and Duties of States.

Article 10 of the United Nations charter provides that General Assembly except as provided in Article 12 may make recommendations to the members of the United Nations or the Security Council or to both on any such questions or matters.

White, opined that it has only recommendatory or moral force as opposed to legal force.[140]

While Brownlie argues that though not binding its acceptance by a majority vote constitutes evidence of the opinions of governments.

Also Judge Lanterpatch[141] concluded that members of the United Nations are under duty to treat with degree of respect the resolutions of the General Assembly because they are legal act of the Untied Nations.

Resolutions 3201 and 3202 are to the interest of African countries. Their objectives are clear. That is economic equity and economic interdependence that will enable developing countries attain the height of self-sufficiency and economic development.

The provisions of the Charter of Economic Rights and Duties of states that each state should have full permanent economic sovereignty look quite naturally justifiable and equitable. It is therefore crucial that member states will be acting towards justifiable causes and hence achieve world peace if they obey and respect the resolutions for which they have voted positively and also adopted in the United Nations Assembly. Developing countries feel that these resolutions especially the ones that are geared towards the New International Economic Order (NIEO) are binding and that they are not only binding on African countries and other developing countries, they also should form what could be considered the Post 1975 Jus Cogens. The need for the establishment of the New International Economic Order (NIEO) cannot be over-

emphasized. African states want the implementation of this new order made as quickly as possible.

Okoli, observed that despite the renewed emphasis on negotiations the legal effect of these resolutions still remain the crucial variable. And that General Assembly Resolution being agreed to by all three main political groups should be adopted without dissenting vote. [142]

Although African states have rights to development, African states should not rely solely on implementation of the New International Economic Order (NIEO) by the developed countries. They should search inwards by improving their institutional contexts of African regional and sub-regional organizations and strategies in the field of real African regional economic co-operation and integration.

6.2 AFRICAN ECONOMIC COMMUNITY (AEC)

The need for an African indigenous economic regional institution that would bridge the lapses of the Economic Commission for Africa (ECA) cannot be overemphasized.

This eventually is one of the objectives that gave birth to the Monrovia Declaration in July, 1979 and subsequently the Lagos Plan of Action in April, 1980.

A major step towards the operationalization of the African Economic Community (AEC) is the relationship between the African Economic Community (AEC) and the Regional Economic Communities (REC).

It is therefore important legally for the treaties establishing both the African Economic Community (AEC) and Regional Economic Communities (REC) to clearly define their

jurisdictions and areas of control so as to avoid confusion in the approach towards the performance of their functions. To this end a closer focus should be on co-ordination and harmonization of the activities of the Regional Economic Communities (RECs).

Thus, the Regional Economic Communities (RECs) should take stronger measures to bring their treaties in line with the African Economic Community (AEC) treaty.

This was done in the revised treaty of Economic Community of West African States (ECOWAS), South African Development Co-ordinating Conference (SADCC), and even the defunct East African Community (EAC). More needs to be done in the future towards this area.

6.3 THE SUB-REGIONAL BLOCS

The Regional Economic Communities (REC) constitute the building blocks of the continental African Economic Community (AEC).

In Africa we have at least seven regional economic blocs comprising:

Economic Community of West African States (ECOWAS).

South African Development Co-ordinating Conference (SADCC)

Union Douaniere Equatoriale Et Du Cameroun (UDEAC), and others.

All these were formally established by a treaty signed by member states of each bloc. The signing of all these treaties was a big achievement over the years and was as a result of strenuous efforts to respond to repeated recommendation of the United Nations bodies especially, the United Nations Economic Commission for Africa, to stress, inter alia, sub-regional co-operation as a means of fulfilling the aspirations of developing nations.

6.3.1. ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

Economic Community of West African States (ECOWAS) established in 1975 contains 65 articles arranged in 14 chapters with the central objective of promoting co-operation and development virtually in all fields of economic activity, particularly in the field of industry, transport, telecommunication, energy, agriculture, natural resources, commerce, money and finance.

