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PAPER PRESENTED TO THE DEPARTMENT OF PUBLIC INTERNATIONAL LAW,  
UNIVERSITY OF GLASGOW, AUGUST 1986, AS DISSERTATION FOR  
THE MASTER OF LAWS DEGREE: INTERNATIONAL LAW AND DEVELOPMENT.

TITLE: REGIONAL INEQUALITY - THE FAILURE OF THE INTERNATIONAL  
LAW OF DEVELOPMENT.

A STUDY OF THE FORMATION AND INSTITUTIONALISATION OF  
DEPENDENCE RELATIONS BETWEEN THE REPUBLIC OF SOUTH  
AFRICA AND BOTSWANA, LESOTHO AND SWAZILAND AND THE  
ROAD TO ECONOMIC INDEPENDENCE.

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## INTRODUCTION

Nearly twenty years ago prominent international jurist Louis Henkin wrote:

".... to many an observer, governments seem largely free to decide whether to agree to new law, whether to accept another nation's view of existing law, whether to comply with agreed law. International law, then, is voluntary and only hortatory. It must always yield to national interest. Surely no nation will submit to law any questions involving its security or independence, even its power, prestige, influence." (How Nation's Behave 1968, p.26).

To the student of law this statement surely must mean that there is no international legal order governing the behaviour of states. To the student of legal philosophy it surely must give credibility to what many international jurists regard as sacrilege to the profession the so called "Austinian Handicap", which maintains that international law is not law at all because laws "properly so-called" are in effect commands emanating from a sovereign who receives habitual obedience but who, in turn, does not owe any such obedience to any person and, as such, international law does not qualify as law "properly so-called". On the other hand the European student of international law dismayed by the apparent futility of her study may find solace in other approaches to the question of the existence, non existence or applicability of international law. She may, for example, choose to accept the formulation proposed by Kelsen that there is an international legal order based on threats of sanctions should a state violate a norm of international law. Of course, faced with questions about the authority of the legal norms she so validates, she may become bewildered by the fact that Kelsen proposes that authority is derived from some untraceable "higher" norm. Or, she may follow the teachings of Hersch Lautepacht who accepting the Austinian test maintains that:

"It is probable that the various shortcomings of international law, in relation to the constituent elements of the Austinian conception of law, are not necessarily destructive of the legal nature of international law so long as they are conceived as associated with a transient stage of immaturity which humanity, under the increasing impact of the interdependence of the modern world, of the growing collective sense of morality and of the realization of the consequences inherent in the absence of an effective international legal order, is destined to overcome by conscious effort." (Collected Papers Vol. 1 p. 12).

Lauterpacht's sense of optimism about an international legal order, though appealing, is yet to be realised as the student will be aware of a growing sense of disunity in the world today.

The approaches towards international law are many and varied. What I have tried to demonstrate briefly above are just some of the numerous contentious points pertaining to questions about international law and an international legal order. This essay is not about the theory or philosophy of international law. It is not about whether international law is law nor does it propose any definition of the same. Being a student of international law these questions I have encountered. I have been struck by the realism adopted toward the subject by Henkin, among others. I have been dismayed by the theorising and abstract reasoning of others such as Kelsen. However even the realism at the end of the day tends to sound like an apologetic defence of the role international law has in relations between states. New approaches towards the subject end up as criticisms with not much to offer by way of new direction (for example see Tarullo or A. Carty). The increasing polarisation between various states of the first, second and third worlds does not seem to have much patience for such exercises. As a student of international law coming as I do from the third world and faced with the gross inequalities existing between the third and first worlds the task seems not to engage in Eurocentric analysis of international law but to tackle the questions arising out of this inequality. The basic realisation of international law is that it claims to function equally for all states, that is, international law grants the same rights and imposes the same duties on all states. The question left open is whether the equal exercise of these rights and duties is possible under the present climate of international

relations. Faced with questions of the applicability of pre-existing norms to new states, some international lawyers maintain that upon entry into the international society there is some kind of automatic or superficial mechanism which renders these new states bound by pre-existing law. For example, Henkin readily accepts that the "reasons" new states accept international law are that they came into an established system accepted by all nations; "...acceptance into that society as an independent equal was proof and crown of their successful struggle", and ".... they adopted traditional forms in international trade and the growing co-operation for welfare of which they have been the principal beneficiaries...." (Henkin p.117). To the observer from the third world Henkin misses the very essentials of reality. Approaches towards questions of equality and benefit cannot be undertaken without an explanation of what status, what rights and what nature of relations these new states had as colonial entities and how these changed (if they did) during the transition from colony to "independent" state.

This essay is about a group of these new states and their relations with a regional power. It seeks to explore through a historical exposition the nature of these relations. It adopts as a basic tool of analysis contemporary political-economic theory. It seeks to destroy or explode the myth of the "sovereign equality" of states and show the effects of the ideological dimension (through historical progression) of the creation of states. It moves away from the legal conception of the sovereignty and equality of states. The thesis adopted is that relations between states are essentially determined not by legal concepts but by the political-economic climate.

There are three main reasons for undertaking such a study. The most paramount of these is to fulfill a theoretical deficiency in the core subject of the course - the international law of development. The second is to found an understanding of why rules and institutions created through the process of history are deemed legitimate and are acted upon as such. The third reason is that, coming from Swaziland, an exploration of the history of South Africa gives a better understanding of the reality of my country's problems vis a vis South Africa.

