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**LOMÉ IV AND ACP/EEC RELATIONS:
SURVIVING THE LOST DECADE**

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INTRODUCTION

I was just conscious, vaguely, of being on the track of a law, a law that would fit, that would strike me as governing the delicate phenomena—delicate though so marked—that my imagination found itself playing with. A part of the amusement they yielded came, I daresay, from my exaggerating them—grouping them into a larger mystery (and thereby a larger ‘law’) than the facts, as observed, yet warranted; but that is the common fault of minds for which the vision of life is an obsession.

Henry James, The Sacred Fount

The Contracting Parties hereby express their resolve to intensify their effort to create, with a view to a more just and balanced international economic order, a model for relations between developed and developing states and to work together to affirm in the international context the principles underlying their cooperation.

Support shall be provided in ACP/EEC cooperation for the ACP States’ effort to achieve comprehensive self-reliant and self-sustained development based on their cultural and social values, their human capacities, their natural resources and their economic potential in order to promote the . . . well-being of their populations through the satisfaction of their basic needs. . . .

Cooperation shall be directed towards development centered on man, the main protagonist and beneficiary of development. . . .

Fourth ACP/EEC Convention of Lomé¹

1. Dec. 15, 1989, 29 I.L.M. 783 (1990) (“Lomé IV”), *reprinted from* the text appearing in *The Courier*, No. 120, March-April 1990. These excerpts are from arts. 1, 4, and 5 of Lomé IV.

As implied by its name, Lomé IV is the fourth in a series of agreements between the EEC and ACP countries. The others are: ACP/EEC Convention of Lomé, Feb. 28, 1975, 19 O.J. EUR. COMM. (No. L 25) 2 (1976), 14 I.L.M. 604 (1975) (“Lomé I”); Second ACP/EEC Convention of Lomé, Oct. 31, 1979, 23 O.J. EUR. COMM. (No. L 347) 2 (1980), 19 I.L.M. 327 (1980) (“Lomé II”); and, Third ACP/EEC Convention of Lomé, Dec. 8, 1984, 24 I.L.M. 588 (1985) (“Lomé III”).

As indicated below, Lomé IV has sixty-nine signatory ACP states. Lomé I was signed by forty-six ACP states. Simmonds, *The Lomé Convention and the New International Economic Order*, 13 COMMON MKT. L. REV. 315 (1976) (“Simmonds I”). By the time LOME II was executed, the number of ACP states had grown to fifty-eight. Simmonds, *The Second Lome Convention: The Innovative Features*, 17 COMMON MKT. L. REV. 415 (1980) (“Simmonds II”). Finally, LOME III was executed by representatives of sixty-five ACP countries. Simmonds, *The Third Lome Convention*, 22 COMMON MKT. L. REV. 389 (1985) (“Simmonds III”).

One may ask why an excerpt from the writing of Henry James, the American novelist and critic, is making an appearance alongside selected provisions of the Fourth ACP/EEC Convention of Lomé (Lomé IV). There is, of course, a certain deliberateness in juxtaposing the two. I intend the “delicate though so marked” phenomena in the James quotation to refer to those myriad factors—described in Lomé IV as cultural, social, human, environmental and economic—which in some as yet unscientific manner coalesce into “comprehensive self-reliant and self-sustained development” in the South. As shall be shown, Lomé IV is part of an evolving attempt to weave these factors together into a form of genuine North/South cooperation, thereby achieving the “mystery” of a “more just and balanced international economic order.”

Moving, then, from the cryptic to the manifest, my thesis is this: The African, Pacific, and Caribbean (ACP) countries² are presently in serious economic trouble and, despite the disappointing efforts of the countries making up the European Economic Community (EEC or Community)³ and

What was observed in 1985 continues to be true: “[I]f capacity to attract participants is a criterion of success, Lomé has stood the test of time well. . . .” Boardman, Shaw & Soldatos, *Introduction, in EUROPE, AFRICA AND LOMÉ III* at 9 (Boardman, Shaw & Soldatos eds. 1985) [hereinafter *EUROPE, AFRICA, AND LOMÉ III*].

During its fifteen year history no signatory state has opted out of Lomé.

2. For information on the origin of the ACP group, see Sy, *The Birth of the ACP Group*, *The Courier*, No. 93, Sept.-Oct., 1985, at 52. For information on ACP organization, see Dodo, *Structure and Functioning of the ACP Group*, *The Courier*, No. 93, Sept.-Oct., 1985, at 57.

The African ACP states (46 countries) are, in alphabetical order: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, Uganda, Zaire, Zambia, and Zimbabwe.

The Caribbean states (15 countries) are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

The Pacific states (8 countries) are: Fiji, Kiribati, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, and Western Samoa.

The total population of the ACP states exceeds 439 million; the total population of the Community states is in excess of 324.7 million. Taken together, the Community and the ACP group represent about half the membership of the United Nations and account for over 14% of the world's population. For brief outlines of these countries, see *Profiles of the ACP States and of the Member States of the European Community*, *The Courier*, No. 120, March-April, 1990, at 20.

3. For a survey of the Community and its structure and institutions, see Yard, *Promises, Promises: A Critical Analysis of Lomé III's Private Investment Provisions*, 9 *FORD. INT'L L.J.* 634 n.3 (1986).

It should be noted that it is the Commission which negotiates treaties, subject to input and approval of the Council of Ministers and the ratification of the European Parliament. *Id.* at 649, n.99. In a very real sense, each renegotiation of Lomé concerns “two separate and concurrent sets of negotiations: those between the EEC and the ACP on the one hand, and those, possibly more important, between the [EEC] Council and the Commission on the other.” Stevens, *The Renegotiation of the Convention, in EUROPE, AFRICA, AND LOMÉ III*, *supra* note 1, at 68.

In terms of concessions to the ACP states, the Commission is often out in front of the Council during these negotiations. For instance, Manuel Marin, Vice-President of the Commission and

the Lomé process to assist them, the continued evolution of Lomé's "vision of life" to meet "basic human needs" provides some hope for a qualitatively different future. My examination of Lomé will show its far-reaching agenda for assisting development in the (mostly African) ACP countries. Achieving the goals of the Lomé accords remain more an ambition than a reality. Still, at best—when viewed with imagination and in light of Lomé IV's expressed aspirations—these accords may yet be regarded as laying "the track" to a more equitable world system.

In particular this article will examine certain of the trade, aid, and finance provisions of Lomé IV⁴ and the earlier accords. The reader will find the discussion presented here to be critical of the progress of Lomé mechanisms in assisting ACP development objectives. Even the moral element behind the EEC assistance cannot go unchallenged.⁵ As in the lives of men and women, so too in the policies of nations does self-interest often overshadow, and too often masquerade as, moral imperative. He or she is urged, however, to recognize that "[n]o study of law is adequate if it loses sight of the fact that law operates first and last *for, upon, and through* individual human beings."⁶ There is, one hopes, room for law which expresses aspirations, as well as law which establishes instruments to achieve concrete objectives.⁷ An excessively instrumentalist approach and evaluation empha-

Commissioner for Development, initially proposed a larger increase for Lomé IV's financial envelope than the majority of Member States were willing to accept. *Council of European Development Ministers*, The Courier, No. 116, July-Aug., 1989, Yellow Pages at XIV. See also *infra* note 255.

4. Lomé IV was signed in the Togolese capital of Lomé on December 15, 1989. Unlike its predecessors, which each lasted five years, except for its Financial Protocol Lomé IV is for a ten-year term. The longer term was specifically requested by the EEC to evidence the durability of EEC-ACP relations. The Financial Protocol has been funded for five years and is to be re-negotiated for the second half of Lomé IV. See *Development Finance Cooperation, infra*, Part Three.

5. That there is a moral element to Lomé IV should be obvious by this examination of its provisions. Lorenzo Natali, upon his retirement as EEC Commission for Development, remarked that he has "always followed the principle whereby development has a moral dimension as well as an economic one." *Lorenzo Natali Leaves the Commission*, The Courier, No. 113, Jan.-Feb., 1989, Yellow Pages at VI.

6. C. KNAPP, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* xxi (1976).

7. This article, though taking as its subject a treaty and therefore referencing traditional legal materials as a matter of course, also relies on scholarship and other sources not forming a part of such materials. Some may argue that what results is not 'legal' scholarship. I have elsewhere answered this argument in the context of international law. See Matthews, *International Inequality: Some Global and Regional Perspectives*, 7 WIS. INT'L L.J. 261 (1989), particularly notes 2-5 and accompanying text.

Dean Robert Stein of the University of Minnesota Law School recently noted with approval that "[l]egal scholars and scholars in related disciplines increasingly are examining broader issues of ethics and social justice and reconceptualizing entire areas of doctrinal development." Stein, *Essay: The Future of Legal Education*, 75 MINN. L. REV. 945, 953 (1991).

Thus an interdisciplinary approach to law is becoming accepted within the academy. Scholars utilizing such an approach have gained a new legitimacy from the success (and influence) of the 'law and economics' movement. See, e.g., Areeda, *Always a Borrower: Law and other Disciplines*, 1988 DUKE L. J. 1029 (1988) and Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987* 100 HARV. L. REV. 761 (1987).

sizes the latter to the detriment of the former.

A sympathetic analysis of the convention would move beyond measuring the effectiveness of Lomé's mechanisms for stimulating growth to its aspirations for self-reliant development in the South and its contributions to a re-thinking of North/South relations. Such an examination of Lomé IV will show that, despite the disappointing economic performance to date of the Lomé process, the agreement presents a qualitative improvement over past and contemporary efforts to achieve these objectives.

Critics of Lomé have frequently and correctly called attention to the fact that the relationship between the Haves and the Have-Nots continues to be unequal, and the EEC states in the final analysis still pursue their own national and collective interests. It would be surprising if it were otherwise. The real issue, though, is whether self-interest is, or can be, defined or redefined in such ways as to increase justice and equity and to broadly encompass a more reasonable vision of the world. It would be odd and ahistorical if Lomé, or any other North-South convention, could radically restructure a world and a system which took centuries to construct.⁸

With James, the reader may conclude that "[t]he facts, as observed" do not warrant some of the more extravagant claims made for the Lomé Conventions as a "larger 'law'" providing a solution to all ACP problems. Neither, however, do they merit the frequent disparagement and occasional outright condemnation of the Lomé accords that sometimes appears in the literature.⁹

Critics maintain that the Lomé process perpetuates the historic division of labor, allocating the production of primary commodities to Africa and the production of industrial goods to Europe. This analysis is perhaps accurate as far as it goes, but it does not go far enough. In particular, it begs the questions of what would constitute better, more productive alternatives to Lomé arrangements, and whether such alternatives currently exist.

In any event, Lomé IV must not only be judged upon present performance,

8. Gruhn, *Lomé Convention Renegotiations: Litmus Test for North-South Discussions*, in EUROPE, AFRICA AND LOMÉ III, *supra* note 1, at 31.

9. See, e.g., Dolan, *The Lomé Convention and Europe's Relationship with the Third World: A Critical Analysis*, J. EUR. INTEGRATION 369 (1978); Vaitos, *From the Ugly American to the Ugly European: The Role of Western Europe in North-South Relations*, in THE NEW INTERNATIONAL ECONOMY 167 (H. Makler, A. Martinelli, & N. Smelser ed. 1982); Rajana, *The Lomé Convention: An Evaluation of EEC Economic Assistance to the ACP States*, 20 J. MOD. AFR. STUD. 179 (1982); Ravenhill, *Europe and Africa: An Essential Continuity*, in EUROPE, AFRICA AND LOMÉ III, *supra* note 1, at 35.

but also for its departures from the past and for its promise for the future.¹⁰ Certain features of Lomé, such as its emphasis on self-reliant development in the South, its joint North/South institutions, and the highly concessional terms of its aid, are unique and valuable examples of movement to a more equitable world order. Such features must be contrasted with prior patterns of relations between Europe and her former African colonies. These relations, as shall be seen, have evolved from an exploitative policy of colonialism to a credible attempt by the Europeans to render development assistance which is sensitive to both the needs and the aspirations of ACP populations. Lomé IV also compares favorably to contemporaneous North/South interactions, where multilateral and bilateral interactions have, to say the least, been less sensitive to these factors.

Part One of this article begins with the contemporary period and examines the current economic status of much of the South in general, and Sub-Saharan Africa, in particular. An introduction to the process of structural adjustment (underway in most of the countries in the region) is included. Two competing theoretical schools of thought concerning the causes of underdevelopment in the peripheral countries of the South are then presented.

Part Two sets out a brief review of the history of European intervention in Africa up to the post World-War II period, followed by the examination of European/African relations dating from the establishment of the EEC in 1957 to the signing, in 1975, of the first Lomé Convention in Lomé, Togo. Next comes a short section contrasting Lomé approaches with those of the Caribbean Basin Initiative and other U.S. aid policies for development assistance.

Part Three presents an overview of selected provisions of the various Lomé accords over time. Performance to date of the specific Lomé development mechanisms is evaluated. Great emphasis is also placed on those Lomé policies and institutions which represent innovations in North/South cooperation. Particular importance is attached to the participatory and contractual nature of EEC/ACP arrangements. This contrasts sharply with the unilateral imposition of European military, economic, and political control in Africa prior to 1975.

The article concludes by refocusing on the subject of structural adjustment, comparing and contrasting the approach of the Bretton Woods institutions and the prospects for the application of the new Lomé IV provisions addressing

10.

[A]ll the ACP governments would refute . . . allegations of neo-colonialism.

The EEC is often condemned by those who believe that an unsullied relationship [i.e. one not tinged by neo-colonialism] between Africa and Europe could be created given sufficient good will by all the parties concerned. But such an attitude overlooks the general point that it is impossible to thrust the past away and make a completely fresh start in international relations. At best, states can hope to take the most positive aspects of the past and build on them.

this issue.

PART ONE

Poverty in the South

The decade of the 1980s has been called the “lost decade” for international development.¹¹ Given the acknowledged urgency, all persons of conscience are called to consider the issues that Lomé IV and its predecessors were designed to address; namely, how best to promote development in the South. The cover of the International Bank for Reconstruction and Development’s (World Bank) most recent report on international development (subtitled *Poverty*) is black in color with deliberately ominous graphics.¹² Nevertheless, the introduction to the report contains a relatively optimistic overview of progress in the South:

During the past three decades the developing world has made enormous economic progress. This can be seen most clearly in the rising trend for incomes and consumption: between 1965 and 1985 consumption per capita in the developing world went up by almost 70 percent. Broader measures of well-being confirm this picture—life expectancy, child mortality, and educational attainment have all improved markedly. Viewed from either perspective—income and consumption on the one hand, broad social indicators on the other—the developing countries are advancing much faster than today’s developed countries did at a comparable stage.¹³

The statistical data that the report contains, however, justify its cover and paints a bleak picture of the outlook for the world’s poorest nations. Its authors estimate that, as of 1985, more than one billion people—at least a

11. *The Paris Conference on the Least-Developed Countries*, The Courier, No. 124, Nov.-Dec., 1990, Yellow Pages at VIII. See also WORLD BANK, WORLD DEVELOPMENT REPORT 1990: POVERTY iii (1990) [hereinafter WORLD BANK REPORT].

12. The situation described by the WORLD BANK REPORT is, of course, not new. See generally Matthews, *supra* note 7, at 264 n.7. That article described South/South cooperation which used the EEC as a point of departure for modeling Third World regional economic integration regimes to foster national and regional development. This article examines the EEC’s role in the context of a North/South cooperative regime designed for like purposes.

13. WORLD BANK REPORT, *supra* note 11, at 1. In a document otherwise bristling with statistics and references, it curiously cites no authority for this last proposition. Nevertheless, even a well-known structuralist theorist (the theory is discussed below) makes the same point. C. CHASE-DUNN, GLOBAL FORMATION: STRUCTURES OF THE WORLD-ECONOMY 261-62 (1989). See also Williams, *Political and Social Problems of Development, in AFRICA SOUTH OF THE SAHARA*, 1991 at 28 (20th ed. 1991) [hereinafter AFRICA SOUTH OF THE SAHARA].

Note also that the World Bank’s use of language—“the developing countries are advancing much faster than today’s developed countries did at a comparable stage”—tracks the “modernizationist” or “stages of growth” school. See *infra* note 34 accompanying text.

quarter of the global population—were experiencing abject poverty, “struggling to survive on less than \$370 a year.”¹⁴ Moreover, thirteen¹⁵ of the thirty low-income countries for which data are available actually experienced either a zero or overall negative rate of growth for the years 1965-1988.¹⁶

Aid and Developed Country Policies

The developed world has not altogether ignored the needs of developing countries, increasing their development assistance from \$6.4 billion in 1965 to \$48.17 billion in 1988.¹⁷ The oil-producing countries have likewise

14. WORLD BANK REPORT, *supra* note 11, at 1.

15. The countries (with populations in millions and per capita GNP for 1988) include: Sudan (23.8, \$480), Mauritania (1.9, \$480), Ghana (14.0, \$400), Central African Republic (2.9, \$380), Togo (3.4, \$370), Niger (7.3, \$300), Zambia (7.6, \$290), Uganda (16.2, \$280), Madagascar (10.9, \$190), Zaire (33.4, \$170), Tanzania (24.7, \$160), Chad (5.4, \$160) and Ethiopia (47.7, \$120).

All are Sub-Saharan African countries. WORLD BANK REPORT, *supra* note 11, at 178. Clearly this region accounts for a “highly disproportionate” number of the world’s poor. *Id.* at 2.

16. WORLD BANK REPORT, *supra* note 11, at 178-79 (Table 1. Basic Indicators—all country data in this footnote is taken from this source). The World Bank Report defines low-income economies as those with a GNP per capita of \$545 or less in 1988. *Id.* at x. By contrast, high-income economies are defined as those with a GNP per capita of \$6,000 or more. *Id.* The highest per capita income—\$27,500 in 1988—was enjoyed by Switzerland. The United States had a per capita income of \$19,840 in 1988, placing it fourth on the list (also behind Norway and Japan). Only two of the twelve countries in the EEC (Portugal and Greece) had per capita incomes of less than \$6,000 in 1988 (\$3,650 and \$4,800, respectively).

17. WORLD BANK REPORT, *supra* note 11, at 214 (Table 19. Official development assistance from OECD & OPEC members).

Official development assistance (ODA) consists of net disbursements of loans and grants made on concessional financial terms by official agencies of the members of the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) and members of the Organization of Petroleum Exporting Countries (OPEC) to promote economic development and welfare.

Id. at 253.

While large in absolute terms, these financial transfers represent only about 0.45 percent of total GDP of the OPEC countries and, alarmingly, only 0.09 percent of total GDP for the OECD countries. *Id.* at 215.