The treaty provides for a programme of liberalization of trade and realization of custom union within the community over a period of 15 years.

Presently, Economic Community of West African States (ECOWAS) has achieved a free movement within the region of citizens of member states.

Furthermore, there is now a common currency to be used within the region.

The central objective of Economic Community of West African States (ECOWAS) as an institution is substantially to alter the pattern of underdevelopment. The aim is to enhance the economic opportunity of the West African states, so as to enable them to reduce this pattern of external dependence and to break free from the historical conditions in which they find themselves.

Hence Article 32 of the Economic Community of West African States (ECOWAS) treaty calls upon the Council of Ministers to take steps to reduce gradually the community's economic dependence on the outside world.

Secondly, the Economic Community of West African States (ECOWAS) treaty represents the aspirations and yearnings of the peoples within the West African sub-region for the promotion of co-operation and development in all fields of economic activity. It also provides the frame work within which collective self-reliance and co-operation among member states of the community could be given concrete expression in line with the New International Economic Order.

6.3.2 SOUTH AFRICAN DEVELOPMENT CO-ORDINATING CONFERENCE (SADCC)

In Southern Africa, the Lusaka economic declaration in 1967 showed the growing concern of Southern African nations over the continuing economic domination of white ruled South Africa. The declaration was also a recognition of the economic dependence of Southern Africa on South Africa.

That was why the Lusaka declaration clearly provided for "A reduction of economic dependence not only on South Africa but also on any single external state or group of states. [143]

The recognition given to regional economic co-operation and economic liberation by South African Development Co-ordinating Conference (SADCC) states is supported by the rest of Africa.

South African Development Co-ordinating Conference (SADCC) is a move towards a regional community in Southern Africa. As a regional economic institution is being complemented by a Preferential Trade Area (PTA) for Central, Eastern and Southern Africa. Lusaka has very concrete objectives, common to the nine countries involved.

The South African Development Co-ordinating Conference (SADCC) treaty amongst others provided for re-exporting within the region to remove tariff and non-tariff trade barriers to ease transit trade. Also it aims at establishing clearing and payment arrangements among member states.

It is worth mentioning that South African Development Co-ordinating Conference (SADCC) identified projects immediately in the areas of transport and communication development in the sub-region.

A look at the nine signatories of the Lusaka declaration quickly reveals the diversity among them with regard to political systems, level of development, socio-economic structures and basic demographic features.

The South African Development Co-ordinating Conference (SADCC) countries place principal stress on their national independence. For them national development efforts are basic, regional co-operation is geared to supplement and co-ordinate national efforts. That was why they opted for a low level of organization and obligation in their co-operation.

The above obstacles notwithstanding, South African Development Co-ordinating Conference (SADCC) has put forward a new development strategy for Southern Africa. [144]

The strategy of collective self-reliance which aimed at enhancing economic development and material well-being of the people in the region to reduce the member countries dependence in South Africa and concomitant vulnerability of their national sovereignty.

It is worth mentioning, that South Africa joined the membership of Southern African Development Co-ordinating Conference (SADCC) in 1992 and the body is now called South African Development Community (SADC).

6.3.3. UNION DOUANIERE EQUATORILE ET DU CAMEROUN (UDEAC)

In Central Africa, the scenario is similar to that of West and Southern Africa with little divergences. On 8th December, 1964, the presidents of the five Central African states decided to create Union Douaniere Equatoriale Et Du Cameroun (UDEAC) by signing treaty of Brazzaville.

On 7th December, 1969, the Libreville treaty modified the Brazzaville treaty with preambular objectives of the organization as "the establishment of a common external tariff and import duties, the harmonization of the fiscal systems of the four member states and the co-ordination of the economic and social development plans". S.59 and 60 of this treaty provided for a single tax system.

Lastly, Union Douaniere Equatoriale Et Du Cameroun (UDEAC) treaty expresses the intention of the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) countries not only to create a common market within the Central African region but also the hope that the union would lead to a true African common market.