For the student of law, a venture into the study of international relations using political-economic theory as the basis of understanding is by no means an easy task. It is a venture not made in the least easier by the lack of a theoretical background necessary to grasp the variants of political-economic theory at the grassroots thus enabling the formation of the necessary tools of analysis to be applied to the study. Having studied the law of development, this essay is designed primarily to meet that other part of the course, development. A study of rules per se cannot give one the correct perspective of international relations and in particular development. Traditionally the issue of development has been undertaken by other disciplines and not the law. The result has been a study of international rules governing development without knowing why the rules have been shaped as they are today. This I feel warrants a look at other discipline - political-economy - which so much criticises the foundations of international law as a dog without teeth. This is because criticisms by political scientists can no longer be ignored, especially when a great number of international lawyers agree that international law has serious limitations in its role as a regulatory system.

There is no doubt that international law has contributed a great deal towards maintaining orderly procedures in trade and peace. However there is also no longer any doubt that it has failed in many respects too. The post-second world war era has seen rising despair amongst the populations of the third world brought about by increasing poverty, famines, armed conflicts and unjust terms of trade. This prompts a fundamental change in the way international lawyers have perceived the foundations of international law. It is no longer wise to rely on circular "positivist" or "naturalist" arguments for the foundations of norms of international law. This essay proposes to look at the creation of rules through the historical dimension. It also seeks to show that any attempt to formulate new law cannot occur if this dimension is not taken into account. States behave as they do because of self-interest and not because of norms of international law. Therefore the belief expressed here is that in order to find the reasons behind regulatory procedures one must look to the material foundations as opposed to abstract notions. The ongoing debate about



whether or not international law is law or whence international law derives its authority is, in my view, a sterile one. On the international fora rules are broken just as easily as they are made. They do exist and states do adhere to them when their interests are not at stake - for example the rules governing diplomatic immunity are generally observed. However, despite accounts to the contrary, rules themselves do account for much of the inequalities which exist between states. They account because they themselves have been founded upon an unequal international system. They will not change that system because it is the system which must change before the rules change.

### Format

The format adopted in this essay is quite straightforward. The paper itself is divided into three parts. Part I attempts to tackle some of the theories pertaining to the issue of development. For this purpose an outline of orthodox Western development theory is examined. A critical look at this theory leads us to look at three prominent dependency theorists who begin from a different premise than that of Western orthodoxy and reach a different conclusion. Lastly a modes of production approach is adopted. This overall approach has been chosen because of the nature of the study. It gives a different perspective to international relations and emphasises the empirical necessity of studying such relations.

Part II is what may be said to be the essence of the essay. It traces the development of capitalism in South Africa. Through a historical survey it seeks to answer the "why" of the creation of the South African state and the consequences of this historical process on the neighbouring states of Botswana, Lesotho and Swaziland (BLS). An attempt is also made to project the realities and reasons for the creation of the BLS as nation states. Because of the vast nature of the content of history - beyond the scope of this paper - there is no attempt to cover everything. The reader may therefore feel a bit robbed as some pertinent aspects of history are left out. However, when viewed in context it may be noted that Part II is primarily concerned with the rise of South Africa as a hegemonic power and the related impact of these historical events on the BLS states. This leads us to look at the foundation of a legal institution

based upon a factual historical approach - the Customs Union Agreement between the BLS and South Africa (reproduced as appendices I and II).

I have termed Part III a conclusion to the paper. This so because it seeks to find the answers to the questions raised in Part II. It looks at the efforts of third world states to combat inequality between them and the developed world. A discussion of the New International Economic Order is undertaken alongside a look at the role of international law in the process of change. The conclusions reached in this respect may be found to be controversial but they maintain the thesis of the essay. Part III also looks at the regional efforts of the Southern African states to combat South African hegemony. The emphasis of Part III is on applicability of the institutions rather than their content.

The sources used in the essay are both of a primary and secondary nature. Limitations of time and availability of primary material hindered any attempt to focus on exclusively primary material. For Part I, I made considerable use of Randal and Theobald's Political Change and Underdevelopment both to introduce me to the subject and serve as a guide to the methodology used in political-economic theory. The historical survey adopted in Part II is undertaken with the use of mainly secondary materials as a study of history using primary documents would have meant considerable financial and time commitments, both of which are in scarcity. However in the whole essay I have tried to express in as lucid a manner as possible the opinions of various writers coupled with my own criticisms and opinions.

The format adopted for references is based upon limiting footnotes. Minimum use has been made of footnotes with references to sources being placed in brackets. A list of quoted material is provided at the back of the essay and is divided into the three parts of the paper. For long quotations the standard is to sub-paragraph them and for one sentence quotations to include them in the original paragraph. Authors and texts are indicated and where there is continuous use of the same text mention and page reference are given thereafter. The list provided at the back should suffice to indicate author and text if there is doubt.

## Acknowledgements

Thanks to:

Dr. A.J. Carty for leading me through the avenues of a highly complex and sometimes impossible course.

Bandile for the incentive.

Mary for her patience and time spent typing this script.