“Collectively, EC countries are the largest providers of multilateral resources [to the South], and account for over one-half of all concessional transfers. They also account for around 42% of the total OECD contribution to the International Development Association.” Watkins, *Africa and the European Community: The Lomé Conventions*, in *AFRICA SOUTH OF THE SAHARA*, *supra* note 13, at 51.

Specifically, Lomé IV commitments represent 17% of EEC national aid budgets (the balance goes either for bilateral aid or to other multilateral efforts). *Id.* at 39. This percentage has increased with each successive convention.

Currently, 93% of Lomé IV’s funds are in the form of grants. According to EEC Vice-President Marin, this extremely large percentage makes Lomé IV the most concessional assistance currently available to ACP countries. *Joint Committee in Port Moresby*, *The Courier*, No. 121, May-June, 1990, at III.

Additional statistical data on Lomé IV’s financial arrangements, including dollar amounts, is

contributed to their poorer neighbors, with development assistance totalling \$2.4 billion in 1988 (down from a high of \$9.6 billion in 1980).¹⁸ Given the dismal figures contained in the World Bank's report and the realities facing the world's poor, however, more must obviously be done.¹⁹

In recent years aid has represented only about 1.4 percent of central government expenditures for DAC members (and only about 0.8 percent for the United States). A substantial increase in the resources for fighting poverty in the poorest countries appears entirely affordable.²⁰

The World Bank recommends that aid be tied to "support the kinds of policies"²¹ that it views as reducing poverty. These frequently onerous policies, discussed below in the sections on structural adjustment, represent a significant change in development policies for most of Sub-Saharan Africa. They were introduced into the Sub-Saharan African context by a 1982 World Bank publication commonly known as the "Berg Report" after its author, economist Eliot Berg.²² The Berg Report, as a noted African economist pointedly remarked, held out the "carrot of doubling foreign aid in real terms in the 1980s" in order to make these principles acceptable.²³ Despite the widespread adoption of structural adjustment policies, however, the increased aid has not been forthcoming.²⁴

The internal policies of developed countries also have a significant impact on world poverty.²⁵ Many developed countries have low rates of sav-

set out below, particularly in the section entitled Development Finance Cooperation.

18. WORLD BANK REPORT, *supra* note 11, at 215.

19. *See infra* note 24.

20. WORLD BANK REPORT, *supra* note 11, at 136.

21. That is, structural adjustment policies (discussed below). *See, e.g., Id.* at 126, 134.

The Bank also points out that bilateral aid is frequently given for political, strategic, and commercial, as opposed to humanitarian, reasons. This explains why per capita aid to Israel is over twice that of Egypt, the next largest recipient, and about 100 times the aid per-capita to India. *Id.* at 128.

Moreover, "[o]nly about 8 percent of the U.S. aid program in 1986, for example, could be identified as 'development assistance devoted to low-income countries.'" *Id.* at 127-28.

22. WORLD BANK REPORT, *Accelerated Development in Sub-Saharan Africa: An Agenda for Action* (1982) [hereinafter Berg Report].

23. *See S. AMIN, MALDEVELOPMENT: ANATOMY OF A GLOBAL FAILURE* 35 (1990).

24. *Id.* at 36.

[W]hile Sub-Saharan Africa received \$6,900m. in official development assistance in 1980, \$8,900m in 1987 and \$14,552m. in 1988 (in current U.S. dollars), if inflation were taken into account the amounts in real terms would actually have declined.

Watkins, *supra* note 17, at 33.

25. WORLD BANK REPORT, *supra* note 11, at 19.

ings.²⁶ If these persist, developed countries will experience slower growth and interest rates will remain high. Demand for the South's imports will slacken and the South's debt service burden, where interest rates are variable, will grow. High budget deficits also keep interest rates elevated and decrease the potential for investment in the South.

Sub-Saharan African Poverty and Development Strategies

Of the forty-nine countries classified by the World Bank as low-income,²⁷ thirty-three are located in the Sub-Saharan Africa.²⁸ Indeed, Sub-Saharan Africa has been deemed the "empty belly of the entire world."²⁹

By virtually any economic or social indicator, Sub-Saharan Africa generally performs less well than any other developing region . . . [and] has the lowest GDP growth rate, intake of daily calories per caput, fewest doctors per caput and the lowest life expectancy.³⁰

What are the root causes of African underdevelopment? Why do the conditions of underdevelopment persist? Only partial answers to such vexing questions can be attempted here.

Addressing the second question first, national development has usually been comprehended in roughly two contradictory ways: as a result of modernization (the mostly Northern "modernizationist group") or as a consequence of the structure of the world economy (the mostly Southern "structuralist group").³¹ While some brief and very general comments regarding each of these theoretical schools follow, it is important to note that "there are important differences within, as well as between, these groups."³² A summary presentation of the two views here will provide an illuminating context to my subsequent examination of the Lomé process and Lomé IV.

It is significant that these heretofore largely competing views are increas-

26. S. AMIN, *supra* note 23, at 19. See also WORLD BANK REPORT, *supra* note 11, at 15.

27. The World Bank defines low-income countries as those countries with a GNP per capital of \$545 or less in 1988. WORLD BANK REPORT, *supra* note 11, at x.

28. *Id.* at 178 and 243.

29. S. AMIN, *supra* note 23, at 148.

30. Sparks, *Economic Trends in Africa, in AFRICA, SOUTH OF THE SAHARA, supra* note 13, at 31.

31. I have elsewhere examined these two broad schools of development theory: the 'structuralist' and 'modernizationist' (or 'stages of growth') schools. See Matthews, *supra* note 7, at 270-77. This portion of the article draws from that earlier study.

32. *Id.* at 270 n.19 and citations therein.

ingly informing each other.³³ This is welcome since policy makers in the two groups are no longer necessarily talking past one another. There is, moreover, evidence that the Lomé accords (and the EEC/ACP cooperation they have engendered) both reflect and contribute to this relatively recent development.

In general, the modernizationist group views development as proceeding from economic growth in a relatively free and unregulated market. Development is seen as a process of passing through common economic stages from an agrarian toward an industrial economy.³⁴ Some countries are more advanced in the process than others. Theorists of this group maintain that *laissez faire* market economy policies promote growth. They regard such policies as universal, equally applicable to a wide variety of countries.

National development has traditionally been measured statistically by the modernizationists in terms of increases in a nation's gross domestic product (GDP).³⁵ Governments should encourage rapid industrialization through domestic policy regimes that encourage manufactured exports. This will result, they maintain, in growing wage labor in industry, thus contributing to both domestic savings and demand and feeding further economic growth.³⁶ The agricultural sector should also be export-oriented as a means of earning the foreign exchange necessary to pay for the imported inputs for the nascent export industry.

Emphasis is placed by modernization theorists on domestic policies which foster foreign investment in order to attract additional capital and boost production. Private economic actors should be given the widest possible latitude to operate in the domestic economy. Taxes, tariffs, and the public sector should be kept to a minimum, again to encourage trade, domestic savings and consumption and to keep import prices down. The domestic policy regime should, above all, focus on export promotion. Modernizationists point to the newly industrialized countries (NICs) of Asia, such

33. See, e.g., Broad, Cavanagh & Bello, *Development: The Market is not Enough*, 81 FOREIGN POL. 144, 148-49 (Winter 1990-91). From their examination of development strategies and experiences, the authors find "a more complex truth than that purveyed by free-market ideologues: Command economies may propel societies through the first stages of development, but further growth into a more sophisticated economy necessitates a greater role for market mechanisms." *Id.*

Lomé IV, in promoting trade while at the same time giving recognition for the need for food security and sympathy for a strategy of state ownership for economies lacking a strong private sector, seems sensitive to this truth.

34. The World Bank quotation appearing in the text accompanying, *supra* note 13, seems to reflect this 'stages of growth' thinking.

35. See Matthews, *supra* note 7, at 271. See also I. ADELMAN & E. MORRIS, ECONOMIC GROWTH AND SOCIAL EQUITY IN DEVELOPING COUNTRIES 71, 72 (1976); and J. COCKCROFT, A. FRANK & D. JOHNSON, DEPENDENCE AND UNDERDEVELOPMENT: LATIN AMERICAN POLITICAL ECONOMY at xv and introduction (1972).

36. See, e.g., J. SPERO, POLITICS OF INTERNATIONAL ECONOMIC RELATIONS 138-39 (1981). Matthews, *supra* note 7 at 270.

as South Korea and Taiwan,³⁷ as evidence that policies promoting international trade do indeed foster development.

Much attention is also given to local elites; if elites adopt the values and consumption patterns of the North, the general population will follow. Economic and social reforms need to be deferred to the future when the benefits of rapid industrialization and economic growth can be expected to "trickle down" to the masses.

The structuralist group is, in many ways, a reaction to this focus on a liberal domestic policy regime.³⁸ Structuralists claim that it is incorrect to suggest that countries in the South can follow the same path as did the developed countries to achieve economic development. Indeed, they point out that, contrary to the domestic policy prescriptions for a liberal and open economy that certain theorists from the North have made for the South, both South Korea and the United States were highly protective of the domestic market during the formative years of their industrial development.³⁹

The structuralists place much greater significance on the historical and contextual role of the South in global trading patterns. The rapid industrialization of the North has resulted, they say, from a continuing process of extraction of surplus value from the South. This process dates from the late fifteenth century and continues up to the present via the 'theory of unequal

37. All is not rosy in these "miracle models of capitalist development." Broad, Cavanaugh & Bello, *supra* note 33, at 144. As these authors point out,

South Korean labor force[s] erupted in thousands of strikes during the late 1980s, undermining the very basis of that country's export success. Meanwhile, decades of uncontrolled industrial development have left large parts of Taiwan's landscape with poisoned soil and toxic water.

Excessive confidence in free-market approaches melts when one examines the mounting crises in the supposed success stories of South Korea and Taiwan. Exciting alternatives to the [modernizationist] paradigms are emerging in the hundreds of thousands of citizens' groups that flourish amid adversity and repression in Africa, Asia, and Latin America.

Id. at 144, 162. As shall be seen below, Lomé IV has a special emphasis on polycentric development and popular participation.

38. Liberal domestic policies will be critiqued in our discussion on IMF/World Bank structural adjustment later in the article. Structuralist theories have also been vehemently criticized, and not just for the policy regimes they engender. One powerful criticism, acknowledged by a leading structuralist, points out that:

men and women are more than simply occupants of structural positions, merely agents of social forces. They are historical actors who actively negotiate and struggle to create their own lives and to change (or maintain) existing social institutions. A structuralist theory is condemned because it implies a mechanical view of human beings hopelessly caught and scuttled along by social forces beyond their control . . . promot[ing] fatalism. Structural theories are themselves ideological weapons by which power is legitimated, and this power is used to oppress and exploit people.

C. CHASE-DUNN, *supra* note 13, at 298.

39. C. CHASE-DUNN, *supra* note 13, at 285.

exchange' or, more familiarly, the 'declining terms of trade'.⁴⁰ While considerably more will be said regarding this, the theory is that, over time, prices for the primary commodities produced in the South decline while prices for the North's processed goods increase. The North is able to demand more of the South's resources for static amounts of its processed goods and technology. In this fashion a net transfer of wealth is being effected from the developing nations of the South to the developed nations of the North. States need to intervene to interrupt and reverse the patterns of the South's 'dependency' on the North. Structuralists advocate for a much stronger, *dirigiste* state in the developing countries.⁴¹ They are skeptical of "trickle down" and question the motives of foreign investors,⁴² subjecting them to significant regulation by the state. Too often, they say, foreign investors control the most dynamic sectors of the economy, expropriating the surplus produced via repatriation of profits, transfer pricing, royalty fees, and licensing agreements.

Many policy makers in the South have placed limits on the repatriation of profits on foreign investment and on the number of foreign workers employed in domestic enterprises. Some have implemented sufficient constraints on foreign capital so as to effectively bar any foreign participation at all in certain sectors of the domestic economy.⁴³ In this manner they hope to keep more of the national wealth at home and to foster "self-reliant" development.⁴⁴

In pursuing their objectives, and often because of capability constraints of inadequate technical skills and financial capital, governments influenced by structural theorists have invested heavily in state enterprises and/or established import substitution policies through, for example, the erection of high tariff barriers to protect domestic industry from foreign competition. Import substitution has been particularly widespread in Sub-Saharan Africa and

virtually every national administration south of the Sahara opted for heavy parastatal involvement. As Guinea's late president, Sekou Toure, once commented, 'there were no private companies [after independence], because France had suppressed all previous such entities. So what would you have done in our place? Suppose your country had no corporate entities and no financial

40. See C. CHASE-DUNN, *supra* note 13, at 288. I. WALLERSTEIN, *CAPITALIST WORLD ECONOMY* 18 (1979). See also Matthews, *supra* note 7, at 272 and 293. See also *infra* notes 51-55 and accompanying text.

41. See, e.g., R. HIGOTT, *POLITICAL DEVELOPMENT THEORY* 82 (1983); see also J. SPERO, *supra* note 36, at 236-38.

42. Logli, *Industry in Africa*, in *AFRICA SOUTH OF THE SAHARA*, *supra* note 13, at 57.

43. See generally J. SPERO, *supra* note 36, at 236-41.

44. *Id.* There is a national and regional aspect to self-reliance. See generally Sauvart, *infra* note 108, at 33-35.

groups. Suppose there was nothing and no one had money. What would you do? . . . Look at the Guinean reality, and do not confuse it with the context of your own experience, which is different from ours.⁴⁵

Equitable social and economic policies are also legitimate governmental concerns in these countries. Structuralists say that development should be measured by indicators in addition to GDP, such as the number of doctors per capita, average life expectancy, infant mortality, and literacy levels. "Trickle down" is unreliable; states must provide public sector social services to improve these indicators. In sum,

[d]evelopment, as seen by the modernizationists, comes about when individuals operate in the free market to achieve economic progress. A developing industrial economy will bring more persons to a higher standard of living. Government is responsible for policies designed to reinforce individual aspirations and actions . . .

Structuralists, on the other hand, view the State as representing the society and, in some sense, responsible to it for shaping an equitable economy. Industrialization policies alone are . . . bankrupt; the rules and regimes currently regulating the international economy work to the disadvantage of the world's poor. States must intervene in the economy to ensure that the basic needs of the population are being met . . .⁴⁶

External and Internal Factors in Underdevelopment

Turning now to the first question, why does African underdevelopment persist? Responses are informed, not surprisingly, by one's view of the causes of underdevelopment and appropriate development policies. Certainly the African states are not homogeneous,⁴⁷ making generalization difficult

45. Sparks, *supra* note 30, at 36. This author points out, however, that state-owned enterprises often serve political objectives for the governments involved. For instance, they provide both patronage and consumer subsidies through pricing policies. *Id.* at 37.

46. Matthews, *supra* note 7, at 276.

47. Angola, Ethiopia, Mozambique, Congo, Guinea, Mail, and Benin, for instance, have all had one form or another of Marxist-Leninist government. Williams, *supra* note 13, at 23.

Kenya, Nigeria, Sierra Leone, and Ghana have had, at least at some point in their histories, Westminster-type parliamentary systems. *Id.* at 24. More recently one-party rule has prevailed in, for instance, Kenya, Ghana, Tanzania, Zaire, and Zimbabwe, among others. *Id.* at 25. Coups d'etat have been rampant:

The military coup has become, along with the death or retirement of the earlier generation of African leaders, the main mechanism for political change. In only one independent African state, Mauritius, in 1982 and 1983, have governments relinquished office as the result of freely-held elections and parliamentary defeats.

and the possibility of any universal explanation remote.

It is useful, however, to organize the various explanations into two general categories which roughly track the theories of development set out above: causes external to the African states (including structural problems reflected by declining terms of trade) and causes internal to the African states (particularly domestic policy regimes which over-protect the internal market).

Those who point to causes beyond the control of states stress, among others, the following factors influencing African underdevelopment: cyclical drought and increasing desertification, burgeoning national populations,⁴⁸ rising world interest rates (leading to onerous debt service burdens), inadequate domestic markets resulting from the (mostly small) states established after decolonization, declining terms of trade or other fluctuations in export revenues, and, the internal policies of, and conditions in, Northern trading partners (including recession, discriminatory tariff policies, import quotas and domestic agricultural subsidies).

Those who point to internal causes emphasize a different set of factors: unwieldy, ineffective national governments implementing protective domestic policy regimes (including overvalued exchange rates, high import tariffs, quantitative trade restrictions, restrictions on foreign investment, inappropriate credit policies which subsidize parastatal enterprises at the expense of the private sector, and price controls discriminating against agricultural production and the rural sector in favor of the urban population), poor infrastructure (including transport, communications, and energy), low levels of domestic savings, a shortage of technical skills, poor project planning and mismanagement, and, lastly, official corruption.

Space does not permit a detailed presentation of each of these factors in the context of the two development theories discussed above. I view as critical two insights provided by these groups: the declining terms of trade described by the structuralists and the adverse domestic policy environments under-

Id. at 26.

Nor are the differences between African countries limited to the political. Nigeria, Sub-Saharan Africa's largest country, had a population of 110.1 million in mid-1988; tiny Sao Tome and Principe's population was 119,000 in that same year (eight other African countries have populations below 1 million). WORLD BANK REPORT, *supra* note 11, at 178 and 243.

Zambia, with a population in 1988 of 7.6 million, has relatively low illiteracy rates of 33% and 24% for its female and male inhabitants, respectively. Contrast this with Niger, population 7.3 million, with illiteracy rates of 91% and 86%. Unfortunately, most Sub-Saharan countries approach the illiteracy rate of Niger rather than that of Zambia. *Id.* at 178.

The level of urbanization of the population also varies. Fifty-three per cent of Zambia's population, for instance, live in urban areas. In Botswana and Burkina Faso the percentages are 21% and 7%, respectively. Sparks, *supra* note 30, at 31. The climate ranges from desert to rain forest to plains. *Id.*

Incomes in 1988 ranged from \$3,800 per capita in the Seychelles to \$100 per capita in Mozambique. WORLD BANK REPORT, *supra* note 11, at 178, 243.

48. Some list natural disasters and rapid population growth as internal causes of underdevelopment. Sparks, *supra* note 30, at 33. While perhaps not external in the same sense as, for example, declining terms of trade or internal economic policies of trading partners, these factors are nevertheless beyond the control of African countries in light of the lack of resources to address these issues.

scored by the modernizationists. These insights suggest that while structuralist theory has considerable descriptive power, the modernizationist group's advocacy of reform of domestic policy regimes (via IMF/World Bank 'structural adjustment') in developing countries is now the dominant prescriptive theory for combatting underdevelopment in Africa.

It is well known that the international trade of most developing countries is based almost entirely on unprocessed, primary commodities.⁴⁹ In most instances countries in the South are entirely dependent on one or a few key agricultural and/or mineral products⁵⁰ to earn the foreign exchange necessary to purchase (often vital) imports from the North. Not surprisingly, then, commodities receive a great deal of attention in articles and studies dealing with development.