Union Douaniere Equatoriale Et Du Cameroun (UDEAC) has its internal problems, but this has been surmounted by the common characteristics of the Union Douaniere Equatoriale Et Du Cameroun (UDEAC) leaders. The Union Douaniere Equatoriale Et Du Cameroun (UDEAC) states are prepared to face the battle of development in unison.

All the same, Union Douaniere Equatoriale Et Du Cameroun (UDEAC) needs to be reformed legally, in terms of their regional structures, regional regulation, regional finance, and effective institutional machinery.

6.3.4 THE COLLAPSED EAST AFRICAN COMMUNITY (EAC)

The East African experience is a good lesson for all continental and sub-continental regions in Africa. The collapsed East African community experience should guide African regional and sub-regional communities. The 1967 Treaty for East African co-operation established the East African community made up only three East Africa countries.

According to Articles 1 to 4 of the 1967 Treaty the East African Community (EAC) was set up primarily to establish a common market. Article 20 made a controversial and difficult provision for transfer tax system. This was one of the problems of the East African Community (EAC). For instance Kenya would be asked to make a disproportionate contribution to the benefits accruing to the East African Community as a whole.

There was also problem of the inability of the community to impose sanctions on delinquent partners who failed to implement decisions of the community. The institutional structures had so many lapses and weaknesses.

The treaty provisions were so inadequate to solve the problem of a more equitable distribution of benefits among the three East African countries. Unfortunately, the composition of the supreme decision body was made up of only the three countries

presidents. This eventually led to the danger of personal rivalries and inter country conflict.

In addition to the above problems of East African Community (EAC), the political situation in Southern Africa indirectly weakened the East African Community (EAC). Lastly membership of the community was only three members and this ought to have been enlarged. These were some of the basic factors responsible for the collapse of East African Community (EAC) and it is pertinent to note that they are not peculiar to East Africa alone. They are common to most regional groups in Africa. African sub-continent blocs are facing some of these East African Community (EAC) problems today.

In addition to the above experience some African states do not have respect for international agreements.

6.4. RECOMMENDATIONS

6.4.1. THE ECONOMIC COMMISSION FOR AFRICA

The Economic Commission for Africa (ECA) should take on a more active role in monitoring, review and evaluation of African regional and sub-regional groups. When it plays this role effectively, African regional institutions could have common objectives, rules and regulations. This will go a long way in the attainment of peace and security in the region and the world at large.

6.4.2. ENLARGEMENT OF TRADE

One of the criteria for a successful regional integration is that the area of the community has to be large. The larger the economic area and the countries forming the union the greater will be the scope of trade creation.

It is unfortunate that in African sub-regions, the areas of the community is small and this has resulted to trade diversion instead of trade creation in most of the area. This also contributed to the demise of some of the regional groups like the East African Community (EAC). In some African, regional groups trade amongst members is small and in some cases insignificant. For a successful integration to take place, trade among members should be substantial and trade with non-union members should be a relatively small proportion of total trade.

In Africa and in other developing nations, trade with the developed countries is large and significant while trade within developing countries is small and insignificant. It is therefore recommended that intra-regional trade be enlarged.

6.4.3. MUTUAL COOPERATION

Thirdly, member states of African regional communities should look at themselves as co-operators and not competitors.

Obviously, African states are in competition to sell their raw materials, and also for their demand for manufactured goods from industrialized countries.

This does not make room for a healthy regional integration. It is therefore recommended that common approach to trade issues be adopted.

6.4.4. TREATY OBLIGATIONS

Lastly, African states should have due respect and be bound by the treaties signed by them especially during their implementations. Unfortunately, most member states of African regional groups feel reluctant to meet their legal obligations especially when it comes to funding of their regional institutions.

Improvement will be made in African regional and sub-regional organizations if African states look at regional blocs as economic co-operation and not economic competition, bodies and learn to honour their treaty obligations.