PART I. IN SEARCH OF AN OPERATIONAL THEORY:  
Dependency, Modernisation or Modes of Production

The purpose of this part of the paper is to try and identify a theoretical base on which to found a methodology which can clearly outline the internal and external political and economic relations of the states in the Southern African region. For this purpose the various political-economic theories pertaining to development, under-development, dependency and the more recent "modes of production" approach, will be examined. It is not the purpose here to embark on a systematic in depth analysis of these theories. The aim rather, is to outline the themes of such theories and through a process of elimination reject those which prove futile to the study whilst accepting from others that which is applicable.

(i) Modernisation Theory and Economic Development Models

The proliferation of the newly independent states in the 1950's and 1960's warranted a broader perspective for analysing international political and economic relations than that which existed. The task of inclusion of the former colonies into political theory was initiated by Western (capitalist) social scientists. Their task was to formulate a theoretical basis upon which could be shaped the course of Western influence and policy. The result of this exercise is what is called "modernisation theory". Being based upon bold rations of the "march of progress", and containing a marked strain of evolutionary optimism, the underlying philosophy of the theory was that the former colonial states would, through the mediums of industrialisation and adoption of Western social concepts, move through a transitional stage from traditionalism to modernity. Thus a model based on the Western industrialised state was drawn up to serve as the goal towards which the third world state must strive.

Traditionalism is identified as that stage in which society cannot expand production beyond a certain ceiling: these traditional societies are essentially agrarian with hierarchical social structures where family and clan connections play a central organising role allowing little scope for social mobility which is essential for high productivity.

In order that they become "modern" these societies have to initiate a "take off" towards the goal of modernity. Rostow sees this initial take off as emanating from the ability of the traditional society to utilise modern scientific know-how. The grasp of modern scientific method is then translated by the society into industrial and agricultural production. The insight into modern science is provided by the intrusion of a more developed society into the traditional one. This intrusion in turn sets off a chain reaction whereby social and economic concepts of production are changed from the traditional static modes to become those of economic and social development.

This development is maintained in a period of "sustained growth" by increased investment into the economy. This investment process takes the form of re-investing a portion of national earnings. To maintain the growth of the economy consumption is suppressed in order to facilitate re-investment. After a certain period of time, on average about sixty years, Rostow maintains that the drive toward economic maturity is attained and the goal of mass consumption reached (Randall and Theobald. Political Change and Underdevelopment, p.19).

Alongside this framework of economic development runs the other strain of modernisation theory which seeks to complement it; that of political modernity. This focuses on the political framework in which economic development is supposed to take place. Political modernity assumes that there will emerge a political elite in the non-industrialised state which will take upon itself the task of social mobilisation necessary to effect economic development. Faced with problems of state building, such as the need to create an efficient bureaucracy, this elite will draw, through a process of absorption (political development), its ideas from the political model presented by the Western industrialised state. Through this process the political elite thus gradually terminates the existing traditional social structures and styles.

Modernisation theory, faced with the criticism that it has no realistic basis for assuming that the non-industrialised state would automatically follow the same path of political and economic development experienced by the industrialised states of the West, sought to justify its assumptions by reference to philosophical theory about the rational

process of man (Moore pp. 7-17). The premise is that the individual, within a certain society and together with other members of that society, will rationally strive to maximise welfare and utility. This utilitarian theorising was thus in conformity with the desire to rationalise transitional processes and explain away the fundamental differences between the "modern contemporary" state and the "traditional" one.

By the late 1960's modernisation theory had come under increasing attack from all quarters of political theory and economic strategy reasoning. Not only was its abstract notion of nationality criticised (Moore pp. 15-17), but the most damning of the criticism was directed at the lack of realism about the sphere in which it was to operate. The idea of "staged" development leading to mass consumption could no longer be defended given the actual nature of relations between the "traditional" society and the industrialised state. The theory could not explain the acute dependence of the third world on the West; this dependence having been prompted by foreign investment and the transfer of technology. The political elite idea could not suffice to explain the gross social inequalities which were developing between the internal social strata of the third world state. Social mobilisation was being undertaken but only involved a tiny percentage of the population. Rostow's idea of re-investment of national earnings floundered upon the reality that most investment taking place was foreign and thus foreign controlled, with the goal, not being that of development, but of profits. It would seem that the failure of modernisation theory to grasp the implications of economic dependency is largely due to the initiation of a study of international political-economic relations based on the need of Western governments to found a legitimate base upon which to formulate strategy and policy.

Given this analytical deficiency of the modernisation theory and the value of Western scholarship towards formulating strategy and policy by governments, more sophisticated tools were employed. This took the form of what is called economic development strategy. Economists, conceding that underdevelopment was a symptom of international economic relations, and that dependency was the consequence of international trade, sought to solve the problem by employing Western economic theory to international economic relations. The two approaches employed were the neo-classical equilibrium model and the post-keynsian growth model (FROBEL, HEINDRICH, KREYE and SUNKEL p.10).

The main aim of these approaches was not to explain underdevelopment as such but to formulate strategies through which underdevelopment could be overcome. This, in effect would solve the problem of analysing the effects of foreign investment which the modernisation theory had not addressed itself to. For both models the starting point is to measure the growth of an economy using the Gross National Product (GNP) as the main global indicator. The GNP of as many countries as possible is taken and an ordered listing of these countries made with the countries having the highest GNP at the top of the scale and those with the lowest at the bottom. A dividing line is then drawn between the high GNP countries and the low GNP ones. Those with the high GNP are thus termed "developed" and those with the low GNP "developing". The GNP variable is said to be independent and as such is a true indicator of global incomes. The low income countries being low-productivity states have to follow certain strategies of development in order to become high productivity societies. If these strategies are followed then the problems of underdevelopment will be overcome.