The writings of Raul Prebisch and other Latin American economists in the 1950s and 60s developed the operation of the principle of unequal exchange. In general, the unequal exchange theory says that, over time, prices on commodities tend to fall and prices on processed goods tend to rise, so much so that peripheral economies are at a permanent disadvantage with respect to the developed economies of the North.⁵¹ The reasons given for this include the slowdown in external demand and increase in supply of many primary products,⁵² the development of synthetic substitutes, and tariffs or quotas in the North on the importation of tropical goods.⁵³

49. Primary commodity exports represent 90% of total ACP country exports. *ACP-Council: Bold Action called for on Debt and on South Africa*, The Courier, No. 110, July-Aug., 1988, Yellow Pages at II. See generally *Dossier: Commodity Prices*, The Courier, No. 116, July-Aug., 1989, at 56.

50. Among the most important of these for Africa are oil, coffee, copper, cocoa, wood and sugar. *Training and Commodities: Development Priorities for the Social Partners*, The Courier, No. 119, Jan.-Feb., 1990, at 7.

For a breakdown of ACP countries and their primary agricultural commodity exports, see Kibola, *Stabex and Lomé III*, 18 J. WORLD TRADE L. 32, 36-37 (1984).

51. See, e.g., Prebisch, *Toward a New Trade Policy for Development*, in *RESHAPING THE WORLD ECONOMY* 110-12 (Pincus ed. 1968).

52. According to the GATT, the volume of world commodity output has more or less steadily increased for the period 1950-85 (except for minerals, where output decreased in 1980 to 1976 levels). To get some idea of the magnitude of the growth in commodities output, note that mineral output in 1985 was about 20% over 1970 levels (GATT's benchmark year). By 1985 agricultural output had increased fully 40% over 1970 levels. N. GRIMWADE, *INTERNATIONAL TRADE: NEW PATTERNS OF TRADE, PRODUCTION AND INVESTMENT* 52 (1989), especially Figure 2.2.

Commodities constituted 53.5% of world trade in 1955, 37.7% in 1978 and 36% in 1985. *Id.* at 58.

53. C. CHASE-DUNN, *supra* note 13, at 289. This source also describes the "Singer-Prebisch" thesis:

'This thesis suggests that due to weaker organization, the unequal relationship between the developed and the underdeveloped worlds leads to a situation where, in the case of primary products, the gains in productivity are translated into a decline in prices, while in the case of manufacturers, those gains are translated into higher salaries and profits.'

Id. (citation omitted).

Whatever the reason(s), the fact remains that, in 1989, average commodity prices for developing country exports were 33% lower than in 1980.⁵⁴

In the context of Sub-Saharan Africa, one respected source reports:

worsening terms of trade [over the past decade], with declining traditional exports, both in price and quantities, and increasing imports, also in both price and volume.

Expressing the terms-of-trade dilemma of Sub-Saharan Africa in another way . . . the prices of the region's 25 most important commodities have been falling on the world market for the past decade. In 1971 the beef from one Sahelian cow could pay for a barrel of petroleum; in 1981 the beef from nine cows was needed.⁵⁵

Introduction to Structural Adjustment

Unfavorable terms of trade have certainly contributed to the severe balance of payments problems resulting from chronic current-account deficits in African countries. This has led, in turn, to increased debt loads as country after country in Sub-Saharan Africa borrowed (mostly from official multilateral and bilateral sources)⁵⁶ to make up for export earnings short-

54. WORLD BANK REPORT, *supra* note 11, at 13. It is interesting to note that the World Bank in 1990 gives much more emphasis to the adverse effects of the declining terms of trade to development in Sub-Saharan Africa in 1990 than it did in 1981.

In the Berg Report, *supra* note 22, economist Eliot Berg suggested that Sub-Saharan Africa's terms of trade had not sufficiently worsened in the 1970s to warrant placing undue emphasis on that factor, "suggesting instead that the current account deficits and the shortages of foreign exchange were caused primarily by . . . policy biases against agricultural exports, rapid population growth and the 'inflexibility' of African economies." Sparks, *supra* note 30, at 32.

By 1990, the World Bank itself admitted that commodity price declines in the 1980s cost Sub-Saharan African countries 15% of their exports' real import purchasing power relative to the 1970s. WORLD BANK REPORT, *supra* note 11, at 13. When factoring in rapid population growth, it is clear that the decline is even more significant in per capita terms.

55. Sparks, *supra* note 30, at 32.

56.

In Sub-Saharan Africa . . . [c]ommerical borrowing has been a significant source of funds only for a handful of middle income or resource-rich countries. Between 1984 and 1989 only 6 percent of net flow came from private sources. As a result, more than 65 percent of the stock of foreign debt in the region is official. . . .

WORLD BANK REPORT, *supra* note 11, at 14.

Very little of this official debt is owed to the Community, due to the highly concessional terms of Lomé assistance. ACP debt to the Community represents 1.2% of total ACP debt servicing costs. *A Convention for a Changed World, Lomé IV Signed*, The Courier, No. 120, March-April, 1990, at 2. Nevertheless, the Commission has recently proposed that Member States approve a write off ACP debt to the EEC. *See infra* note 265.

Lomé IV has new debt provisions (arts. 239-242), wherein the Community agrees to provide technical assistance for debt management and international financial negotiations. It also "declares its readiness to continue to exchange views, within the context of international discussions, on the general problem of debt" (Annex L)

falls. Debt-service ratios (interest and repayments on debt expressed as a percentage of export earnings) have skyrocketed due, among other factors, to inadequate debt forgiveness or restructuring, high real interest rates, continued borrowing, and overall declines in commodities prices.⁵⁷ Foreign exchange, never abundant in these countries, increasingly goes to service this debt, dramatically reducing the amount available for imports and discouraging foreign investment at a time when many Sub-Saharan African countries have finally initiated policy reform precisely to encourage such investment.⁵⁸ As the World Bank noted,

[e]xternal shocks precipitated the crisis of the 1980s. But internal structure determined how countries would respond. Faced with changed circumstances, countries now have no choice but to adjust. During the 1980s governments of countries at all income levels and, remarkably, of all ideological stripes have come to recognize the need for reforms to increase economic efficiency and flexibility.⁵⁹

It is to this policy reform that I now turn. It has been suggested that structural theorists have provided insight into causes of underdevelopment, providing a more accurate appraisal of the South's position in the international economy than the "stages of growth" group. This is a significant achievement.

Structural theorists have been markedly less successful in advancing policy prescriptions to address the problems they have described.⁶⁰ Import substitution policies, prominent among their recommendations, have mostly failed to cut back on imports or to produce competitive exports. Lack of technical know-how, inadequate financing and product diversification, low-skilled labor, small internal markets (preventing economies of scale), mismanagement and outright corruption, poor infrastructure, inadequate transport, and the need for intermediate, imported inputs have all contributed to these failures.

Some see the Commission "well-placed to act as a catalyst and even a manager of the debt reform process for sub-Saharan Africa." Watkins, *supra* note 17, at 51. Dieter Frisch, Director-General for Development, recently "highlighted the role of the Commission as a moderator and an initiator of sensible policies for debt relief" in a talk before London's Royal Commonwealth Society. *Dieter Frisch goes to Bonn and to London*, The Courier, No. 113, Jan.-Feb., 1989, Yellow Pages at VII.

Likewise Development Commissioner Marin recently promised to provide technical assistance to ACP countries in their negotiations with the Bretton Woods institutions and the Club of Paris. (Interview with Manuel Marin) *A Non-Interventionist Concept of Development*, The Courier, No. 121, May-June, 1990, at 3 [hereinafter Marin].

57. See generally Sparks, *supra* note 30.

58. *Id.*

59. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1989, 10 (1989).

60. See generally AFRICA'S DEVELOPMENT CHALLENGES AND THE WORLD BANK: HARD QUESTIONS, COSTLY CHOICES (Cummins ed. 1988).

Negligible or negative growth rates in the 1980s, moreover, have made Sub-Saharan African countries increasingly poor candidates for loans from commercial banks. Many countries in the region have had to turn to the International Monetary Fund (IMF) or the World Bank for help with current account deficits.⁶¹ Both institutions have provided special lending facilities to assist Sub-Saharan Africa with balance of payments problems conditioned, however, upon the countries involved undertaking so-called “structural adjustment” programs.⁶² According to the World Bank,

[a]t the most abstract level, adjustment programs use changes in fiscal, monetary, and sectoral policies, in regulations, and in institutions to alter relative prices and the level of [public] spending and thereby redirect economic activity. The real exchange rate and the real interest rate are key relative prices. They affect both economic activity and saving, as well as exports and imports and the rate of investments. Changes in taxes, subsidies, and quantitative controls move resources between sectors. Ensuring that adjustment achieves a balanced change in spending and an appropriate sectoral reallocation is critical for growth and development.⁶³

Structural adjustment starts with the undeniable premise that most Sub-Saharan African countries entered the decade of the 1980s with over-valued domestic currencies.⁶⁴ Due to high rates of domestic price inflation in the mid-1970s and the failure to devalue national currencies to compensate, the prices of imported goods declined relative to domestic goods, leading to an increase in demand for imports. Over-valued currencies also meant higher relative prices for exports, adversely affecting external demand for Africa’s products.⁶⁵ These and other factors substantially contributed to foreign exchange shortages and the resulting balance of payments crisis in African countries.⁶⁶

At a minimum, both the IMF and the World Bank have required currency

61. By the year 1988, 32 countries in the region were participating in structural adjustment operations. Sparks, *supra* note 30, at 36. For a list of countries as of 1987, see *Dossier: Structural Adjustment*, The Courier, No. 111, Sept.-Oct. 1988, at 66.

62. See generally *Dossier: Structural Adjustment*, *supra* note 61, at 50-75.

The World Bank has gradually transformed its structures and instruments to become more of an adjustment bank as the percentage of its transfers to Africa devoted to loans linked to policy reform has increased.

Id. at 52. This linkage is known as “conditionality.”

63. THE WORLD BANK, *supra* note 59, at 10-11.

64. Sparks, *supra* note 30, at 35.

65. *Id.*

66. *Id.* at 35-36.

devaluation as a condition for loans covering current account deficits. Such a devaluation immediately results in higher import prices. Higher prices for imports deflate domestic demand for foreign products, thereby easing the balance of payments problem. Devaluation also reduces the price of a country's exports on world markets, thereby stimulating the external demand for its goods.

In practice, conditionality for IMF/World Bank assistance only begins with devaluation. Usually there is a concomitant demand for reduced public spending (via a reduction in the size of the government bureaucracy and a decrease or outright elimination of public subsidies, including those for food, health, education, utilities, or other public goods), privatization of state-owned enterprises, and/or a reduction or elimination of domestic price controls.⁶⁷

Reform in the regulatory regime governing foreign direct investment, and a shift in policy emphasis from import substitution to export promotion (particular in the customs area), complete the package of conditions. Domestic consumption, private and public, of imports becomes leaner and exports are increased. The domestic economy, thus restructured, is brought into equilibrium with the world economy.

IMF and World Bank programmed lending has typically had short timetables and inflexible targets for the implementation of policy reforms, leading to the rapid destabilization of economies where structural adjustment is operative.⁶⁸ In the African context, the structural adjustment programs have been criticized by Commission officials as frequently undifferentiated, taking an "over-theoretical, over-standardised view of adjustment."⁶⁹ These programs have not been tailored to the individual characteristics of each country's economy.

Increased unemployment results from both the reduction of government bureaucracies and from the reduction or the elimination of subsidies to, and tariff protection for, import substitution industries. This unemployment, coupled with steep increases in the prices of imports due to devaluation and massive reductions in the funding of social services and price subsidies, gives rise to greater internal social inequities and domestic opposition. This opposition has erupted into violent rioting and, as in the case of Ghana, sometimes resulted in coups d'état in the affected countries.⁷⁰

Yet, structural adjustment remains the reality for much of Sub-Saharan Africa. Not only must these governments remain dependent on official lending to cope with balance of payments problems, but all forms of official development assistance from some multilateral institutions and Northern

67. *Id.*

68. *Dossier: Structural Adjustment*, *supra* note 61, at 70. *See also infra* notes 282-84 and accompanying text.

69. *Dossier: Structural Adjustment*, *supra* note 61, at 70.

70. *See Williams*, *supra* note 13, at 25-27.

states (in particular the United States) are increasingly being conditioned on the implementation of on-going structural adjustment reforms.⁷¹

IMF/World Bank structural adjustment policies in Sub-Saharan Africa have been bitterly criticized.⁷² Some of these criticisms, such as the undifferentiated nature and social costs of austerity policies, I have already discussed. Privatization requirements are questioned since no alternative to public ownership exists in states where domestic capital and entrepreneurial skills are weak or nonexistent.

Some have seen a concerted policy of 'deindustrializing' the South, causing it to lose what ground has been gained in its attempts to alter the traditional international division of labor.⁷³ These critics speculate about why little or no discussion of the obvious benefits to transnational capital from structural adjustment appears to occur within the institutions advancing these policies:

The scientific method to use in such situations would be one that analyzed results of the policies and from there deduced the objectives of the policy. On that basis it is reasonable to conclude that the new emphasis [in IMF/World Bank lending] on policy formation is designed to increase the disarticulation of industrial capital within the peripheral capitalist economies, and to subordinate such industrial capital as remains to transnational capital which will use such peripheral capital as it sees fit.⁷⁴

The World Bank recently claimed that trends during the period 1985-1987 show improved, albeit modest, GDP growth for Sub-Saharan African countries undergoing adjustment over those not undergoing reforms.⁷⁵ Cynics, however, pointed out that such improvements can be explained by the relative ease these countries have of obtaining donor assistance.⁷⁶ External flows increasingly are following policy reforms. They questioned "whether there was sufficient money—let alone commitment—in the donor

71. See, e.g., WORLD BANK REPORT, *supra* note 11, at 133; *The Paris Conference on the Least Developed Countries*, The Courier, No. 124, Nov.-Dec., 1990, Yellow Pages at VIII.

72. See generally AFRICA'S DEVELOPMENT CHALLENGES AND THE WORLD BANK: HARD QUESTIONS, COSTLY CHOICES, *supra* note 60.

73. Cypher, *The Crisis and the Restructuring of Capitalism in the Periphery*, 11 RESEARCH IN POLITICAL ECONOMY 72 (P. Zarembka, ed. 1988).

74. *Id.* at 76. Despite the implications, the author doesn't appear to believe that there is an overt conspiracy in multilateral institutions. Rather, "guided by neoclassical theory and dogma[,] the 'invisible hands' of capitalist structure realize a project not consciously articulated [by them]."

IMF/World Bank officials believe in the efficacy of liberal domestic policies, the author states, and the benefits accruing to transnational capital are simply "a fortuitous by-product of [their] brave new monetarist world." *Id.*

75. *Encouraging Evidence of African Progress—the World Bank View*, The Courier, No. 116, July-Aug., 1989, at 13-14.

76. *Id.* at 12. See also *infra* note 77 and Pollen & Cockburn, *The World, the Free Market, and the Left*, 252 Nation No. 7, Feb. 25, 1991, at 224.

community to ensure that all ailing sub-Saharan economies got assistance on that scale."⁷⁷

Having laid some foundation, I will return to the subjects of structural adjustment and conditionality later in this article when I further elaborate on the differences between Lomé's approaches to these issues and those of the United States and the IMF/World Bank. First, however, I present an abbreviated examination of the historical ties between Europe and Africa, along with an overview of antecedents to the Lomé process, as a prelude to my general examination of Lomé's provisions.

PART TWO

Europe and Colonial Africa

Any meaningful examination of current EEC/ACP relations must be informed by the nature of past relations. Economic progress can be measured statistically, but political and social progress is best appreciated through a contrast with the patterns of past relationships. Early European intervention in Africa dates from the 1440s and for several centuries consisted in the traffic of African slaves between Europe and her American colonies.⁷⁸

It is estimated that up to ten million slaves were landed in the Americas before the slave trade ended in the 1880s. Gold and ivory also figured prominently in early trade.⁷⁹

By the late nineteenth century, African exports to Europe had expanded to include wool, cotton, palm oil, peanuts and cloves.⁸⁰ At the Conference of Berlin in 1884, where the slave trade was abolished, the European powers set out ground-rules for establishing European protectorates in the African

77. Glaser, *Analysing the Effects of Structural Adjustment*, The Courier, No. 116, July-Aug., 1989, at 12. Glaser cites the World Bank's own statistics, which show that financial flows have followed reform efforts.

Glaser also expressed concern that IMF/World Bank lending adds debt for the future and, further, cites a "study on the forestry sector [in Ghana] which notes that derestricted private enterprise, combined with foreign funding, have led to numerous abuses and the depletion of precious natural resources." *Id.* at 12, 13.

None of the forgoing is intended to signify that fundamental reforms, of the nature of structural adjustment, are not necessary nor that their results are unworthy of study and applause. [The World Bank analysis] is however heavily weighted in favour of the quantitative approach to which this introduction seeks to act as a counterbalance.

Id. at 13.

78. The historical material appearing here was taken from Girard, *Toward Lomé III: Perfecting the European Community's African Partnership*, 16 CASE W. RES. J. INT'L L. 459, 463-66 (1984); Yard, *supra* note 3, at 642-45; and Davidson, *Africa in Historical Perspective, in AFRICA SOUTH OF THE SAHARA*, *supra* note 13, at 11.

79. Yard, *supra* note 3, at 643.

80. Girard, *supra* note 78, at 463 n.20.

continent.⁸¹ France, which acquired the largest portion of territory, Great Britain, Portugal, Italy, Spain, Belgium and Germany all had established and maintained important colonies in Africa that served both as sources for raw materials and markets for home country manufactures.⁸²

By the early twentieth century, many colonies had well-established agricultural and extractive sectors. Exports expanded to include additional commodities: sugar, rubber, coffee, tea, cocoa, sisal, tobacco, fruits, diamonds, tin, copper, bauxite, manganese, iron ore, phosphates, oil and natural gas.⁸³ Except for the mining activities, there was little industry:

There was, no doubt, a large introduction [into Africa] of mechanical and even of industrial technology during the colonial period. Deep mines were sunk and exploited; railways were thrust inland from the seaboard; modern ports were excavated; motor cars and trucks increasingly displaced primitive methods of transport; a new commercialism began to flourish. But the central point . . . is that with very few exceptions this was always an unassimilated technology.⁸⁴

Commodities and trade were the preeminent sectors in the African colonies; industrial production remained centered in Europe. Africans were given no voice in determining their role in the international division of labor.