6.5. CONCLUDING REMARKS

The long list of demands by the developing countries to the developed countries to promote the establishment of the New International Economic Order based on equity, sovereignty, equality, interdependence, common interest and co-operation among all states is geared towards the promotion of world peace and security.

There is a need to redress the economic imbalance between the North and the South. Member states of the United Nations must therefore implement the import of United Nations Charter of Economic Rights and Duties of States and ofcourse United Nations resolutions 3201 and 3202[145] establishing the New International Economic Order.

A major obstacle to the speedy implementation of the New International Economic Order is the non-legal implications and non-binding effect of United Nations resolutions on member states.

Secondly, efforts should be made to legalize the enforcement of United Nations resolutions on member states especially resolutions 3201 and 3202. [146]

Furthermore, the United Nations should call for a review of the United Nations Charter. There is no provision in the Charter on the binding effect of United Nations resolutions on member states.

Some of the provisos need amendments. United Nations charter was adopted since 26th June, 1945. The world is fast developing in all aspects of life. The world is becoming a global village, there is therefore a strong need for the review and amendment of the United Nations Charter and Codification of the development of the New International Economic Order (NIEO).

Thirdly, African states should not solely rely on their demand for the New International Economic Order, instead, they should look inwards on how to develop their abundant resources and be self-reliant.

African states should understand that the search for the New International Economic Order (NIEO) should be complemented with establishment of effective and strong regional economic communities. If regional blocs are strong and effective they will attain high level of self-sufficiency and also speak with one voice in world matters.

In Article 56 of the United Nations Charter, all states pledged to take joint and separate action in co-operation with the United Nations to promote:

(a) Higher standards of living, full employment and conditions of economic and social progress and development.

(b) Solutions of international economic, social, health and related problems and international cultural and economic co-operation.

(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.[147]

Therefore, the proposal for a New International Economic Order (NIEO), should be no longer perceived to be a trade union of the poor developing countries especially African states. It envisages a world order founded on partnership of all member states as pledged in Article 56 of United Nations charter.

There should be an urgent review of the United Nations charter which will provide amongst others for the binding effect of the United Nations resolutions on member states. This will help in achieving the aims and objectives of the founding fathers

of the United Nations. It will also assist in speedy implementation of United Nations resolutions 3201 and 3202 and also binding them to the pledges in Articles 55 and 56 of the United Nations charter. This will promote world order, peace and security.

The realization of the New International Economic Order is the legal duty of all United Nations member states individually and collectively.

The time has come when the developed North must realize that there are strengths in the developing South, and that the South is not looking for charity by searching for this New International Economic Order, rather the South especially African nations want equal opportunity and justice.

Although African states have rights to development, they should not rely solely on the implementation of the New International Economic Order (NIEO) by the developed countries.

They should also search inwards by improving their institutional contexts of African regional and sub-regional organizations.

Economic co-operation and integration in Africa is necessary strategy for the economic and social development of the continent without much recourse to the implementation of the New International Economic Order by the North.

The Economic Commission for Africa should be Africanised and should speak for Africa on the search for the New International Economic Order. Its policies and organizational structure should be solely tailored towards African demands, aspirations and causes only.

Also African Regional group like the African Economic Commission (AEC) and its Sub-Regional Economic Communities (REC's) should take stronger measures to unite and develop African states. They should talk with one voice when it comes to issues like the search for the New International Economic Order (NIEO) and African development. African states have a right to development.

The respect for the inherent dignity and the inalienable rights of the peoples of Africa and all members of the United Nations is of the essence of such an order.

Furthermore, it is essential that present and future African Economic Communities be based upon the same objectives notwithstanding their political, social and economic differences.

The objectives of African sub-regional blocs must therefore be the same and they must follow the African Economic Community goals as laid down in Articles 1 and 2 of the African Economic Community Treaty signed in Abuja, Nigeria in June 1991. It is only when this arrangement is followed, can African states expect to achieve harmonization and unification of such rules that will guarantee a peaceful co-existence of African states and the world at large. Regional unification is an absolute pre-requisite to global unification and world peace.

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