How then do you formulate such strategies? The starting point is not to analyse underdevelopment and its causes and effects but to maintain the GNP as the yardstick to measure "actual" development. The GNP variable when correlated to numerous other indicators, such as the rate of investment, production, employment, literacy rates, degree of urbanisation, number of patients to a doctor etc. is used to interpret the state of the economy. This interpretation is then used to determine the structural changes necessary to that economy. The structural changes once identified, then outline the rate and type of investment needed, the educational and health policies to be adopted, and policy of the depth of agricultural mechanisation and rate of urbanisation. This, therefore, represents what is called development strategy which when adopted pinpoints the path towards a mass-consumption society. (Frobel, Heindrichs, Kreye and Sunkel, pp.9-11).

Looked at this way, this model of economic development does not seem to offer much by the way of an alternative to modernisation theory. Its refusal to address the questions of dependency and underdevelopment underlines the almost heretic devotion which Western social scientists have with equating the growth of an economy alongside the same lines as Western economies. The strategy refuses to acknowledge that

investment may be the main cause of underdevelopment. It refuses to acknowledge that the third world can never undergo the same historical experiences as those of Western economies. The use of the GNP as a global indicator is made with an almost sacred belief that it is truly an independent variable. Faced with questions of GNP per capita and its relationship to the prosperity of the majority of the population economic development strategists retreat to answers of internal distribution as if there were no ties between the internal social classes and the state of the world economy. The analytical poverty of Western (Capitalist) theories and strategies warrants their total rejection as a base for this paper.

However, because the modernisation and economic theories laid the foundations and sought to explain the policies and strategies of Western governments they must not be dismissed entirely. They help us to understand why the world economy is in the state it is in today. Structural changes, based upon policies of the expansion of the capitalist mode of production, did occur in the third world on a large scale. The alleged goal of these strategies was to reduce the gap in the standards of living between the industrialised Western states and the third world. However it soon became apparent that the supply of foreign capital, foreign expertise, foreign technology, foreign values, culture, ideology and weapons was not contributing to a rise in the standards of living of the majority of the population in the third world. The distribution of income had actually become more unequal, social standards-nutrition, education, housing, health and social security - had not improved. These were the consequences of a transplant of capitalism from the first to the third world. They could no longer be explained away by notions of abstract economic development. It was thus the task of non-capitalist theorists, philosophers and academics to undertake a systematic study of international economic relations. The two main theories to come out of this exercise were the Dependency theory and the Modes of Production analysis.



(ii) Dependency Theory or World-Systems Analysis to Modes of Production

The primary focus of dependency theory is on the international economic order. Its main premise is that no society can be looked at in isolation that is, isolation from the international economic order. Dependency theorists assert that the condition of underdevelopment is precisely the result of the incorporation of Third World economies into the world capitalist system which is dominated by the industrialised nations of the West.

In examining the nature and scope of dependency theory reference here shall not be made to the numerous variants which have emerged in the last two decades. Reference shall be made to three prominent theorists in the field; Johan Galtung, Andre Gunder Frank, and Immanuel Wallerstein. An outline of the salient points of each of their perspectives shall be drawn. Johan Galtung's theoretical framework is discussed first. It will serve to introduce some of the terminology and also provide us with a model outline of method used in dependency theory.

Johan Galtung identifies the international economic order as one which is essentially imperialistic by nature. Imperialism is a relationship which is conditioned by the domination of one nation over another. For this purpose Galtung sees the world as being composed of two main parts: a dominant part which represents the developed nations and a dependent part which is comprised of third world nations. The relationship between the two parts consists of the dominant nation establishing a bridgehead in the dependent nation.

The dominant nation is called the Centre and the dependent nation the Periphery. Both Centre and Periphery have their own centres and peripheries. The relationship between the two is one which involves a link between the Centre and the centre of the Periphery. There is a harmony of interests between the Centre and the centre of the Periphery. However, there can be observed a disharmony of interests between the centre of the Periphery and the periphery of the Periphery. There is also a disharmony of interest between the Centre and the periphery of the Periphery.

The disharmony of interest, to which Galtung refers can be seen by measuring the "living conditions" in both the Centre and the Periphery and also between the centre and periphery in the Periphery. On the other hand, the harmony of interest which prevails between the Centre and the centre of the Periphery does so because the living conditions are more or less the same. The living conditions can be measured by using indicators such as income, standards of living and quality of life. As long as there is continuity in the gap between the living conditions in the periphery of the Periphery and the Centre, there will remain constant disharmony of interest between the two.

Given this totally abstract notion of dependency one would be tempted to dismiss it out of hand. However Isaacs (from whom this outline is derived: Dependence Relations between BLS and the Rep. of South Africa, Chapters 1 and 2 ) points to two mechanisms, five types and three phases of imperialism which Galtung explores in order to make his model seem less abstract.