The terms of Europe's trade with Africa in the late 19th century were unilaterally defined by economic and military coercion. . . . Both colonial administration and pressure from overseas suppliers anxious to retain their African markets tended to preclude industrial development in Africa.⁸⁵

Decolonization and Association

In the post World War I period, the newly formed League of Nations set up the mandate system to oversee the former colonies of Turkey and Germany. After the devastation of Europe in World War II, the African colonies increasingly were viewed as economic liabilities to the emasculated European economies. Africans, moreover, became nationalistic and many formed political parties and liberation movements.⁸⁶ These raised the

81. *Id.* n.24.

82. *Id.* at 463-64.

83. *Id.* at 463 n.20.

84. Davidson, *supra* note 78, at 11.

85. *Id.*

86. See Williams, *supra* note 13, at 19. See also AFRICA IN THE NINETEENTH AND TWENTIETH CENTURIES 534-38 (Anene & Brown, eds. 1966).

banner of self-determination in an effort to gain control of their territories.⁸⁷

Great Britain responded by giving independence to its former colonies. France, on the other hand, opted for a system of reform in colonial administration and increased the participation of local elites in the governance of her colonies. Nevertheless, in the three decades following the war most of Sub-Saharan Africa, including the former French colonies, became independent.

Few African countries, however, had achieved independence by 1957, the year that the Treaty of Rome was signed.⁸⁸ During the negotiations leading up to the establishment of the Community, France initially proposed integrating her colonies into the arrangement.⁸⁹ France wished to secure alternate markets for their products, production of which exceeded France's domestic demand. The Federal Republic of Germany and the Netherlands, fearful that the EEC was promoting collective colonialism and unwilling to share the financial burden of France's colonial possessions, resisted. Both eventually gave way to compromise when it became clear that France would not sign onto the Community absent concessions in this area.⁹⁰

The compromise to full inclusion in the Community was so-called "Associated Status" pursuant to Part IV of the Treaty of Rome for the territories associated with France and, to a lesser extent, Belgium, Italy and the Netherlands.⁹¹ "The basic purpose of the association with [these territories] was to promote their 'economic and social development' and to 'establish close relations' between [these territories] and the Community as a whole."⁹²

The hallmarks of this association were both the preferential access to the EEC Member States for Associates' commodity exports and a corresponding pledge by the Associates to provide the same preferential treatment to imports from Member States that it formerly had provided to the imports of the Member State with which it had special relations.⁹³ The Associates also agreed to move toward the gradual elimination of all duties charged on imports from the EEC.⁹⁴ Hence the arrangement was one of "reverse preferences." The net effect was to discourage the development of an industrial base in the participating African territories, since no tariffs could be put in

87. AFRICA IN THE NINETEENTH AND TWENTIETH CENTURIES, *supra* note 86, at 534-38. Specific countries are discussed in Williams, *supra* note 13, at 19.

88. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter Treaty of Rome]. The original signatories were France, West Germany, Belgium, Italy, the Netherlands, and Luxembourg.

89. Information from this section comes from Yard, *supra* note 3, at 645 and Girard, *supra* note 78, at 467.

90. Girard, *supra* note 78, at 467-68; Yard, *supra* note 3, at 647.

91. See Treaty of Rome, *supra* note 88, arts. 131-36 and Annex IV.

92. McMahon, *The Renegotiation of Lomé: Inventing the Future*, 14 EUR. L. REV. 140, 141 (1989), quoting from art. 132 of the Treaty of Rome.

93. Girard, *supra* note 78 at 469; Yard, *supra* note 3, at 648.

94. Girard, *supra* note 78 at 469; Yard, *supra* note 3, at 648.

place to keep out cheaper imports and thereby encourage local industrial production. Thus was perpetuated the colonial division of labor.

That Associated Status did not foster growth in trade between EEC and Associated States is supported by statistical evidence:

EEC imports from the Associated States, as a percentage of total EEC imports from developing countries, declined from 13.4% in 1958 to 7.4% in 1974. Moreover, EEC exports to Associated States, as a percentage of total EEC exports to developing countries, declined from 11.6% in 1958 to 9.9% in 1973.⁹⁵

Associated status had other perceived benefits, however. For example, the Implementing Convention⁹⁶ of the Treaty of Rome also established the European Development Fund (EDF). The EDF was initially funded in the amount of \$581.25 million over a five-year period and supplemented the bilateral development aid (largely directed toward infrastructure) provided to Associates by certain individual Member States.⁹⁷

By the early 1960s many former associated territories had become sovereign countries. Some of these new nations wished to continue the association regime, in particular to benefit from the aid provided under the EDF.⁹⁸ Negotiations between these states and the Community led to a replenishment of the EDF and the signing of Yaounde I in July, 1963 at Yaounde, Cameroon.⁹⁹ The agreement was renewed, and the EDF replenished a third time, when Yaounde II was executed in 1969.¹⁰⁰ These agreements maintained the essential character of the arrangements of Associated Status under the Treaty of Rome: reciprocal trade preferences, prohibition of discrimination against or between Member States, and duty-

95. Girard, *supra* note 78, at 471.

96. Implementing Convention Relating to the Association with the Community of the Overseas Countries and Territories, May 25, 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II) (official English translation), 298 U.N.T.S. 157 (1958).

97. The EDF has become a fixture in EEC/ACP relations. The seventh EDF, funded by Lomé IV, has a current allocation of ECU 10,800m (or about \$14.58 billion) for the five-year period commencing March 1, 1990. A further ECU 1,200m (or about \$1.65 billion) is provided in the form of loans from the European Investment Bank. See also *infra* Part Three on Development Finance Cooperation.

For a summary table of the first through seventh EDFs, see *EEC-ACP Cooperation: The Historical Perspective*, The Courier, No. 120, Mar.-April, 1990, at 24, 26.

98. Girard, *supra* note 78, at 470.

99. Convention of Association Between the European Economic Community and the African and Malagasy States Associated with that Community, July 20, 1963, 2 I.L.M. 971 (1963) [hereinafter Yaounde I]. The African states included Senegal, Mali, Ivory Coast, Dahomey, Mauritania, Niger, Upper Volta, the Central African Republic, Chad, Gabon, Cameroon, Madagascar, Togo, Congo (Brazzaville), Congo (Leopoldville), Rwanda, Burundi and Somalia.

For some of the poorer African states EDF aid accounted for as much as 30% of total external aid received. Girard, *supra* note 78, at 470 n.79.

100. Convention of Association Between the European Economic Community and the African and Malagasy States Associated with that Community, July 29, 1969, 9 I.L.M. 484 (1970) [hereinafter Yaounde II]. In 1972, Mauritius was added as a party to the agreement.

free access to the EEC for a limited number of primary products.¹⁰¹ The remaining imports from Yaounde signatories benefited from the same rate of duty in effect between the Member States.¹⁰²

The NIEO and the Birth of Lomé

In 1973 Great Britain acceded to the Community.¹⁰³ The Commonwealth countries of Africa, the Pacific, and the Caribbean thereby became "associable" under the Treaty of Accession. In 1974 these Commonwealth countries met with the Yaounde countries and six other independent Sub-Saharan African states under the auspices of the Organization for African Unity (OAU)¹⁰⁴ and formed the ACP group.¹⁰⁵ The ACP group presented a unified bargaining position in the negotiations leading up to Lomé I and continues to represent a significant example of South/South cooperation.

Lomé I negotiations took place under markedly different conditions than those obtaining in earlier EEC-African negotiations. While Treaty of Rome and Yaounde provisions for Africa largely originated with the Member States, demanding reciprocity and perpetuating a neo-colonial division of labor, Lomé I negotiations took place at a time of great upheaval in the world economy. Certain countries in the oil-producing South were beginning to flex their economic muscle. The Yaounde countries included potentially important oil producers. The oil shocks of the early 1970s had caught the attention of the Europeans, who increasingly came to recognize the necessity of securing their access to this resource.

The threat of other producer cartels along the lines of the highly successful Organization of Petroleum Exporting Countries caused the EEC to wish to secure supplies of other primary commodities, as well. During the period of Lomé I negotiations, developing countries also came together in the United Nations General Assembly to urge the adoption of the Charter of Economic Rights and Duties of States¹⁰⁶ and the Declaration and the Programme of Action on the Establishment of a New International Economic

101. Girard, *supra* note 78, at 468-70.

102. *Id.* at 470.

103. Treaty concerning the accession of Denmark, Ireland, and the United Kingdom of Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community, Jan. 22, 1972, 1973 Gr. Brit. T.S. No.1 (Cmd. 5179-I), O. J. Eur.Comm. Special Edition March 27, 1972, at 5 [hereinafter Treaty of Accession].

104. Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39, 2 I.L.M. 766 (1963).

105. *See supra* note 2.

106. G.A. Res. 3281 (XXIX) (December 12, 1974) adopted by a vote of 120 to 6 (Belgium, Denmark, Federal Republic of Germany, Luxembourg, the United Kingdom, and the United States voted no). Ten states abstained (Austria, Canada, France, Ireland, Israel, Italy, Japan, The Netherlands, Norway and Spain). Thus, all the then members of the EEC either voted no or abstained.

Order (NIEO).¹⁰⁷ The Group of Seventy-Seven (composed of Southern states) and the United Nations Conference on Trade and Development (UNCTAD),¹⁰⁸ led by Raul Prebisch as its first secretary general, began to actively promote the interests of the South in international forums.

A major thrust of these efforts was the formation of a more equitable world trading order, based on Southern solidarity, to secure preferential access to the markets of the North and to ensure adequate compensation for the South's natural resources. The NIEO also called for increased aid from the North and the linkage of aid to commodity access. At the same time it became increasingly clear that the North was no longer willing or able to

107. G.A. Res. 3201 (VI) (May 1, 1974) and G.A. Res. 3202 (VI) (May 1, 1974). Both were adopted without vote but with a number of significant stated reservations by the U.S., the Federal Republic of Germany, France, Japan and the United Kingdom.

For more on the NIEO and the Charter of Economic Rights and Duties of States, see R. MEAGHER, AN INTERNATIONAL REDISTRIBUTION OF WEALTH AND POWER: A STUDY OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES (1979); T. FRANCK & M. MANUAN-SANGU, THE NEW INTERNATIONAL ECONOMIC ORDER: INTERNATIONAL LAW IN THE MAKING? (1982); and Sauvant, "The NIEO Program: Reasons, Proposals, and Progress" in CHANGING PRIORITIES ON THE INTERNATIONAL AGENDA 78-138 (K. Sauvant ed. 1981).

108. A more complete discussion of the Group of Seventy-Seven and the United Nations Conference on Trade and Development is beyond the scope of this article. See Sauvant, *Organizational Infrastructure for Self-Reliance: The Non-Aligned Countries and the Group of 77*, in THE CHALLENGE OF NORTH-SOUTH COOPERATION 33-72 (B. Pavlic ed. 1983); and A. MACBEAN & P. SNOWDEN, INTERNATIONAL INSTITUTIONS IN TRADE AND FINANCE 93-109 (1981).

See also the interesting remarks contained in T. WEISS, MULTILATERAL DEVELOPMENT DIPLOMACY IN UNCTAD (1986). This excerpt first sets out the common wisdom:

'The South favours a universal, multilateral system of public negotiation which gives due recognition to the weight of numbers. It wants comprehensive negotiations dealing with packages of issues and giving full weight to the linkages between them. It believes that needs, equality and redistributive justice, rather than power, should be the criteria adopted. The North, on the other hand, favours traditional bilateral forms of negotiations or those involving limited participation, and views multilateral diplomacy in the North-South context skeptically, both on technical and political grounds. It prefers negotiations which are specific and issue-oriented. It believes that economic power and responsibility for the implementation of decisions must be fully reflected in the negotiations'

Id. at 8, 9 (citation omitted). The author (a former UNCTAD official) urges the South, on the other hand, to recognize the posture of the North and its own internal divisions and, thus, the "futility" of UNCTAD's practice of group negotiations. *Id.* at 55. His alternative might be called "minilateral" negotiations. He cites the Lomé agreements with approval:

As a counter example to UNCTAD's practice of group negotiations, one could point to the trade and aid relationships between the members of the EEC and its ACP partners.

The negotiations were not global but took place between differentiated sections of the South and the North. There was not simply a group of northern countries reacting defensively to demands for general reform emanating from the South which ignored pertinent northern concerns. While one should not exaggerate the significance of Lomé, one should also not denigrate the fact that concrete and limited policy reform measures were discussed and agreed. . . .

Id.

secure access to raw materials through political or military action.¹⁰⁹

The terms contained in the new Lomé I agreement represented an important shift from those contained in the earlier Yaounde agreements. Developments in Lomé I that have received significant attention in the literature included the elimination of reciprocity in favor of unilateral preferences for certain ACP exports, increased participation of ACP states in aid management, and the formation of a commodity price stabilization program. These and other provisions are examined in Part Three.

Less attention has been given to what is perhaps the more far-reaching and potentially significant change represented by the continuing Lomé process; namely, the movement away from the unilateral declaration by Europe of its policies in Africa toward a negotiated and institutionalized relationship between the cooperating EEC and ACP states based on parity between the two partners. These developments are central to this article and will also be discussed below.

In concluding this Part Two, reference has already been made to the heady days of the early seventies when the South sought to unite, wield what economic power it had, and advance the work in the U.N. and elsewhere on the NIEO. Since that time, however, little real progress has been made to advance the NIEO agenda.¹¹⁰ The South's marginal economic power, its declining terms of trade, its declining importance as an area of superpower competition, and its own internal divisions made it possible for Northern opponents to defeat or weaken its proposals.

While UNCTAD provides important technical services for the South and a forum for North/South negotiations,¹¹¹ the absence of any real power to affect trade and finance issues (which resides in the GATT,¹¹² and the IMF, respectively) has made it ineffective.¹¹³ Likewise aid, whether grants or loans, is generally controlled by the World Bank and its International Development Association (IDA) and other multilateral and bilateral donors.¹¹⁴

A salutary feature of Lomé is the holistic approach it takes to aid, trade, and finance. All of these are treated in one document and administered by

109. J. SPERO, *supra* note 36, at 202-03.

110. T. WEISS, *supra* note 108, at 55.

111. *What is UNCTAD?*, The Courier, No. 116, July-Aug., 1989, at 71.

112. The General Agreement of Tariffs and Trade (GATT) takes the form of a multilateral trade agreement setting forth the principles under which the signatories, on a basis of "reciprocity and mutual advantage," shall negotiate "a substantial reduction in customs tariffs and other impediments to trade." General Agreement of Tariffs and Trade, Oct. 30, 1947, 61 Stat. 5-6, T.S. No. 814, 55-61 U.N.T.S.

Provision is made, through authorization of a Generalized System of Preferences and other permissible derogations from the GATT, for more favorable and non-reciprocal treatment to be afforded to developing countries. See *Principles and Objectives of GATT*, The Courier, No. 116, July-Aug., 1989, at 4. As of 1989, 96 countries, including the EEC Member States and 36 ACP nations, were contracting parties to the GATT. *Id.* at 2.

113. For a thorough critique of UNCTAD, see generally T. WEISS, *supra* note 108.

114. WORLD BANK REPORT, *supra* note 11, at 129.

the institutions it establishes.¹¹⁵ This contrasts sharply with the atomistic approach of the Bretton Woods institutions to these subjects and to their division between separate departments or ministries in many developed countries. Keep in mind also the weighted voting favoring the North in the IMF and the World Bank (and the fact that many ACP states are not signatories to the GATT) during the discussion below of the role ACP institutions and the individual ACP countries play in Lomé negotiations and implementation. For now, let me present a quick sketch of the starker contrasts between Lomé and one set of examples from U.S./South relations.

Lomé, USAID and CBI: Some Contrasts

Lomé IV represents perhaps the only significant contemporary manifestation of some key aspects of the NIEO¹¹⁶ reflecting, as it does, the EEC's willingness to offer a package of aid, trade, and finance measures to Sub-Saharan African countries while largely allowing them to determine their own development strategies.¹¹⁷ Its aid provisions are largely concessional; that is, Lomé aid is provided to countries who retain the authority to determine their internal development and social policies.

Lomé provides a buffer between developed and developing states experiencing disputes, reducing the risk of the coercive use of aid. Administered by the Commission and the joint ACP/EEC institutions, it is in a nature of a contract, and cannot be controlled unilaterally by any of the individual states comprising the Contracting Parties.¹¹⁸ In this respect the convention is unique, as Laurent Fabius, President of the French National Assembly and member of the ACP/EEC Joint Assembly, recently observed:

Lomé . . . covers all types of development aid in an original cooperation agreement. That agreement is between regions. No Member State can diminish its effect and no ACP State can be discriminated against or sanctioned. Difficulties, disputes even, have arisen between different countries in the past, but they have not affected the Agreements. This is a remarkable guarantee of independence and non-alignment and there is nothing like it

115. Remark, however, that the European Investment Bank does administer loans from its own resources and EDF risk capital. EIB funds represent a fairly small portion of total Lomé IV financial resources.

116. See Simmonds I, *supra* note 1, at 315, 321 (1976). See also Benedek, *The Lomé Convention and the New International Law of Development: A Concretisation of the New International Economic Order?* 26 J. AFR. L. 74 (1982): The Lomé conventions have "incorporated into a binding treaty more of the proposals contained in the Declaration and Programme of Action on an N.I.E.O. than any other international instrument." *Id.* at 88.

117. These assertions are developed in Part Three, *infra*.

118. "Lomé is a contract. This means that the ACP have a firm entitlement to its aid allocation." Stevens, *The Renegotiation of the Convention*, in EUROPE, AFRICA AND LOMÉ III, *supra* note 1, at 69. See also *infra* notes 224-34 and accompanying text.

anywhere else.¹¹⁹

In contrast, many other multilateral and bilateral aid programs demand a high degree of conditionality. This has not been limited to reform of domestic economic policy regimes, as Jordan has recently discovered by the action of the United States Senate in cutting off aid to that country during the 1991 Gulf crisis.¹²⁰ In fairness, it must be conceded that EEC Member States have also used their bilateral aid flows to influence beneficiaries' foreign and domestic policies. Compare Lomé, which

is apparently perceived as at least tactically consistent with remarkably different domestic strategies, power structures, income distributions, emphasis on exports, other external economic links and political economic ideologies.¹²¹

Apart from the use of aid as a weapon, and since Lomé specifically deals with international development, it will be instructive to examine comparable U.S. institutions and instruments, namely the United States Agency for International Development (USAID) and the Caribbean Basin Initiative (CBI). In 1985, USAID published its Blueprint for Development, which called for directing aid to countries adopting IMF/World Bank structural adjustment.¹²² Prior to 1981, the USAID had been concerned with agriculture, health, education and appropriate technology. But, during the Reagan years, the USAID has endorsed IMF conditionality for aid and urged the World Bank and other bilateral aid donors to adopt similar policies.¹²³ The thrust of its argument tracks those contained in the Berg Report—that due to import substitution, costly state-owned enterprises and other policy errors, the South is the principal cause of its own underdevelopment.

The CBI, which gives beneficiaries duty-free access to the U.S. market, illustrates conditionality:

It is true that the Caribbean Basin Initiative (CBI) has some claim to being a regionally-based development strategy, and that some of its trade provisions compare favorably with those of the Lomé Convention. But in reality the CBI has never been more than an extension of US strategic policy for the region, with members

119. *Joint Assembly Meets in Versailles*, The Courier, No. 118, Nov.-Dec., 1989, Yellow Pages at I. See also *infra* notes 140-42 and accompanying text.

120. *After the War; Congress Withholds \$55 Million in Aid to Jordan*, N.Y. Times, Mar. 23, 1991, at sec. 1, 5, col. 3 (late ed.). See also *supra* note 21.

121. Green, *The Child of Lomé: Messiah, Monster or Mouse*, in THE POLITICAL ECONOMY OF EEC RELATIONS WITH AFRICAN, CARIBBEAN AND PACIFIC STATES 14 (Long, ed. 1980).

122. The material in this and the next few paragraphs is largely taken from Cypher, *supra* note 73, at 45-82.

123. AFRICA'S DEVELOPMENT CHALLENGES AND THE WORLD BANK, *supra* note 60, at 128.

selected primarily on the basis of their political affiliation
 [T]he relationship between the USA and the CBI states is that of patron and client.¹²⁴

There is a high degree of policy reform required in order to qualify for CBI benefits—e.g., privatization, a restructuring of trade, and implementation of certain macroeconomic state and labor policies. Caribbean Basin countries who wish to take advantage of the trade preferences the CBI provides must also enter into bilateral investment treaties with the United States.¹²⁵

The provisions of the U.S. Development Fund for Africa, established in 1987, further illustrate conditionality.¹²⁶ In 1990, this aid program made some \$560 million available for quick responses to the region's development needs.¹²⁷ These funds, however, were restricted to those countries which had undertaken domestic policy reforms along the IMF/World Bank model.¹²⁸ The concessional features of Lomé assistance are conspicuously absent from U.S. aid programs such as these.

PART THREE

The 'Acquis' Lomé

It is understandable that Lomé I was heralded as a breakthrough in collective North/South negotiations in light of the past and present unilateral nature of most such relationships. Claude Cheysson, EEC Commissioner for Cooperation and Development Policy when Lomé I negotiations concluded in 1975, described the occasion as

the first time that such a comprehensive approach to the problems of development has been agreed by industrialised countries with regard to such a large number of countries. It is unprecedented also because the whole of Black Africa has stood together we hope to have created a new pattern for the relationship between industrialised and developing countries.¹²⁹

That the Lomé process is intended to serve as a model of North/South relations was expressed in Lomé I and repeated in each subsequent conven-

124. Watkins, *supra* note 17, at 50. See also Cypher, *supra* note 73, at 70.

125. Cypher, *supra* note 73, at 71.

126. Sparks, *supra* note 30, at 34.

127. *Id.*

128. The author also notes that the U.S. has agreed to forgive the debts owed to it by certain African countries provided these countries initiate economic reforms. *Id.*

129. Cheysson, *Europe and the Third World after Lomé*, 31 *THE WORLD TODAY* 232, 235 (1975).

tion.¹³⁰ The conventions have been disappointing in this regard.¹³¹ Yet the continued renewal, refinement, and expansion of the accords provide, at a minimum, a useful educational function for the future.

Lomé I marked an important shift in European and African relations. Another formative moment in EEC-ACP relations occurred with the formal adoption of the so-called "acquis" Lomé in 1985. This acquis sets out the objectives and guidelines of cooperation between the contracting parties, stressing equality between the Contracting Parties and the sovereign right of each party to set its own policy options.¹³² Portions of the acquis, carried over into Lomé IV, are excerpted below and account for much of the salutary "tone" of the convention.

Lomé IV and Polycentric Development

In this section of the article specific Lomé IV provisions will be informed, where appropriate, by a discussion of the earlier conventions and of the changes and additions over time. The progressive nature and evolution of EEC-ACP relations will thus be more fully appreciated.

Preliminarily, one may well remark on the fact that Lomé IV is a quite comprehensive agreement. Discussing each of its many objectives is beyond the scope of this article, though some of the more important will be examined. The convention encompasses a host of development concerns¹³³

130. See Lomé I, *supra* note 1, Preamble; Lomé II, *supra* note 1, Preamble; Lomé III, *supra* note 1, art. 3 and Lomé IV, *supra* note 1, art. 1 ("The Contracting Parties hereby express their resolve to intensify their effort to create, with a view to a more just and balanced international economic order, a model for relations between developed and developing states")

"The failure of the Convention[s] to lead to this result does not mean that [they] have failed, rather that other factors, indeed other actors, contributed to the non-emergence of a new international economic order." McMahon, *supra* note 92, at 149.

131. "In fact the Lomé Convention performs the function of a demonstration model for both the E.E.C. member states and other industrialised states. But neither the United States, Japan, nor others have shown any intention to follow the example given." Benedek, *supra* note 116, at 89.

132. According to Professor Simmonds, Lomé III, art. 2

provided for the political expression within the Convention of an "acquis" (described during the negotiations as the 'common heritage' of the partners) progressively built up over twenty-five years of cooperation since the days of the Implementing Convention attached to the EEC Treaty. The ACP States looked to such an expression as both an assurance of continuity and a guarantee of their future treaty relationships with the Community.

Simmonds III, *supra* note 1, at 394.

133. The areas of ACP/EEC Cooperation are set out in Part Two of Lomé IV. They are:

- Title I: Environment
- Title II: Agricultural cooperation, food security, and rural development
- Title III: Development of fisheries
- Title IV: Cooperation on Commodities
- Title V: Industrial development, manufacturing and processing
- Title VI: Mining development

within its 369 articles, not including the numerous annexes and protocols. The goals are ambitious; most have not been realized. Model or not, wouldn't it have been better to draft a more modest document which created less expectations, and therefore would be subject to less criticism in light of the ACP group's generally poor economic performance?

A former French colonial administrator and a long-time official in the EEC's Directorate General for Development, Andre Auclert, who has over 30 years experience in development administration, offered a wry view on this question during an interview given upon his retirement:

Look, to be very frank, I have no qualms in saying that this is the ACPs' fault. Every five years, from one Convention to another, they push us to add more.

As a result, we now have a very long list of all the possible uses of Community aid, particularly the EDF. And when we take stock of it all in five years time, when we say, negotiate Lomé V, some people will say—and our friends the [ACP] Ambassadors are very good at this—'You didn't do this and you didn't do that. It was in the Convention. It's an oversight.' But it's not. All it means is that, when we talk more seriously . . . the ACPs know exactly where their priorities lie, believe you me. The projects they put forward reflect their top priority needs. So obviously, compared to the whole string of schemes we could be financing according to the Convention, there are things that fall by the wayside—not because they do violence to the Convention, but for no other reason than that no one applies for projects or financing to do them.¹³⁴

Auclert points to external and internal factors along the lines set out earlier in this paper to explain African underdevelopment. "I don't see why the ACPs' poor economic situation should be bad publicity for the Lomé

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- Title VII: Energy development
 - Title VIII: Enterprise development
 - Title IX: Development of services
 - Title X: Trade development
 - Title XI: Cultural and social cooperation
 - Title XII: Regional cooperation

Not all of these areas can be fully developed below. Certainly some topics which are not discussed here, such as regional cooperation, MINEX, industrial development, and development of services, would appear in any comprehensive treatment of Lomé IV's provisions.

134. *A Talk with André Auclert*, *The Courier*, No. 116, July-Aug., 1989, at 7, 8 [hereinafter *Auclert*]. Auclert takes particular pride in having introduced the funding of microprojects into Lomé I. For more on microprojects, see *Is Small Beautiful: Microprojects Assessed*, *The Courier*, No. 118, Nov.-Dec., 1989, at 14. "[F]or hundreds of village communities microprojects represent the first direct benefit from Official Development Aid." *Id.* at 15. The provisions relating to microprojects under Lomé are set out in arts. 252 and 253.

Convention. [W]ithout the Convention, the situation would be an awful lot worse than it is now."¹³⁵ This sentiment is expressed frequently in reply to criticism of Lomé's modest achievements to date.¹³⁶ Far from being bad publicity, Former Commissioner for Development Lorenzo Natali has said that Lomé "makes an essential contribution to the Community's image in the world, both quantitatively and qualitatively."¹³⁷

The continued willingness of the EEC to enter into an arrangement subject to almost certain criticism, must be taken as evidence to some commitment to what has been called the "spirit" of Lomé.¹³⁸ The best means of getting a sense of this spirit is through an examination of some of Lomé's more remarkable provisions. Examining the performance of certain Lomé development mechanisms will likewise highlight the criticisms that frequently appear in the literature.

The Preamble to Lomé IV sets the unique tenor of the agreement.¹³⁹ As noted earlier, this language is not simply a rote carry-over from Lomé I, but has evolved over time. Negotiated "on the basis of complete equality between [EEC and ACP] partners and in their mutual interest," the contracting parties of Lomé IV are

[r]esolved to step up their common efforts to contribute towards international cooperation and to the solution of international problems of economic, social, intellectual and humanitarian nature, in conformity with the aspirations of the international community towards the establishment of a new, more just and more balanced world order¹⁴⁰

Lomé IV's Part One, excerpted in the introduction to this article, picks up and elaborates on these themes. In particular, it labels as "fundamental principles" "the equality between [the] partners, respect for their sovereignty, mutual interest and interdependence" and "the right of each State to determine its own political, social, cultural and economic policy options."¹⁴¹ "The ACP States shall determine the development principles, strategies and models for their economies and societies in all sovereign-

135. Auclert, *supra* note 134, at 7.

136. See, e.g., Pagni, *From Lomé I to Lomé IV*, The Courier, No. 120, March-April, 1990, at 17, and *ACP/EEC Negotiations for Lomé IV: A Spur from the Council of Ministers*, The Courier, No. 116, July-Aug., 1989, Yellow Pages at V.

137. *Commission Policy on the new ACP/EEC Convention*, The Courier, No. 109, May-June, 1988, Yellow Pages at IV.

138. See *infra* note 255. See also *infra* notes 151-52.

139. For details on the complex negotiating process for Lomé IV, covering a period of 13 months between October, 1988, and November, 1989, see generally *The Structure of ACP/EEC Negotiations*, The Courier, No. 120, March-April, 1990, at 10.

140. Lomé, *supra* note 1, Preamble.

141. Lomé IV, *supra* note 1, art. 2.

ty.”¹⁴²

Article 5 places great emphasis on the pursuit of, and cooperation for, human rights, including economic, social and cultural rights. Apartheid and other forms of discrimination (including gender discrimination) are expressly condemned. This emphasis on human rights appears repeatedly throughout the convention.¹⁴³

Popular participation in development also receives special attention. “The role and potential of initiatives taken by individuals and groups shall also be recognized and fostered in order to achieve in practice real participation of the population in the development process”¹⁴⁴ Likewise, Article 13 provides that the parties shall “encourage participation by the population in the design and execution of development operations.”¹⁴⁵

EDF resources may be used to decentralize development, making available funds for rural and village groupings, cooperatives, and non-governmental development organizations and others who “wish to make their own spontaneous and original contribution to the development of the ACP states”¹⁴⁶ “provided they correspond with priorities, guidelines and development methods adopted by the ACP states.”¹⁴⁷ This emphasis on the participation of non-governmental groups—frequently referred to as the economic, social and cultural groups—appears repeatedly throughout the convention.¹⁴⁸

This is a most interesting and innovative area of the present convention, building on terms contained in its predecessor agreements.¹⁴⁹ Cultural cooperation first debuted as part of the *acquis* of Lomé III. Economic and

142. Lomé IV, *supra* note 1, art. 3.

143. *See, e.g.*, Lomé IV, *supra* note 1, Annex IV, Annex V, and Annex VI. *See also* arts. 13, 17, 42, 46, 121, 139, and 143.

144. Lomé IV, *supra* note 1, art. 5-1.

145. Lomé IV, *supra* note 1, art. 13.

146. Lomé IV, *supra* note 1, arts. 20, 22.

147. Lomé IV, *supra* note 1, art. 21.

148. *See, e.g.*, Lomé IV, *supra* note 1, arts. 111, 139, 144, 151, and 343.

149. It is also an idea which is spreading among the peoples of the South:

Popular organizations are taking on ecological destruction, inequitable control over resources and land, and governments' inability to advance the quality of life.

Many citizens' groups are pushing for a central role in development—a concept they do not measure solely in terms of economic growth. At the core of almost all these movements lies an emphasis on participation of members in initiating and implementing plans, and in exercising control over their own lives.

Broad, Cavanagh & Bello, *supra* note 33, at 153.

The authors describe these groups as “people the development establishment rarely contacts and whose voices are seldom heard.” *Id.* at 145. Listening to what they say, according to the authors, will lead to “a new kind of development.” *Id.*

If Lomé IV means what it says, it means to listen. Given that each succeeding convention strengthens and expands upon provisions designed to accomplish this goal, at a minimum it means to try.

social group contact was permissive even earlier, beginning with Lomé I.¹⁵⁰

Lomé III charged the ACP/EEC Council of Ministers to "take all necessary measures to establish ongoing contacts between the economic and social sectors in the Community and in the ACP States and to arrange regular consultations with their representatives on matters of mutual interest . . .

"¹⁵¹

Annual meetings between the Community and ACP economic and social sectors date back at least fourteen years. These exchanges are invaluable because they contribute to what has been called "polycentric cooperation, i.e. cooperation which function[s] through a wide variety of public and private bodies and which [keeps] as close to its beneficiaries as possible."¹⁵² Exchanges at these meetings can be refreshingly frank.¹⁵³ At one such meeting, discussing training cooperation, an African participant commented that training had to be "appropriate" and "pointed to the situation in his country where many who were highly educated (graduates, lawyers) were needing to be re-trained as farmers, because other avenues offered no hope of earning their living."¹⁵⁴ Another comment, from a Nigerian, added a blunt addition to the usual list of reasons for the ACPs' lack of appeal for

150. Lomé I, *supra* note 1, art. 168.

151. Lomé III, *supra* note 1, art. 23-2(h). Articles 20 and 30-2(h) of the present convention have added cultural groups to the list. For more information on the ACP/EEC Council of Ministers, see *infra* notes 168-72 and accompanying text.

152. *Training and Commodities: Development Priorities for the Social Partners*, The Courier, No. 119, Jan.-Feb., 1990, at 7.

Polycentric cooperation has support in the Commission, as well. Former Vice-President of the Commission and Commissioner for Development, Lorenzo Natali, speaking before a meeting of the ACP/EEC Joint Assembly (discussed below) attached particular importance to the notion because "everyone's ideas and energy are needed in development." *ACP/EEC Joint Assembly for a Convention in Tune with the Times*, The Courier, No. 109, May-June, 1988, Yellow Pages at II.

Funds have been earmarked in Lomé IV to strengthened polycentric cooperation. European Communities-Council, Annual Report of the ACP/EEC Council of Ministers 18 (1989).

153. Members of the ACP/EEC social partners do not hesitate to criticize their governments or Lomé itself. "The Convention was a 'government to government or civil service to civil service affair' declared a European employers' representative" in the course of demands to be a part of the negotiation and implementation for Lomé IV. *12th Annual Meeting of the Social Partners: A 'Genuine Participation in the Implementation of Lomé'*, The Courier, No. 114, March-April, 1989, at 7. The requirement in Lomé IV for social and cultural elements in project design contained can be said to respond to these demands. (art. 142)

Polycentric or "decentralized" cooperation also receives detailed attention in Lomé IV. Article 343 charges the Council of Ministers to

organize contacts between the relevant organizations in the Community and the ACP States (decentralized public authorities and unofficial bodies) to examine in practical terms how and under what conditions their initiatives can be organized, with a view to contributing to the pursuit of the development objectives of the ACP states.

Article 343 specifically addresses improved access of decentralized parties to information on ACP development policies and ACP/EEC cooperation operations.

154. *12th Annual Meeting of the Social Partners: A 'Genuine Participation in the Implementation of Lomé'*, The Courier, No. 114, March-April, 1989, at 6.

foreign investors: "We Africans have for long disdained manual labour."¹⁵⁵ Yet another participant at one of these meetings, a woman from a Rwanda cooperative group, commented on a proposed article in Lomé IV on the training of women, expressing hope that it would be adopted: "It is well known that if you educate a woman, you educate a family."¹⁵⁶

A renewed emphasis on cultural exchanges also evidences the continuing vitality of the Lomé arrangements. The provisions of Lomé III addressing cultural concerns have been strengthened in the new convention. Some may scoff at the attention received by these concerns here but it is a not unimportant matter to the ACP group and of no small value in the effort to enlighten and culturally enrich the populations of Europe.

As stated in Lomé IV's Article 145, "[i]ntercultural dialogue [is] geared to more thorough knowledge and a better understanding of cultures. By clearing obstacles to intercultural communication, cooperation shall stimulate awareness of the interdependence of peoples of different cultures." "The Parties shall each for its own part strive to root this notion of interdependence in public opinion."¹⁵⁷ Project design must include social and cultural evaluations.¹⁵⁸

Funding for the ACP/EEC Foundation for Cultural Cooperation is also provided.¹⁵⁹ This important institution has a rather broad mandate, as this excerpt from an article authored by a Commission official makes clear:

The word "culture" was long seen in a restrictive light, as referring to the production and enjoyment of works of intellectual and artistic endeavour.

Today, culture is taken to mean the interaction between man and his environment and, seen in this light, it is a way of being aware of reality, a code, a set of different kinds of rules whereby the individual can communicate with his ecosystem and establish relations to suit his aims.

Cultural cooperation is part of all ACP/EEC cooperation aimed at promoting more autonomous and self-sustaining development in the ACP States by placing man at the centre of the process. By adopting this theme in the convention, both the ACPs and the

155. *Social and Economic Partners Debate Private Investment*, The Courier, No. 107, Jan.-Feb, 1988, Yellow Pages at IV.

156. *Training and Commodities: Development Priorities for the Social Partners*, The Courier, No. 119, Jan.-Feb., 1990, at 6.

Lomé IV does indeed contain detailed provisions on women in development, including providing access to, and funding for, training and education. Lomé IV, *supra* note 1, art. 153.