The first mechanism employed is that of Vertical Interaction Relations. It assumes that there is a reciprocal relationship between the Centre nation and the Periphery. This relationship leaves the dominant nation in a far better position than the dependent nation. The relationship is one which involves asymmetrical exchange. The clearest example of asymmetry is to be seen in trade where the Periphery exports primary products to the Centre. The Centre, enjoying an advanced level of processing capability, sells the primary product in the form of manufacturers back to the Periphery at inflated prices.

There is thus a processing gap which exists between the Centre and Periphery. This gap results in spin-off effects whose consequences are enormous and far-reaching. For the Centre they are generally positive, manifesting themselves on every level; economic, military politically and culturally. For the Periphery they are largely negative resulting in strengthened dependency on the Centre. These highly differential spin-off effects (to be discussed below) are the major source of inequality between Centre and Periphery.

The second mechanism is called the Feudal Interaction Structure. This reinforces and maintains the Vertical Interaction Relations: in effect, it is the structure within which the VIR takes place.

It assumes that because of the VIR there is no interaction between the Periphery and the Periphery, that is, between dependent nations. It also implies that there is no multilateral interaction between the Centre and its Periphery with other Peripheries belonging to other Centres. What the Feudal Interaction Structure entails therefore, is a monopolisation by the Centre of any potential relationships the Periphery may have with other nations.

The consequences of the feudal relationship is that there is a concentration of trade partners with the Periphery having most of its trade with its Centre, and a concentration of commodities, with the Periphery having to export one or two primary products. The effect of these consequences is a relationship of economic dependency between the Centre and the Periphery. This economic dependence is a result of political strategy by the Centre which ensures that it is protected from the Periphery by means of the process of divide and rule.

The five types of imperialism outlined by Isaacs are economic, political, military, communication and cultural. The extent and nature of the relationship between the Centre and the Periphery will determine the types which occur and the degree to which they manifest themselves as a whole of imperialism.

There are various inter-relationships which can be observed between these types of imperialism. These inter-relationships manifest themselves as sets of spin-offs and spill-overs. A spin-off effect would occur where for example the Centre exchange tractors for oil. In this case it develops a tractor production capacity and one possible spin-off effect is a tank production capacity. This becomes a spill-over effect the moment that tank producing capacity is converted into military imperialism. More examples of spill-over effects may be where political imperialism is converted into economic imperialism by dictating terms of trade; communication imperialism to cultural imperialism through the regulation of the flow of information, cultural imperialism to economic imperialism by means of technical assistance processes.

Where all the five types are operative at a given period "perfect" imperialism occurs. However should one or some of these types show

signs of breaking up, especially the political and economic types, military imperialism can be activated to resume the status quo.

Galtung defines three phases of imperialism which occur in different periods of history: colonialism, neo-colonialism and neo-neo colonialism. Colonialism is the past period in which the centre in the Periphery was composed of people who came from the Centre to occupy and dominate the Periphery. Neo-colonialism is the present or contemporary phase. This phase is characterised by indirect control of the Periphery by the Centre through various international organisations. There are five types of such organisations which in turn represent the five types of imperialism; economic: private or governmental multinational corporations; military: various systems of military alliances and treaties and organisations; communication: shipping and air transport companies and international press agencies; cultural: international and non-governmental organisation; political: many of the international governmental organisations (Isaacs pp. 7-8).

The third phase represents the future. Here there is a more direct control of the Periphery by the Centre. With the sophistication of communication and transport systems, the centre of the Centre will be able to interact rapidly with the centre of the Periphery without having to exercise control via international organisations or without the need for physical occupation.

Even though Isaacs uses Galtung's theoretical model as the basis of his study of the Southern African periphery - centre relations, he does see the danger of using such a model to explain concrete situations. He notes that Galtung is highly a-historical in his approach. The model does not answer fundamental questions presented by history. In a very abstract manner it mentions three phases through which imperialism develops. These phases, as presented, seem to move automatically from one into the other. The model does not seek to answer questions as to how and why these phases occur.

However, in my view, the main problem with Galtung's model is the fact that there is a marked lack of an analytical framework defining the actual make-up of the operative groups in both Centre and Periphery. In other words, the model does not give us a specific role analysis of the groups and/or classes functioning within both Centre and Periphery.

One is left with the impression that it is sufficient that class analysis be based upon uncompromising units; units whose status within imperialist relations are to be seen in the measurement of "living conditions". The tests or indicators for the measurement of such living conditions are themselves dubious at best. Without a clear definition of their respective roles in the Periphery, how is one to measure things such as income. For example it is a well known fact that within Periphery societies there are subsistence farmers who may constitute up to seventy percent of the population. These subsistence farmers are engaged to mass-self consumption and it may be an impossible task to measure their incomes, let alone their standards of living. In Southern Africa the issue of seasonal immigrant labour makes such a task even more daunting.

However, despite these faults, there is an appealing significance in the manner in which Galtung treats the imperialistic relationship between the Periphery and Centre. The significance lies in the mechanisms which he employs in order to explain the nature of the relationship. The approach, though a-historical, does present an intriguing and fresh view of the world. The spin-offs and spill-overs as consequences of Vertical Interaction Relations and the treatment of organisations as being conveyors of dependency relations in the contemporary period theoretically can be employed effectively.