157. Lomé VI, *supra* note 1, Annex III.

158. Lomé IV, *supra* note 1, arts. 140, 142 & 143.

159. Lomé IV, *supra* note 1, Annex XXII.

Community were anxious to recognize that autonomous, self-sustaining development meant that the ACP countries had to be freed from the western cultural model where it was ill-suited to the realities of the local situation.¹⁶⁰

There is, not surprisingly, tension arising out of this area. Two examples will suffice. Speaking at an ACP/EEC Cultural Foundation-sponsored seminar, Isaac Nguema, President of the African Commission on Human Rights and People's Rights, gave a glum assessment on human rights in Africa, "a continent where personal initiatives are rare, and the will to act with a sense of responsibility absent."¹⁶¹ President Nguema, playing devil's advocate, stressed that the notion of Western civil and political rights has as its heritage the religious tradition of man created in the image of God.¹⁶² African animism has no such conception, and traditional societies are largely governed by kinship ties and group relationships which subordinate the individual.¹⁶³ Illiteracy is also a major impediment to creating awareness of human rights among in Africa. This naturally provoked a lively debate with the European participants at the seminar.¹⁶⁴

160. Aloa, *ACP/EEC Cultural Cooperation under Lomé III*, The Courier, No. 115, May-June, 1989, at 7. Over the four year period of 1985-1989 about 60 cultural schemes received funding of ECU 4.4 million. *Id.* These included sending a Lesotho teachers' choir to Wales, financing the training of art restorers from French-speaking Africa, book publishing, and numerous media projects. *Id.* at 9.

For an indication that Europeans have appropriated a genuine understanding of the idea, see *infra* note 164.

161. *Specificity and Universality in Human Rights*, The Courier, No. 114, March-April, 1989, at 9.

162. *Id.* at 10.

163. For more on animism, see Nkuisi, *Religion in Africa*, The Courier, No. 123, Sept.-Oct., 1990, at 83, and Parrinder, *The Religions of Africa, in AFRICA SOUTH OF THE SAHARA*, *supra* note 13, at 90.

164. Commission officials have shown remarkable sensitivity on the general questions of human rights and democracy. In an February, 1990 interview, Manuel Marin, EEC Vice-President and Development Commissioner was asked if he was "shocked by the Joint Assembly [discussed below] having ACP representatives who are not MPs?" His answer:

No, I'm not, not at this stage in Africa's institutional development. You can't lump countries which were only decolonised a short time ago together with those with well-oiled structures and hundreds of years of experience—and what experience! Because we are highly satisfied to be Europeans now, we should never forget that the shaping of Europe involved what were sometimes horrible wounds. I think we have to see all that in its historical perspective.

Now I've just returned from Mozambique. I talked about institutional and political matters with President Chissan, who is going to call free elections . . . and we spent some time quietly discussing whether a single party or a multi-party system could be applied in a country which you knew to contain something like 60 different cultural and tribal organisations. Age, the village elders, women and children all have a cultural part to play and it not that same part they would have in Europe. So people will react maybe in the light of instruments and views of life which do not specifically tally with the way we see our democratic system—which is not to say that there will not, practically speaking, be a place for human rights,

The ACP declaration on the return or restitution of cultural property urges "the Community and its Member States, insofar as they acknowledge the legitimate right of the ACP States to cultural identity, to promote the return or restitution of cultural property taken from ACP States and now found in Member States."¹⁶⁵ Clearly there is friction on this issue as the ACP group was unable to obtain a binding Lomé IV provision to require the return cultural treasures in Member States.

Enough has probably been said regarding the important "aspirational" aspects of Lomé IV and the participation of non-governmental groups in the development process. This, along with the section on joint ACP/EEC institutions which immediately follows, constitutes much of the "good news" in Lomé IV. Attention must also, however, be given to the mechanisms in the areas of trade, aid, and finance, and to an evaluation of their performance. As shall be seen, there the news is not uniformly good.

ACP/EEC Joint Institutions

Lomé IV ACP/EEC institutions consist of the Council of Ministers, the Committee of Ambassadors and the Joint Assembly.¹⁶⁶ Each institution lays down its own rules of procedure. Disputes are resolved by Lomé's highest institution, the Council of Ministers, with provision being made for binding arbitration where the Member States and the ACP States are unable to agree. The Member States receive technical support from the Commission. For their part, the ACP countries have organized an ACP Secretariat, headquartered in Brussels, pursuant to treaty. Taken together, the above has been praised as "a network of institutions representing the [ACP/EEC] partners and aimed at keeping the system turning over on the basis of permanent negotiation . . . making ACP/EEC collaboration more open than most other cooperation policies."¹⁶⁷

The ACP/EEC Council of Ministers consists of members of the Council of European Communities and the Commission of the European Communities,

for respect for life and freedom, for the right to travel freely, to enter and leave a country and to have your own ideas and not be followed by the police, and so on . . . these are things which can perfectly well be maintained. The only thing is that application and the definition of the institutions will be expressed differently.

165. Lomé IV, *supra* note 1, Annex XXIV.

166. See *infra* notes 167-83 and accompanying text.

167. Bouvier, *What to Expect from Lomé? Neither the Best Nor the Worst*, The Courier, No. 113, Jan.-Feb., 1989, at 13.

At a meeting of ACP/EEC trade union organizations in Dakar, "the participants stress[ed] unanimously that the Lomé Convention is unique, as a model for organized and institutionalised North-South cooperation with both parties on an equal footing." *ACP/EEC Trade Union Organisations Meet in Dakar*, The Courier, No. 113, Jan.-Feb., 1989, at V.

During the periodic renegotiations of the convention, the ACP/EEC Council of Ministers, the Commission (which is delegated the authority to negotiate on behalf of the Member States), and the ACP Ambassadors all play a role. See *The Structure of ACP/EEC Negotiations*, The Courier, No. 120, March-April, 1990, at 10.

on the European side, and a member of the government of each ACP State, on the other.¹⁶⁸ It acts by agreement between the Community on the one hand and the ACP States on the other.¹⁶⁹ Its functions include interpreting and implementing the terms of the convention, mediating disputes between the Contracting Parties,¹⁷⁰ and fostering consultations with the economic and social sectors of the Contracting Parties.¹⁷¹ Its decisions are binding on the Contracting Parties.¹⁷²

The ACP/EEC Committee of Ambassadors is a subordinate institution, composed of each Member State's Permanent Representative to the European Communities and one representative of the Commission, on the one hand, and the head of each ACP State's mission to the European Communities, on the other.¹⁷³ It may submit proposals to the Council of Ministers *sua sponte* or as a result of a delegation by the Council of Ministers and is charged with monitoring the implementation of the convention and supervising the standing and ad hoc committees.¹⁷⁴

The ACP/EEC Joint Assembly is Lomé IV's consultative body,¹⁷⁵ composed of equal numbers of, on the one hand, members of the European Parliament and, on the other, of members of parliament or, failing this, of representatives¹⁷⁶ designated by the ACP States.¹⁷⁷ In addition to its consultative function, it too is charged with organizing regular contacts with representatives of the economic, cultural and social development bodies in the ACP States and the Community.¹⁷⁸

168. Lomé IV, *supra* note 1, art. 30-1.

169. Lomé IV, *supra* note 1, art. 338.

170. *See also* Lomé IV, *supra* note 1, art. 352, which provides for compulsory arbitration in the event of deadlock.

171. Lomé IV, *supra* note 1, arts. 30-2, 342 & 343.

172. Lomé IV, *supra* note 1, art. 342.

173. Lomé IV, *supra* note 1, art. 31-1.

174. Lomé IV, *supra* note 1, arts. 31-2 & 346.

175. Among the functions of the Joint Assembly is to "seek, through dialogue, debate and concerted action, to:

- promote better understanding between the peoples of the Member States and the ACP States;
- promote public awareness of the interdependence of the peoples and of their interests as well as the need for solidarity in development;
- reflect upon all matters pertaining to ACP/EEC cooperation, particularly the fundamental problems of development;
- encourage research and initiative, and formulate proposals with a view to improving and reinforcing ACP/EEC cooperation; [and]
- urge the relevant authorities of the Contracting Parties to implement this Convention in the most efficient manner possible so as to ensure the full attainment of its objectives. . . ."

Lomé IV, *supra* note 1, art. 32-2(a).

176. *See supra* note 164.

177. Lomé IV, *supra* note 1, art. 32-1.

178. Lomé IV, *supra* note 1, art. 32.

The Joint Assembly often serves the useful function of “creating a political climate where difficult decisions may more easily be taken” regarding, for example, such issues as the movement of hazardous and radioactive wastes and the plight of internally displaced persons.¹⁷⁹ These are topics that governments, for various political and economic reasons, may prefer to overlook. The Joint Assembly can also give Commission officials political cover when they attempt to take the Member States further than they may otherwise want to go on a given issue.¹⁸⁰

ACP/EEC institutions, not surprisingly, do have their critics. Essentially they point to inherently unequal bargaining power, lack of ACP technical capabilities, and other institutional asymmetries.¹⁸¹ Commission officials admit as much.¹⁸² There is, however, no significant evidence of bad faith

179. *The Madrid Joint Assembly: All Eyes on 'Lomé IV'*, The Courier, No. 112, Nov.-Dec., 1988, Yellow Pages at VI.

At the Madrid meeting there was a heated exchange on the export of EEC toxic wastes to the ACP. Although the EEC representative protested that EEC directives already required shipments to be “justified” and the consignee be capable of disposing of the waste, many members from both EEC and ACP nations urged an outright ban on such shipments. They pointed out that “the rules are not always respected, and unprincipled companies exploiting the poor and the ignorant [here one could add ‘and the corrupt’] can put countries and their populations at serious health and environmental risk.” *Id.* at IX.

Lomé IV has put into place new provisions which effectively ban the movement of hazardous and radioactive waste between the Community and the ACP states “without prejudice to specific international undertakings to which the Contracting Parties have subscribed or may subscribe . . . within the competent international fora.” Lomé IV, *supra* note 1, art. 39. Each signatory to the convention undertakes to ratify the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Lomé IV, *supra* note 1, Annex IX.

A report originating in the Joint Assembly likewise drew attention to displaced persons:

The report [on Refugees and Displaced Persons] laid particular stress on displaced persons, who, unlike refugees, had no official status, and whose plight—because it was often considered to be a temporary phenomenon—was accorded low priority. [Displaced persons] had not been covered by the provisions of Lomé III, and should be by those of the successor Convention.

Lomé IV, like its predecessors, provides funds for emergency assistance. Lomé IV, *supra* note 1, arts. 254-257. In addition to the familiar provisions for aid in case of “serious economic and social difficulties . . . resulting from natural disasters or extraordinary circumstances having comparable effects” (Lomé IV, *supra* note 1, art. 254) and aid for refugees and returnees, Lomé IV now funds efforts to integrate or reintegrate internally displaced persons due to conflicts or natural disasters. Lomé IV, *supra* note 1, art. 255. ECU 350m (\$472.5 million) has been put aside in the EDF for these purposes. Lomé IV, *supra* note, Financial Protocol.

180. *See infra* note 255.

181. *See, e.g.*, Gruhn, *supra* note 8, at 27.

182.

It is not easy to discuss the terms of cooperation and implement this cooperation on a truly equal footing when on the one hand you have wealthy countries with room for manoeuvre and, on the other, much poorer countries that are often in the grip of intolerable economic and social pressures. However, the mere fact that we negotiate the terms of cooperation, “group to group,” is in itself a guarantee and gives you a chance to present your points of view and interests. The continuity of our relations and the security derived from the fact that our cooperation is codified in a treaty constitute further guarantees

From an address of Manuel Marin, Vice-President of the Commission and Development

on the part of the EEC. To the contrary, many of the problems are simply reflections of the verity that twelve relatively homogenous countries often are able to present a more united front than sixty-nine more varied nations can normally achieve. Over time the increasing sophistication of ACP organizational capacities¹⁸³ and the refinement of provisions regarding operations of the joint institutions have alleviated some of the concerns. The best evidence of this is the convention itself, particularly in terms of its increased transparency, better dispute resolution mechanisms, and increasingly favorable financial provisions.

Trade Cooperation

The Lomé trade provisions have always constituted a vital part of ACP/EEC cooperation, though they have been criticized by some academics and non-ACP developing countries as divisive to South-South cooperation.¹⁸⁴ Moreover, as shall be seen, the Lomé trade regime has failed to promote overall growth in ACP trade with the Community.

As indicated above, Lomé departed from the principles of reciprocity that were a hallmark of the earlier Yaounde agreements—there are no requirements for reverse preferences in Lomé. Products originating in the ACP States, including manufactured goods and textiles, enter the Community free of customs duties and, in most instances, quantitative restrictions.¹⁸⁵ Not surprisingly, certain agricultural products are excluded consistent with the EEC Common Agricultural Policy (CAP).¹⁸⁶

The CAP protects European agricultural production by the general imposition of one or a combination of variable levies and other customs duties, quantitative restrictions, and/or export subsidies. The CAP has been a primary source of contention in the Uruguay Round of GATT negotiations.¹⁸⁷ Even in this area, however, the ACP group benefits from more favorable treatment than other third country exporters.¹⁸⁸ Quotas have been extended for ACP beef and veal, with an increase of almost 25% over Lomé III allowances. Quotas for bananas,¹⁸⁹ sugar,¹⁹⁰ and rum¹⁹¹ are

Commissioner to the ACP Council of Ministers in 1989, excerpted in *To Act Effectively We Must Have a Clear View of the Main Issues*, The Courier, No. 114, March-April, 1989, Yellow Pages at III.

183. The 1980s has been called "the decade which saw the rise of the ACP Group and its emergence as a major organisation on the international scene. . . ." Traore, *Many a Challenge for the ACPs*, The Courier, No. 120, March-April, 1990, at 19.

184. Benn, *The Commonwealth Caribbean and the New International Economic Order*, in *DEPENDENCY UNDER CHALLENGE: THE POLITICAL ECONOMY OF THE COMMONWEALTH CARIBBEAN* 264 (Payne & Sutton eds. 1984).

185. Lomé IV, *supra* note 1, arts. 168 & 169.

186. Lomé IV, *supra* note 1, at 168-2(a).

187. *GATT Reprived*, THE ECONOMIST, Oct. 19, 1991, at 15.

188. See *supra* notes 182-184 and accompanying text.

189. Lomé, *supra* note 1, Protocol 5.

also in place and are designed to protect traditional EEC markets for the ACP suppliers of these products. Mechanisms are also available for the admission of certain other important agricultural products, such as strawberries, tomatoes, molasses, and sorghum, particularly during the off-season in Europe. Where the CAP imposes a duty, but no quantitative restriction on agricultural imports, ACP products enter duty-free.¹⁹²

Notwithstanding the very liberal provisions for ACP exports to the Community, the trend in ACP/EEC trade has been negative.¹⁹³ In 1970, for instance, the ACP share, in monetary terms, of EEC total imports was 8.3%.¹⁹⁴ The comparable figure for 1985 had dropped to 4%.¹⁹⁵ The percentage of ACP participation in EEC imports from all developing countries has also declined from 20% in 1975 to 15% in 1987.¹⁹⁶ Studies confirm a general decline in ACP exports of semi-manufactured, manufactured and agricultural products from ACP countries.¹⁹⁷ Nevertheless, the Community annually absorbs an average of about 55% of total ACP exports.¹⁹⁸

A number of reasons have been advanced for these circumstances, including the ubiquitous phenomenon of the declining terms of trade. In 1988, prices for non-petroleum commodities, constituting upwards of 80% of ACP exports, were at about 60% of their prices in the early seventies.¹⁹⁹ Another consideration also previously discussed is the disincentives to foreign investment due to both internal (unfavorable domestic policy regimes) and external (high debt service ratios and current account imbalances leading to foreign exchange shortages) causes.²⁰⁰ What little industry exists is notoriously uncompetitive, as Community officials often point out.²⁰¹

190. Lomé IV, *supra* note 1, Sugar Protocol.

191. *Id.* Protocol 6.

192. Lomé IV, *supra* note 1, art. 168-2(a)(ii).

193. Watkins, *supra* note 17, at 40.

194. *Id.*

195. *Id.*

196. *Id.* at 41.

197. *Effects and Prospects of EEC/ACP Trade and Trade Policy Relations*, The Courier, No. 98, July-Aug., 1986, at 62.

198. There is some evidence of structural changes in ACP trade and rather substantial increases in certain processed goods, mainly textiles, processed tropical products, and wood and leather products. Recalling that ACP countries started from a practically non-existent industrial base, it is significant that these and other processed products now constitute about 8% of ACP exports. It is also significant that these products benefit from exemptions to the high MFN tariff rates under GATT. Watkins, *supra* note 17, at 41.

199. Gakunu, *Difficulties of Structural Adjustment Policies*, The Courier, No. 111, Sept.-Oct., 1988, at 75, citing World Bank figures.

200. *See Dossier: Investment in ACP States*, The Courier, March-April, 1987, at 70.

201. "The real problem with ACP/EEC trade," according to former Commissioner for Development Lorenzo Natali in a speech made in October, 1988, "does not lie in the trade arrangements under the Convention but in the competitiveness of the ACP countries." *'Inventing the Future': Opening of the Negotiations for the Renewal of the ACP/EEC Convention*, The Courier, No. 112, Nov.-Dec., 1988, Yellow Pages at V.

Some ACP officials²⁰² admit that competitiveness is a problem, but also point to the absolute decline in foreign investment in ACP states, European (agricultural) subsidies and the dilution of ACP preferences through the extension of the Generalized System of Preferences (GSP), discussed below. Whatever the cause for declining export capacity, at a seminar on trade issues held in 1990, a delegate from Cote d'Ivoire dryly summed up the problem for ACPs: "There [is] no point in having access to a market . . . unless you have something to sell."²⁰³

The introduction and gradual extension of the Community's GSP has considerably eroded ACP preferences. Indeed, only about one-third of ACP products (primarily agricultural produce and fish) enjoy real advantages due to the Lomé preferences.²⁰⁴ The remaining two-thirds would enter duty-free in any event.²⁰⁵ ACP countries must compete with other developing countries in the EEC market for these GSP products. Studies have shown that "the tariff preferences the ACPs get are, in relation to the GSP, generally inadequate to direct trade patterns on their own."²⁰⁶ They are nonetheless significant, particularly for sensitive products (such as preserves and textiles), because ACP countries are not subject to GSP quantitative restrictions placed on non-ACP developing countries.

The value of the preferences to the ACP group are virtually impossible to measure since there is no obvious answer to the following question: But for the trade preferences, what would the level of ACP/EEC trade be? Phrased another way, what is the competitive advantage, where the preferential margin is "efficient" and helps to boost the volume of ACP exports over competitors, for the one-third of ACP imports which in fact benefit from

At the Joint Assembly meeting in Madrid earlier in September, he used almost the same words: "The real problem of ACP/EEC trade lies not in market access but in the capacity to export and the competitiveness [sic] of the ACP States; free market access is already practically total. . . ." *The Madrid Assembly: All Eyes on "Lomé IV,"* The Courier, No. 112, Nov.-Dec., 1988, Yellow Pages at VII.

202. *Lomé IV: ACP/EEC Council of Ministers in Brazzaville—Political Go-Ahead for the Negotiations,* The Courier, No. 114, March-April, 1989, Yellow Pages at I.

203. *Symposium: Trade Issues in the Context of Lomé IV and 1992,* The Courier, No. 123, Sept.-Oct., 1990, at 6.

As Girard rightly points out,

[o]verall, the greatest obstacle to effective use of the Lomé market access provisions is the economic structure of the ACP states. Unless substantial structural transformations are achieved through increased investments in plants and equipment, ACP producers will remain unable to penetrate EEC markets.

To exploit the trade preferences granted under the Lomé convention, the ACP states must attract foreign investment or induce efficient domestic investment in manufacturing sectors.

Girard, *supra* note 78, at 478.

204. *The Lomé Trade Arrangements: What Do They Do for the ACPs?,* The Courier, No. 109, May-June, 1988, at 5.

205. *Id.*

206. *Id.*

favorable Community customs treatment? No study has been located that answers this question. Still, “[i]n 1989 the ACP received ECU 1,700m. [\$2.295 billion] in aid from the [E]EC through the EDF. In the same year, trade with the Community was worth approximately ECU 30,000m. [\$40.5 billion].”²⁰⁷

There is, in addition, understandable concern on the ACP side that global tariff reductions negotiated in the Uruguay Round of the GATT will further erode those meaningful ACP preferences that do exist.²⁰⁸ While the Community attempts to soothe the ACP group by pointing out the additional markets that such global reductions would entail, the ACP group is not comforted.²⁰⁹ The ACP countries have, undoubtedly, taken certain satisfaction from the recent temporary collapse and proposed two-year extension of these negotiations.

In the negotiations leading up to Lomé IV the ACP states sought to receive some form of commitment from the Community to (1) either preserve its preferential standing vis-a-vis third countries or (2) to receive compensation through “special arrangements” for their most important exports.²¹⁰ The Community response was that “it had never committed itself to maintaining the preferential margin for ACP products on its markets.”²¹¹ In the end the Community did agree to a vaguely worded provision set out in Annex XXIX in the Lomé IV, noting that it “is conscious of the need to ensure, in the overall application of the Convention, the maintenance of the competitive position of the ACP States where their advantages on the Community market are affected by measures relating to general trade liberalization.”²¹²

Through what mechanisms and to what extent the “competitive position” of ACP exports will be supported remains an open question. Earlier, an Commission official dismissed a suggestion of quotas at guaranteed prices, with automatic compensation for price declines, as “totally unrealistic.”²¹³ The ACP states have, nevertheless, recently pointed to Annex XXIX in

207. Watkins, *supra* note 17, at 41.

208. European Communities-Council, *supra* note 152, at 19. See also *Lomé IV: ACP/EEC Council of Ministers in Brazzaville—Political Go-Ahead for the Negotiations*, The Courier, No. 114, March-April, 1989, Yellow Pages at II.

209. *Id.* A study subsequently commissioned by the ACP Council of Ministers estimates losses of between US \$118 million to \$121 million annually if trade in tropical products is liberalized as a result of the Uruguay Round. *Fifty-First Session of the ACP Council of Ministers: Seeking Satisfaction on Trade*, The Courier, No. 125, Jan.-Feb., 1991, Yellow Pages at II.

210. *ACP/EEC Negotiations for Lomé IV: A Spur from the Council of Ministers*, The Courier, No. 116, July-Aug., 1989, Yellow Pages at I, II.

211. *Id.*

212. Annex XXIX.

213. *The Madrid Joint Assembly: All Eyes on ‘Lomé IV’*, The Courier, No. 112, Nov.-Dec., 1988, Yellow Pages at VI, IX.

According to another Commission official, “[a] Sugar-Protocol-type solution for tropical products might involve isolating the EEC-ACP zone from the outside world . . . which is not feasible.” *ACP/EEC Negotiations for ‘Lomé IV’: Hoping to do Better*, The Courier, No. 115, May-June, 1989, Yellow Pages at I.

renewing their demands for compensation for losses due to trade liberalization.²¹⁴

The topic of trade cannot be left without comment on two additional Lomé IV trade provisions: the rules of origin²¹⁵ and the safeguard clause.²¹⁶ Both are well-known devices in trade agreements and so will not be analyzed in detail here. Lomé IV does, however, make concessions to the ACP states concerning these matters. The improvements over previous accords should be mentioned.

Rules of origin are principally meant to prevent third countries from 'jumping' trade barriers by moving assembly operations into countries benefitting from a trade preference for the good in question. Lomé's rules of origin, since it used its own system of nomenclature, had been criticized by business as difficult to use. Lomé IV now bases its system on the popular Harmonized System of Nomenclature and is therefore considerably more transparent.²¹⁷ The ACP states are treated as a single customs territory. The margin of tolerance for non-originating goods (i.e., non-ACP or EEC goods) has been doubled to 10% under Lomé IV.²¹⁸

Most importantly, the system for obtaining derogations from the rules of origin has been improved. It had been at least theoretically possible for an ACP producer to receive such a derogation, but many claim that the Community stonewalls these requests, making business planning difficult or impossible and frustrating investment. Under Lomé IV, if the EEC fails to respond within three months, derogations will be deemed approved.²¹⁹

Much ink has been spilled on Lomé's safeguard clause,²²⁰ though no safeguard measures have ever been invoked against ACP products in Lomé's fifteen year history.²²¹ It is no doubt easier for ACP officials and academic critics alike to enter into a wailing and gnashing of teeth over the issue than to propose methods of fostering productive capacity sufficient for ACP enterprises to pose a real threat of causing "serious disturbances" in the EEC's domestic economy. Moreover, voluntary export restraints (VERs), notorious devices imposed on trading partners to avoid the invocation of GATT safeguards, have apparently only been complained of one time in

214. *Fifty-First Session of the ACP Council of Ministers: Seeking Satisfaction on Trade*, The Courier, No. 125, Jan.-Feb., 1991, Yellow Pages at II.

215. Lomé IV, *supra* note 1, Protocol 1.

216. Lomé IV, *supra* note 1, arts. 177-180 and Protocol 4.

217. *Details on Principal Developments and Innovations*, The Courier, No. 120, Mar.-Apr. 1990, at 16.

218. *Id.*

219. *Id.*

220. *See, e.g.*, Girard, *supra* note 78.

221. For a general treatment of safeguard clauses, *see* Koekkoek, *Safeguards and the Developing Countries' Interests in the Uruguay Round*, in INTERNATIONAL TRADE: EXISTING PROBLEMS AND PROSPECTIVE SOLUTIONS 106-120 (Fatemi ed. 1989).

Lomé's history.²²² EEC negotiators agreed to subject the area to new rules²²³ which include statistical surveillance and regular consultations. Protocol 4 appears carefully designed to ensure that safeguards are put into place only when Community allegations of serious disruptions are sustainable.

Development Finance Cooperation

Development finance cooperation is governed by the lengthy provisions set out in Title III of Lomé IV, which must be read in conjunction with its Financial Protocol. At the outset of each convention the Community announces the amount of development financing available to the individual ACP states out of the total available funds set out in the Financial Protocol. The ACP states then formulate an "indicative programme" to take advantage of the assistance.²²⁴ Initial coordination between the EEC and ACP country concerned is handled within each ACP country. The EEC is represented in each ACP State by its Delegate, with significant powers, who must be approved by the country concerned.²²⁵

The broad objectives of Lomé development finance are set out in Article 220. Fundamental among these objectives is the "self-determined, self-reliant, and self-sustained" development of the ACP states. Included in Article 220 are pledges to facilitate an increase in official and private financial flows, to promote intra-ACP cooperation and regional cooperation, to provide emergency relief from natural disasters, and to assist the ACP group to innovate, adapt and transform technology. Technical assistance is provided only at the request of an ACP State, with a corresponding pledge

222. This was in the case of Mauritian textiles going into the U.K. in the early 1980s. Ravenhill, *supra* note 9, at 40-41.

223. Lomé IV, *supra* note 1, Protocol 4.

224. A complete description and evaluation of the effectiveness of national indicative programs is beyond the scope of this article.

For the example of national indicative programs in the Gambia, see *The Gambia-EEC Cooperation*, The Courier, No. 119, Jan.-Feb., 1990, at 26. Funding trends in that country are instructive regarding Lomé trends as a whole. These trends reflect a shift away from project funding in multiple sectors under Lomés I and II toward sectoral funding under LOME III. Beginning with Lomé III an increasing effort was focused on food security and rural development.

In the Gambia, the principal project funding under Lomé I was Gambia College, now the country's highest educational and training institution. Under Lomé II, the largest expenditure was for a sewage project in the country's capital. It should be noted that a "microproject" in the fisheries area (providing facilities and a revolving loan fund to Gambian fishermen) has received continuous funding under all the conventions.

By Lomé III, emphasis was shifted from a relatively large number of interventions in different sectors to a focus on rural development and the environment. The Gambia, with its heavy dependence on foreign exchange earned from the export of peanuts, has also benefited substantially from STABEX. *Id.* at 26-27.

For more on the new emphasis on rural development and food security, see McNamara, *Lomé III: a Mid-Term Financial Review*, The Courier, No. 118, Nov.-Dec., 1989, at 6. See also Lomé IV, *supra* note 1, art. 15.

225. Lomé IV, *supra* note 1, arts. 316 & 317.

“for rapid and effective training of ACP replacement personnel.”²²⁶

The list of the possible sectors for intervention are numerous and range from structural adjustment, to measures to save energy, to microprojects for grassroots development, and beyond.²²⁷

A key guideline for cooperation is “the concept of equality between the partners. . . .”²²⁸ The ACP countries are generally responsible for defining their objectives and identifying sectors for intervention, as well as identifying, negotiating, implementing and maintaining the specific projects to be financed as part of their indicative programs.²²⁹ Regional groupings, joint ACP/EEC bodies and, “subject to the agreement of the ACP States,” national or local public and private entities, including ACP or EEC enterprises, unions, local communities and cooperatives are also eligible for support under Lomé IV.²³⁰

The ACP countries and the Community are jointly responsible for establishing administrative guidelines for development finance cooperation, adopting the indicative programmes, and monitoring and evaluating the effects of projects.²³¹ Though the partners engage in a structured policy dialogue²³² (governed by the provisions of arts. 281-287), the Community retains the ultimate responsibility for taking a financing decision on projects.²³³ Ordinarily such decisions must be taken within 120 days of an ACP request, and there is a provision for the referral of disputes to the ACP/EEC Development Finance Cooperation Committee or the Community’s

226. Lomé IV, *supra* note 1, art. 221.

227. Lomé IV, *supra* note 1, art. 229.

228. Lomé IV, *supra* note 1, art. 222-1.

229. Lomé IV, *supra* note 1, art. 222-2.

230. Lomé IV, *supra* note 1, art. 230.

231. Lomé IV, *supra* note 1, art. 222-3.

232. The alert reader will note that “policy dialogue” sounds suspiciously like a euphemism for “conditionality.” Not so. First, it is to be recalled that aid under the Lomé agreement is an entitlement and, though financing decisions are ultimately made by the Commission, considerable procedural safeguards exist to prevent arbitrary action on the part of the Commission. Second, though initial fears of conditionality surfaced at the negotiation and signing of Lomé III (which inaugurated policy dialogue), in practice the Commission has shown deference to ACP priorities and sensitivities.

An astute observer of, by no means an apologist for, Lomé has described the changes in Lomé III as

intended to provide aid programmes with a more focused approach, enabling the [E]EC to direct funds where they could be most effectively deployed rather than merely responding to ACP project ‘shopping lists’. This in turn required the [E]EC to become more closely involved in policy formulation through a process of dialogue with individual ACP countries.

Policy dialogue was conceived, therefore, as a means by which the [E]EC could ensure consistency between its aid programme and the broader policies pursued by recipient governments—a third way between ‘rigid conditionality imposed by financing bodies and the irresponsibility of non-conditionality’

Watkins, *supra* note 17, at 41.

233. Lomé IV, *supra* note 1, art. 222-4.

decision-making body.²³⁴

Projects may be financed either by grants or by risk capital from the EDF,²³⁵ or by loans for the European Investment Bank (EIB).²³⁶ As set out by the Financial Protocol, a total of ECU 7,995m (\$10.95 billion) is allocated for grant assistance.²³⁷ ECU 825m (\$1.13 billion) is earmarked for risk capital with interest limited to 3%, and ECU 1,200m (\$1.64 billion) from EIB's own resources is set aside for loans to the private sector and regional development banks. Taking subsidies into account, beneficiaries will pay interest in the range of 3-6%.²³⁸

Lomé IV's financial provisions are substantial²³⁹ and "have gone well beyond merely allowing for inflation: The overall financial envelope has increased from ECU 8,500m [under Lomé III] to ECU 12,000m [under Lomé IV] . . . i.e., an increase of more than 40% in arithmetic terms and

234. Lomé IV, *supra* note 1, art. 289.

235. The EDF is made up of contributions from the Twelve. The breakdown of contributions, expressed in terms of percentages, is as follows:

Belgium	3.96
Denmark	2.075
Germany	25.964
Greece	1.284
Spain	5.896
France	24.368
Ireland	0.549
Italy	12.96
Luxembourg	0.19
Netherlands	5.568
Portugal	0.879
Britain	16.368

Each member state is assigned a weighted vote on the EDF Committee, which has duties in three areas: programming, implementation, and project decision-making (for projects exceeding ECU 2m). *Lomé IV: Internal Financial Agreement*, *The Courier*, No. 124, Nov.-Dec., 1990, at 6, 7.

236. The EIB was established by the Treaty of Rome to finance long-term investment in EEC Member Countries. Since the signing of Lomé I its scope of operations has been broadened to include the ACP nations. The EIB's operations are examined in detail in Phillippe Tabary, *EIB Financing Arrangements in the ACP States*, *The Courier*, No. 110, July-Aug., 1988, at 7.

The EIB funds larger projects directly and small projects through loans to regional development banks. It therefore plays a central role in developing so-called "small and medium-sized enterprises" (SMEs). See *The European Investment Bank and the SMEs in the ACPs*, *The Courier*, No. 115, May-June, 1989, at 66.

A marked shift has recently been reported from financing import substitution investments to export-oriented ventures. *Id.* at 69.

237. Including funds earmarked for structural adjustment, treated in a separate section, below.

238. *Details on Principal Developments and Innovations*, *supra* note 217, at 14.

239. The EDF is an important source of funds for the nations of Sub-Saharan Africa. According to an OECD report, in 1986 the EDF provided almost one-quarter of all multilateral net official development aid to these countries, making it the second largest multilateral donor (after the IDA). Bouvier, *supra* note 167, at 11.

For comparative amounts of funds provided by the first through seventh EDFs, as well as a statistical analysis of the type of aid and sectors assisted, see Hughes, *EDF Implementation: The Latest Position*, *The Courier*, No. 125, Jan.-Feb., 1991, at 12.

more than 20% in real terms."²⁴⁰ While each successive convention has provided for absolute increases in aid, Lomé IV represents the first time that a Lomé renegotiation has resulted in a real, if modest, per-capita increase in assistance to the ACP countries.

Lomé IV also introduced new emphases in the areas of trade and services, including tourism²⁴¹ and processing, marketing, distribution, and transport (PMDT) of primary commodities.²⁴² These are aimed at "diversifying the range and increasing the value and volume of ACP States' trade in goods and services,"²⁴³ as well as "resolving the structural difficulties in many commodity sectors."²⁴⁴ No special funds have been earmarked for these programs, however, and they therefore must be prioritized by the ACPs themselves in their national indicative programs.

In light of the observations made at the outset regarding the abysmal state of development in Sub-Saharan Africa and the continuing international division of labor, the development finance provisions of Lomé obviously have not provided the solution to ACP group's development dilemma. This was underscored in a remark by Edwin Carrington, recently retired ACP Secretary-General, when he observed that "25 years of preferential treatment from the EEC had not enabled a single ACP State to climb into the league of newly industrialising countries."²⁴⁵

To state the underlying reasons for this lack of success is to restate the well-worn arguments which attribute the South's lack of development to various external and/or internal factors. Many in the ACP countries also fault the volume of aid made available under the various Lomé conventions.²⁴⁶ For the Commission's part, its officials emphasize that Lomé was not designed and never intended to substitute for self-reliant development in Sub-Saharan Africa, responsibility for which the conventions had always placed on the ACPs themselves.²⁴⁷ Moreover, Lomé does not operate in

240. European Communities-Council, *supra* note 152, at 7.

241. See Lee, *The Tourism Sector and Lomé IV*, *The Courier*, No. 122, July-Aug., 1990, at 61. See also Lomé IV, *supra* note 1, arts. 114 and 121.

242. See, e.g., Lomé IV, *supra* note 1, arts. 18 and 70.

243. Lomé IV, *supra* note 1, art. 114.

244. Lomé IV, *supra* note 1, art. 70.

245. *Reported in Fairclough, 1992 and the Caribbean*, *The Courier*, No. 113, Jan.-Feb., 1989, at 6.

246. The ACPs had wanted a commitment of ECU 15.5 billion for the first five years of Lomé IV. The final amount agreed to by the Commission, as indicated above, was ECU 12 billion. *Lomé IV Signed*, *The Courier*, No. 119, Jan.-Feb., 1990, Yellow Pages at I.

247. As one academic has written, "EDF- and EIB-financed projects and programmes are, and can only be, ways of consolidating, diversifying, amplifying and accelerating the development strategies run by the national Governments." Bouvier, *supra* note 167, at 11. See also Marin, *supra* note 56, at 5.

Development Commissioner Marin has suggested that the industrial policies adopted by most ACP states (not without some urging from capitalist elements in the developed world) were unsuited to their social and economic environment: "The accent on project size and sophisticated equipment is behind over-investment—which is also based on over-optimistic forecasts that are often backed up by equipment sellers and bankers in the West." *Joint*

a vacuum and any meaningful progress in international development, it says, will not occur outside the context of both broader North/South cooperation and increased assistance from other multilateral and bilateral donors.²⁴⁸ The recent decade has seen only static, and often regressive, activity on these fronts.²⁴⁹

Cooperation in the Field of Commodities

Lomé's mechanism for the stabilization of commodities export earnings (STABEX) has been substantially improved over its predecessors. STABEX has "the aim of remedying the harmful effects of the instability of export earnings . . . of products on which their economies are dependent and which are affected by fluctuations in price or quantity or both these factors."²⁵⁰ Thus STABEX compensates both for general price declines and for production shortfalls, including those resulting from natural causes, such as drought or hurricanes. ACP countries, able to rely on predictable export earnings, are better positioned to avoid disruptions in their development planning. Payments may, with joint ACP/EEC consultation, be used to diversify away from reliance on the commodity in question.²⁵¹

Payments are computed by the difference between actual earnings and average earnings over the previous six years, less 4.5% of average earnings, provided a "dependence threshold" (the minimum percentage that a commodity must constitute of a country's total exports in order to qualify for payments) of 5% has been met.²⁵² These figures are down from Lomé I's 7.5% and 7.5% (2.5% and 2.5% for LDLICs).²⁵³

STABEX has been popular with the ACPs, since transfers have been rapid

Assembly Meets in Barbados, The Courier, No. 114, Mar.-April, 1989, at 4, 5-6.