One of the earliest pioneers of dependency theory is Andre Gundy Frank. He like Galtung adopts an analytical approach which divides the world into two main parts. He identifies a world capitalist economy which he calls a "world metropolis". In this world metropolis we have a Centre (such as the United States and its governing class), which has its international satellites. These international satellites in turn play the role of national metropolises and are linked up to provincial satellites. The system works in such a way that there are economic links extending from the very centre of the capitalist system down to its furthest periphery. This whole system is "characterised" by close economic, political, social and cultural ties between each metropolis and its satellite", (Randall and Theobald p. 108).

The sustaining factor of Frank's system is its monopolistic structure characterised by each metropolis exercising a monopoly over its satellite. This monopolistic structure involves what may be seen today as the appropriation of the surplus value of the satellite by its metropolis. Thus the appropriation of surplus value created by the dependent world is what, in effect, sustains the capitalist world economic system.

The world capitalist economy, Frank argues, is one which can only be explained through a historical approach. As he puts it, "if the essentials of past capitalist development are missed we cannot possibly understand the essence of contemporary and future historical development ....., it is absolutely essential to understand the present through the past, and to understand both the past and the present in terms of worldwide relations within the development of a single world economic system (Frank, Crisis and Transformation of Dependency in the World System, 1980 p. 187).

The development of capitalism, Frank argues, did not take place in isolation but was predicated on the progressive incorporation of the various economies outside Europe. This incorporation due to European economic and political expansion since the fifteenth century, resulted in the now underdeveloped countries being drawn into a capitalist world economy and following a single stream of world history.

The crux of Frank's methodology is summarised by him in the following words;

"If we try to understand capitalism and the history of capitalism as being based simply on Europe or Britain, and if we try to find a transition from feudalism into industrial capitalism at the end of the 18th Century and then analyse its spread from one place to another, we are missing the very essentials of historical and contemporary capitalist development (Frank, Crisis and Transformation, p. 187).

For Frank, the incorporation of the non-European nations into the world capitalist economy is essentially the reason why the Western world was able to develop. That is, the development of the West was made possible by the underdevelopment of the economies of Asia, Africa, and Latin America.

According to him, this underdevelopment is, in turn, facilitated by the dependency links between the Metropolises and the satellites. Dependency links are created through the appropriation of surplus value by the metropolis. Appropriation is ensured by the maintenance of a steady international division of labour and an advanced technological base in the metropolis.

Even though Frank suggests a concrete look at world historical interaction in order to understand dependency relations, which is a move away from Galtung's theory, one cannot help but note that he does not seek (as Galtung does) to engage questions relating to the role of the governments, bureaucracies and militaries; the organisations which would seem to be at the centre of any manifestation of a capitalist mode of production. However one must note that for Frank, change is on the international fora; one cannot engage in a study of change based upon internal capitalist development or the development of the state apparatus. For Frank there can be no independent or autonomous capitalist development in the satellites. This view serves to dismiss the traditional Marxist analytical model which suggests that with the autonomous development of capitalism the opposing classes will clash internally resulting in the overthrow of the dominant class. Even though Frank bases his model upon the Marxist notion of the theory of value he rejects the notion of class struggle as a basic tool of change. For him there is one world capitalist economy in which there is development in the metropolis and underdevelopment in the periphery. Autonomous development can only occur with the politicisation of the masses in the satellites (see Randall and Theobald pp.106-117).

Of critical value in Frank's analytical approach is the use of history as the starting point to any understanding of underdevelopment. This is a theme which is picked up by Immanuel Wallerstein.

For Wallerstein there is also one world system which has been such since the sixteenth century. His premises are similar to those of Galtung and Frank; within the world capitalist system there is a core and a periphery with a semi-periphery located in between the two (Wallerstein, *The Modern World Capitalist System* I chap. 7). In core economies are located advanced economic activities, such as industry, advanced technology, banking and the world financial markets. In periphery economies, economic activity is more or less restricted to the production of primary products.

Like Frank, Wallerstein makes the same point about the core's appropriation of social surplus produced by the periphery. Also like Frank, he attributes the creation of dependency relations to the international division of labour and advanced technological base. However, he sees these attributes as only being part cause. He introduces a new element into the theoretical framework by asserting that the inequality is underpinned by political power;

"This division (international division of labour) is not merely functional but geographical. That is to say, the range of economic tasks is not merely distributed throughout the world system. In part this is the consequence of ecological considerations to be sure. But for the most part, it is a function of the *social organisation* of work, one which magnifies and *legitimises the ability of some groups* within the system to exploit the labour of others, that is, to receive a larger share of the surplus" (The Modern World Capitalist System p. 349, *my emphasis*).

To ensure a perpetuation of this uneven distribution of economic tasks we therefore have, "the creation of a strong state machinery coupled with a national culture which serves both as a mechanism to protect disparities that have arisen within the world system, and as an ideological mask and justification for the maintenance of these disparities (p.349). The location of this mechanism is in both the core and the periphery and is also found in the semi-periphery which is politically independent of the core. In its strangest mode it exists in the core and only extends itself to the periphery in a weaker form and seeks to ensure that the wishes of the core are carried out. That is, the elite in the periphery are subservient to the core as their relationship with the core is collaborationist in nature.