Former Deputy-Director of Development Auclert has also pointed out that "[t]here are turnkey factory merchants going all over Africa offering the leaders of the countries marvellous (sic) projects on very harsh financial terms." Auclert, *supra* note 134, at 8.

248. *Taking Stock: The ACP/EEC Council Meets in Mauritius*, The Courier, No. 110, July-Aug., 1988, Yellow Pages at II.

249. Development Commissioner Marin recently stated that the "raw materials slump and the debt crisis" are beyond the remit of Lomé. He also pointed out that while there has been a 26% real increase in the amount of aid under Lomé IV, comparable World Bank credits, while showing a 16% increase in absolute terms, had not increased when adjusted for inflation. *Joint Committee in Port Moresby—First Meeting in the Pacific*, The Courier, No. 121, May-June, 1990, Yellow Pages at II.

250. Lomé IV, *supra* note 1, art. 186.

251. Lomé IV, *supra* note 1, art. 209.

252. One percent for least-developed, landlocked and island countries (LDLICs). Lomé has special provisions for least-developed, landlocked and island states (LDLICs) throughout. In addition, Title IV sets out general provisions regarding LDLICs.

253. Lomé I, *supra* note 1, arts. 17 and 19.

and, though heretofore loans, made on highly concessional terms.²⁵⁴ Under Lomé IV, STABEX can only increase in popularity, since there is no longer any requirement to replenish the scheme.²⁵⁵ Exceeding even the expectations of ACP optimists, ECU 1,500m (\$1.025 billion) has been allocated to STABEX over the next five years, a whopping 62% increase over the Lomé III allotment.²⁵⁶ STABEX funds are managed by the Commission.²⁵⁷

Product coverage of STABEX has grown two-fold since Lomé I to include forty-nine of the most important ACP commodities.²⁵⁸ The scheme is intended to compensate for losses on exports to the EEC only, though a derogation procedure exists to compensate for losses to other markets, particularly where LDLICs are involved.²⁵⁹

Some early criticisms of STABEX have been rectified in the later conventions. One author, for instance, pointed to limited product coverage, inadequate funding, long delays between requests for transfers and disbursement, arbitrary administration, and no recourse for appeal in the event

254. The EEC has put into place a much more modest STABEX scheme for the commodity exports of Latin American and Asian least-developed countries to the EEC. *The Stabex System for Latin American and Asian Developing Countries*, The Courier, No. 117, Sept.-Oct., 1989, at 94.

Lomé I, II, and III used a slightly different formula, still involving reference prices, to compute payments.

255. STABEX funds had always been grants to LDLICs. Kibola, *supra* note 50, at 42, had termed the repayment requirement the "vicious circle of Stabex." Payments for subsequent years had been withheld to repay earlier advances. The elimination of the requirement to replenish Stabex eliminates this problem for the future.

As has been noted, ACP debt for total Lomé benefits (including STABEX) constitutes about 1.5-2.0 percent of total ACP debt to all sources. The present Commission of Development, Manuel Marin, recently recommended to the EEC Council of Ministers that the EEC write off ECU 1.467 billion in existing ACP debt, and convert loan amounts not yet committed or disbursed under Lomé I, II, and III (amounting to some ECU 1.6 billion) into grants.

Pointing out that he had obtained the political support of both the European Parliament and the ACP/EEC Joint Assembly, he clearly expressed his expectation that the Council of Ministers would approve this request. "According to the spirit of the Lomé Convention, the Community should not be cast simply in the role of creditor but rather that of a co-partner in development." Marin, *Writing off the ACP Debt to the EEC*, The Courier, No. 125, Jan.-Feb., 1991, at 9.

It may be fanciful, but one still wonders whether Marin in making his recommendation, considered one of the prophet Habakkuk's five woes directed against nations that plunder peoples:

Woe to him who heaps up what is not his own—for how long?—and loads himself with pledges! Will not your debtors suddenly arise, and those awake who will make you tremble? Then you will be booty for them. Because you have plundered many nations, all the remnants of the peoples shall plunder you, for the blood of men and violence to the earth, to cities and all who dwell therein.

Habakkuk 3:6-8 (King James).

256. Lomé IV, *supra* note 1, Financial Protocol.

257. Lomé IV, *supra* note 1, art. 190.

258. Lomé IV, *supra* note 1, art. 187.

259. Lomé IV, *supra* note 1, art. 189.

of an adverse Community determination.²⁶⁰ As mentioned above, product coverage has broadened over time. And, according to a report on a 1990 study, STABEX has actually covered the demands placed upon it for ten of out of its fourteen years.²⁶¹ Resources under Lomé IV are substantially increased. Tighter deadlines for Community response to ACP requests have been imposed²⁶² and a “good offices” procedure, carried out by an expert acceptable to both sides, is now available in the event of a dispute.²⁶³

Criticisms of STABEX persist. The most damning criticism is that the scheme contributes to the perpetuation of the historic division of labor between Europe and Africa in that payments are made only for a limited number of unprocessed, traditional imports.²⁶⁴ ACP efforts to include plywood and textiles under Lomé IV, for instance, were rejected.²⁶⁵ This is somewhat obviated by the ability of ACP states to use STABEX payments in order to diversify away from the commodities concerned.²⁶⁶

The Community is clearly unwilling to consider what would be an admittedly extraordinary step: that of stabilizing export earnings for processed goods. One wonders whether Lomé IV’s provision for the development of PMDT²⁶⁷ of commodities will be utilized if the resulting processed goods are not subject to the protection of STABEX. The circumstances call into question the EEC’s continued commitment to meaningfully advance ACP development.

A second criticism is distributional; some ACP countries benefit much more than others.²⁶⁸ These criticisms are also leveled at the protocols covering specific commodities. STABEX payments have, in some cases, exceeded the EDF allotment of some countries under their national indicative programs.²⁶⁹ They have been particularly important to those ACP countries producing coffee, groundnuts (peanuts), and cocoa, three commodities which experienced particularly steep declines in price during the 1980s.²⁷⁰

260. Ravenhill, *supra* note 9, at 47.

261. *STABEX: from Lomé I to Lomé III—An Analysis of its Functioning*, The Courier, No. 124, Nov.-Dec., 1990, at 8.

262. Lomé IV, *supra* note 1, art. 207.

263. Lomé IV, *supra* note 1, art 208.

264. Gruhn, *supra* note 8, at 17.

265. Watkins, *supra* note 17, at 50.

266. Bouvier, *supra* note 167, at 11, cites a study which surveyed 10 ACPs with a total of 42 STABEX transfers between them. That study concluded that “[t]he vast majority of the funds obtained through the system were used outside the sector on which the application was based.” *Id.*

267. *See supra* note 242 and accompanying text.

268. Kibola, *supra* note 50, at 37. *See also* Bouvier, *supra* note 167, at 13: “Records of the first two Stabexes show that, of the 48 nations eligible, Senegal and Cote d’Ivoire between them received more than a quarter of the transfers and six countries, the two last-named plus Ghana, Sudan, PNG and Kenya, got more than half.”

269. Kibola, *supra* note 50, at 38.

270. Watkins, *supra* note 17, at 44.

Structural Adjustment Support

This article began with an overview of poverty in the South. Contemporary conditions in Sub-Saharan Africa were singled out and two paradigms for development were addressed: structuralism, with its emphasis on import substitution for self-reliant development, and modernization, with its emphasis on export promotion as the engine for economic growth. I noted that import substitution informed the policies of most Sub-Saharan African countries.

The general terms of trade dilemma inherent in traditional North/South trading patterns, which the precipitous decline in commodity prices over the last decade is said to reflect, was offered by some as the leading cause for both Sub-Saharan Africa's persistent underdevelopment and the existing and widespread balance of payments crises within the countries of in the region. Others have advanced failed domestic policy regimes, which kept out foreign capital and competition and distorted the structure of African economies, as well as inefficient, even corrupt, state bureaucracies as the most important factors contributing to conditions on the continent.

Not surprisingly, I didn't resolve this debate. Instead I acknowledged that, whatever the reasons, given the purview of the IMF within the international financial regime it fell to that institution, joined by the World Bank, to sort through balance of payments problems as African governments ceased to be able to borrow from other sources to paper them over. Indeed, such borrowing as did occur has only contributed to the crisis.

The international institutions in question are effectively controlled by a North that is disinclined to take a structural view of underdevelopment in the South. Distortions in the domestic economies, exacerbated by inappropriate governmental policies, primarily account for balance of payments problems. I therefore presented a summary discussion of structural adjustment programs they designed to address these distortions. These IMF/World Bank-sponsored programs have demanded domestic policy reforms in Sub-Saharan African countries, including a shift from import substitution to export promotion, as a condition for the loans necessary to avoid their financial collapse. As Sub-Saharan African governments have found, "the only way to get such support is to sing in the free-market choir."²⁷¹ The Bretton Woods institutions have become receivers for a bankrupt South.²⁷²

271. Pollen & Cockburn, *supra* note 76, at 226.

272.

In recent years, [African] public administration structures have been increasingly burdened and dominated on the one hand by the ever-growing concern and preoccupation with short-term crisis management . . . and on the other, by the increasing role of foreign experts and managers in national economic decision-making in Africa.

With the unending rounds of programme reviews and protracted negotiations on

I then shifted to a focus on the historical evolution of Europe's relations with Africa, noting a break with established colonial patterns at the outset of Lomé I. The requirement for reciprocal trade preferences was dropped by the EEC in the 1970s as it grew to appreciate its mutual dependence with former colonies, particularly with respect to ACP strategic commodities. Even after events made clear that threatened shortages were not to materialize, the EEC has continued its contractual relations with ACP countries, broadening and deepening its commitments with each subsequent Lomé convention. Next, some of Lomé's more important provisions were examined in detail, pointing out various strengths and weaknesses. Admittedly the reality of Lomé's impact on ACP development has not lived up to the vision of its *acquis* with the ACP countries.

And so I come to my final topic before concluding this article, which concerns Lomé's newest provisions. The Financial Protocol reserves ECU 1,150m (\$1.5755 billion) from the EDF to provide structural adjustment support to ACP states over the next five years.²⁷³

Unlike IMF/World Bank structural adjustment assistance, Lomé funds for this purpose are entirely in the form of grants. These grants may be used for a wide variety of purposes, including sectoral and general import support programs, grassroots programs, and capital projects and programs.²⁷⁴

The Community and the ACP States "see the need for urgent action and share the view that short and medium-term policies must reinforce the long-term development efforts and goals of the ACP states."²⁷⁵ Hence, structural adjustment support ought to "improve the social and economic well-being of the population as a whole"²⁷⁶ and "ensure that adjustment is economically viable and socially and politically bearable."²⁷⁷

"[T]he ACP States shall bear primary responsibility for the analysis of the problems to be solved and the preparation of reform programmes"²⁷⁸

"[T]he right of the ACP States to determine the direction of their development strategies and priorities shall be recognized and respected"²⁷⁹

The ultimate financing decision rests with the Community subject, as

policy adjustments that many an African country has had to undertake . . . as a precondition for balance of payments support and debt relief, the scope for independent policy-making and national economic management in Africa has gradually diminished and narrowed. Policy-making in most of Africa today is essentially on a short leash.

Glaser, *Adjustment, An African Response*, The Courier, No. 117, Sept.-Oct., 1989, at 16.

273. These are set out in Lomé IV, *supra* note 1, arts. 242 through 250, under the rubric "Structural Adjustment Support."

274. Lomé IV, *supra* note 1, art. 224.

275. Lomé IV, *supra* note 1, art. 243.

276. Lomé IV, *supra* note 1, art. 243(b).

277. Lomé IV, *supra* note 1, art. 243(g).

278. Lomé IV, *supra* note 1, art. 244(a).

279. Lomé IV, *supra* note 1, art. 244(e).

always, to Lomé mechanisms for consultation and dispute resolution. "All ACP States shall in principle be eligible for structural adjustment assistance depending on the scope of the reforms being undertaken or contemplated"²⁸⁰ but "ACP States undertaking reform programmes that are acknowledged and supported at least by the principal multilateral donors . . . shall be treated as having automatically satisfied the requirements for adjustment assistance."²⁸¹

These Lomé IV excerpts raise a key question: Will Community support for structural adjustment rise to something more than IMF/World Bank conditionality? Certainly many in the ACP countries have asked precisely this question. The Community's response has been an unequivocal "yes," though only time will tell whether this proves out in the practice of administering Lomé IV's provisions.

Manuel Marin, EEC Vice-President and Commissioner for Development, in a speech delivered at the signing of Lomé IV, made an oblique reference to IMF/World Bank structural adjustment as he observed that

a number of structural adjustments programmes were not successful or experienced serious difficulties due to political and social obstacles stemming from an approach which was too rigid and too focused on purely financial and economic considerations.

Thus the principles on which the new Convention is based require the process embarked on to be not only economically viable but socially and politically sustainable.

It is also important for this process to be integrated into the long-term development objectives chosen by the ACP States concerned.

. . . .

I am confident that our special relations will make a decisive contribution to the improved conception and implementation of structural adjustment programmes.

This, in my opinion, is a unique occasion: for the first time there has been a "North/South Agreement" on the philosophy underlying structural adjustment.²⁸²

While negotiating the provisions in Lomé IV, the Commission's Director-General for Development, Dieter Frisch

280. Lomé IV, *supra* note 1, art. 466-1.

281. Lomé IV, *supra* note 1, art. 346-2.

282. Address of Manuel Marin, Vice-President of the European Commission and Commissioner of Development, *transcribed in The Courier*, No. 120, Mar.-Apr., 1990, at 8-9.

promised, with regard to the austerities of the programmes proposed by the World Bank and IMF, that the Community would strive to make [structural adjustment] policies differentiated, to ensure that they took the social dimension into account, were spread over a longer period and were, to a greater extent than at present, evolved by the countries concerned. He emphatically denied that Europe would “simply be dragged behind the chariot wheels of the World Bank and the IMF.”²⁸³

The Commission has backed up these promises in the growing number of contacts they make with IMF/World Bank officials.²⁸⁴ The Commission coordinates with these institutions “without being at their beck and call.”²⁸⁵ It is also significant that in the area of structural adjustment, as in debt,²⁸⁶ the Commission sees itself as a willing moderator in negotiations between an ACP country and the IMF and World Bank using, in Manuel Marin’s words, the “institutional weight of the European Community.”²⁸⁷

283. Dieter Frisch Goes to Bonn and to London, *The Courier*, No. 113, Jan.-Feb., 1989, at VII.

284. Michel Camdessus, Executive Director of the IMF, visited the Commission in late 1989, to discuss Lomé IV’s structural adjustment efforts with Commission officials, particularly the provisions designed to address the social costs of adjustment. These officials attribute the visit to the fact that the EEC “is becoming a major actor in discussing sectoral and macro-economic policies. This needs coordination with other major actors, notably those taking the conditionality approach.” *Michel Camdessus, Executive Director of the IMF, at the Commission*, *The Courier*, No. 118, Nov.-Dec., 1989, at X.

The visit, according to Director-General for Development Dieter Frisch, “is evidence that the IMF is now considering the social dimension, major development objectives such as food security, [and] moving away, hopefully, from too stereotyped an approach [to structural adjustment].” *Id.*

The Commission has clashed with the IMF over its focus on food self-reliance under Lomé III. The Commission has taken the position that local producers must be protected from cheap imports to ensure food security; the IMF has predictably insisted that the market determine prices. Thus the “Commission supported Niger’s imposition of a import tax and compulsory take-up of local production by licensed importers in order to protect rice-growing projects from the effects of lower priced imports.” *Watkins, supra note 17*, at 46.

285. Auclert, *supra note 134*, at 9. Auclert, a former Deputy Director-General for Development, goes on to say that

[EEC-IMF/World Bank] coordination is such that we can influence the decisions. Because the World Bank people have realised that the Community, with its local presence and knowledge of local situations, has something to say and is not just a blinkered technocrat.

Id. In this same interview Auclert claims that the World Bank has inquired about and has copied EEC procedures for establishing a presence in the countries of Sub-Saharan Africa. *Id.*

286. See *supra note 255*.

287. Marin, *supra note 56*, at 5. He hastens to add that

it mustn’t be seen as a fundamental source of antagonism with the Bretton Woods institutions. Coordination is called for, coordination on reasonable foundations.

Only time can tell what our intended part will be. I want to negotiate permanent systems of contact with the IMF and the World Bank, so we can do our best

Structural adjustment is a fact of international economic life for most ACP countries. The Commission has been sympathetic to, even protective of, the ACP states undergoing austerity. It recognizes that unique problems in Africa, such as the absence of a viable private sector or the need to provide food security or other social goods, militate against the knee-jerk application of policies designed to pry open African economies. There are heartening indications that the Commission will continue to support ACP countries experiencing the process.

CONCLUSION

The Moth and the Flame

Over 25,000 words have here been put to paper, yet terrible truths remain obscured. In the time that it takes to read all these words many hundreds, even thousands, will have perished through violence, hunger, pestilence, and disease. Dwellings razed, the earth brutalized, justice denied, appalling indignities inflicted, and I daily manage to avoid, rationalize or forget these terrible truths. The temptation is great to throw up one's hands and get on with one's life. Only death or denial provides relief from the awesome consequences of global inequalities.

Still, like a moth to a flame, I am irresistibly drawn to the crisis in the international economy. What insight I have gained from my study frightens me. It is useless to those who are suffering. I feel the moth.

Lomé IV's contributions to alleviating international inequality are pitifully modest and incomplete. What can be admired are those elements in the convention which contribute to a more just and equitable world order. They ought to be better publicized so that present and future opinion leaders become aware of some alternatives to the dominant paradigm in international economic relations. Utopian or revolutionary musings seem less useful, at least where one chooses to participate in economic life. One takes one's inspiration where one can.

There is no perfect solution to global inequality, but there are surely better and worse ways of living with it. When contrasted with contemporary and past patterns in North/South relations, the Lomé acquis, and the ACP/EEC development cooperation which it has fostered, at least points in the direction of a better way.

without renouncing what the Community believes to be just, fair and reasonable.

Id. at 5, 6.