Wallerstein rejects the notion of the state as a vehicle for development and change. The attitude is reflected in his referral to the periphery as areas and not as states. This is so because "one characteristic of a peripheral area is that the indigenous state is weak.... one with a low degree of autonomy". (p.3490. he also sees no socialist systems in the world economy because, "it is a world economy and it is by definition capitalist" (Randall and Theobald p.124 quoting from Smith's Underdevelopment of Development Literature 1979). He regards socialist national economies as being actually "socialist movements controlling certain state machineries within the world economy." (Modern World System p. 351). This, in effect, means that a revolution to establish a socialist economy must take on an international image, that is, must be acted out in the international forum rather than within the state.

This view of the state and its rejection as a vehicle for change and development signifies a marked generalisation of classes. Wallerstein's assertion is that, since it is a world economy, classes must be seen in the context of international classes. The formation of classes runs parallel with the development of capitalism. In order for a class to become one which is active, it must obtain a class consciousness. The only class which has maintained such a consciousness on a continuous basis is the international bourgeois. The bourgeois class is engaged in a class struggle with other international strata or groups within which the workers figure prominently whenever their class consciousness is activated. Thus the class struggle is one which involves a conflict situation between the bourgeois and other strata and which will be concluded on the international forum when workers having activated their class consciousness will overthrow the chains of wage labour (Modern World System, pp 350-353).

As has been seen, Wallerstein introduces the new element of political core power to dependency theory. However his devaluation of the state as a vehicle for change and development, and his purely international perspective to the study of classes and the class struggle, seems to this writer to undermine the importance of his world-system analysis of dependency relations. It is the contention here that any study the social and political forces existing on the international forum must be initiated within the state. It is also argued that even though an analysis of international classes is important one must look to the vehicles of imperialism - international organisations - to find answers for change.

The assumption of dependency theory or world system analysis that the capitalist mode of production has asserted itself in totality leaving no inch of the world untouched is accurate. How does dependency theory approach the problematic of allegedly still existing feudal relations of production within many states and regions of Asia and Africa. The obvious answer would be to deny their autonomy; that there are no truly feudal systems in existence, instead there is peasant production which is tied up in one way or another to the capitalist mode of production. It is, however, the denial of the development of a class struggle within the state capable of transforming the capitalist mode of production which must be questioned. This denial stems from the assertion - and this is especially true of Frank and Wallerstein - that in order for a socialist transformation to occur, there has to be autonomous development of capitalism within the state and that this is not possible given the structure of international dependency relations.

The denial of the state as a dynamic unit capable of political and economic development is wrong: empirical evidence suggests otherwise. The October revolution of 1917 Russia did spearhead a transformation of the mode of production, that is, from a feudal-capitalist mode to a socialist mode. Marx himself asserted that once the means of production are taken away from private ownership and placed at the disposal of the workers the road to communism (distinguished from socialism) shall be opened. It would be fallacious to assert that the Soviet Union today is engaged in a capitalist mode of production as we understand it.

I have asserted above that the starting point of class analysis and class struggle must be within the state. A discussion of this point is warranted here. Socialist revolution today is a fact-situation in many third world states and the subject particularly relevant to a study of African political economy. It is seen by many Africans as the only way to break out of the yoke of neo-colonialism which grips the continent.

The starting point of our class analysis is with reference to Marxist tradition. The element of Marxist theory adopted is the historical materialism method.

Marx asserted that in every society the most important human activities are those by which men and women produce and distribute goods within a society. The forces used to bring about such productive activities are the level of production and the social relations of production. These are the three key elements through which to determine the nature of society. Depending upon the level of productive forces, the ways in which the social product is appropriated, and the relations of production, there are to be found certain social classes. These social classes are characterised by each class possessing opposed relations to production. Appropriation of the social product by one class produces contradictions within the social base giving rise to a conflict situation between the classes (Cohen Class Analysis of African Politics, pp.87-88).

Classes evolve within society, and this evolution accompanies changes within the society. Change within society takes place when increased levels of production make possible new productive relations which in turn make possible increased levels of production, resulting in a cyclical evolutionary process. This process is characterised by eras or stages of social change which increasingly produce a "bipolar model" of classes within the society (see Cohen p.88).

However this bipolar model is not always true. It is particularly applicable in the era of capitalism but may not apply to traditional communal societies. Classes it should be noted, at any stage or epoch of social evolution, possess an internal differentiation whereby

they can be divided into various fractions, strata or categories. The fractions, strata or categories of one class may possess conflicting interests amongst themselves but one united vis a vis opposing classes.

The different and opposed interests of conflicting classes within the changing process of production outlines the nature of the class struggle. This class struggle is the human arena within which are played out the basic contradictions arising from the nature of production (Cohen p.88).

All social change is therefore determined by the manner in which this class struggle manifests itself. In his letter to Bloch (21.9.1890) Engels puts it this way:

"According to the materialist conception of history, the ultimately determining factor in history is the production and reproduction of real life. Neither Marx nor I have ever asserted more than this. Hence if somebody twists this into saying that the economic factor is the only determining one, he transforms that proposition into a meaningless, abstract, absurd phrase. The economic situation is the basis, but the various elements of the superstructure - political forms of the class struggle and its results, such as constitutions established by the victorious class after a successful battle, etc., juridical forms, and especially the reflections of all these real struggles in the brains of the participants, political, legal, philosophical theories, religious views and their further development into systems of dogmas - also exercised their influence upon the course of the historical struggles and in many cases determine their form in particular. There is an interaction of all these elements in which amid all the endless host of accidents, the economic movement is finally bound to assert itself. Otherwise the application of the theory to any period of history would be easier than the first degree". (Reproduced in Cain and Hunt, Marx and Engels on Law 1979 at p.56 and Cohen p.88),

Thus the relations between the classes are those of domination and exploitation. The stronger class uses its control over production relations to exploit the weaker class. As Engels' letter reflects, it is the ideology of the ruling class compounded by the control of the economic base which sets the scene for domination and exploitation. The ideology of the ruling class is used to justify, explain and reinforce its rule.

The state is the instrument the ruling class uses as its tool of domination. Through the state apparatus it reinforces the ideological base and manages its interests. The ruling class, even though it has its own fractions or strata with conflicting interests, presents itself as a unified or allied force in the face of confrontation with the dominated classes.

The present era of social evolution is characterised by the capitalist mode of production. This mode is dominant over older feudal modes. Within this capitalist mode of production, production is characterised by conditions in which the means of production are privately owned. This ownership is, "not only a legal category but above all an economic one. It means that the power to dispose of the productive forces does not belong to the collectivity but is fragmented between the different groups of the capitalist class." (Ernest Mandel, From Capitalism to Communism, 1977 at p.48).

The basic feature of a capitalist mode of production is the appropriation of surplus value for purposes of accumulation. Where wealth is accessible it is used by the capitalist class to facilitate the development of capitalism through appropriation and accumulation. On a world scale accumulation results in a surplus of capital which is in one way or another controlled by huge industrial concerns which control the monopolised markets of the world. The surplus of capital accumulated by the industrial nations gives rise to a vast movement to export capital to the underdeveloped countries. This in turn facilitates the domination of dependent countries by foreign capital (or imperialist capital).

Therefore, in the underdeveloped state, the dominant force is that of imperialist capital. The social classes inherent within the underdeveloped state are therefore not of the same composition as those in the industrialised world.

In examining African class relations it is important to realise that production is geared to the needs of international capital through international markets for export production. The international capitalist class which owns and controls most of the productive forces in African economies organises its domination and exploitation of African producers through,

"A variety of institutional arrangements: in the economic sphere, multinational corporations, international banking houses and international markets" (Dennis Cohen, p.95).

The international bourgeois' dominance in production is therefore the first main characteristic of the capitalist class in Africa. On the international forum this international bourgeois is independent, manifesting itself in the form of the multinational corporation and responding to investment opportunities on a world scale. Through an international infrastructure comprised mainly of the multinational corporations - including financial banks - the international bourgeois makes decisions about the location of production independently of geographical factors.

The strength of the international bourgeois to control production irrespective of international bodies has serious consequences for the social base of the African state. The most important function of the state in the metropolis is the protection and securing of international capitalist relations of production. However for the dependent African state its function, above all, is to provide a cheap labour force and inputs and services to industries they don't control. According to our Marxist analysis of classes it is the dominant or ruling class which controls the state apparatus: thus the state serves the interests of the international bourgeois to the extent that this class is dominant. In order to ensure the servitude of the state the international bourgeois does not itself

exercise direct control. Such control is exercised by the local capitalist groups. Because of the lack of control over the means of production the local capitalist class is not comprised of a national bourgeois. Power over the state is exercised by the petty bourgeois, entrepreneurs and servants of capital - which they control. This latter group is composed of professionals, such as lawyers, doctors, etc., managers, administrators and army officers.

Despite claims that the petty bourgeois has conflicting interests vis a vis the international bourgeois - i.e., their aim is to control the means of production - they have largely maintained a collaborationist relationship with the international capital. Frobel, Heindricks, Kreye and Sunkel go to the extent of claiming that this class is tending to become fully dependent on internationalisation of capital (The Internationalisation of Capital and Labour, 1981 p.19). I support this argument. The nature of dependency relations cannot allow for the radicalisation of the local bourgeois or for the autonomous development of capitalism which would allow for the emergence of a national bourgeois.

Thus the question posed by the dependencias remains, in the face of the lack of autonomous capitalist development how can socialist change be effected? Marxists have referred this question to the role of antagonist classes within this capitalist set-up. In fact Marxism views the proletariat class as the key to revolution. The question therefore is, does Africa possess a proletariat capable of effecting general change. Or to put it another way, has the phase of worldwide production created an industrial labour force whose sole asset is their labour sold for a wage.

When applied to Africa these questions pose some difficulty. There are essentially two main schools of thought on the subject. The first ("Labour Aristocracy Thesis") maintains that even though the injection of capital has resulted in jobs, workers in Africa "do not constitute a permanent, urbanised, proletarian class, but an amorphous collection of migrant workers still tied to the land". What urban workers there are, are a highly paid "labour aristocracy attuned to political conservatism." (Cohen p.99).

The second school maintains that empirical evidence does point to the existence of a numerically significant and politically capable proleteriat, whose existence has been conditioned by systematic use of cheap labour. (Cohen pp. 98-100)

The problems I find with the labour aristocracy thesis is that it discounts the fact that colonialism eradicated most of the communal systems ensuring rights in rural land. Alienation of the peasants from the land has actually resulted in the rural masses assuming as their dominant relation to production their capacity to sell labour as migrants. This may not have formally proleteriatized them, but the fact that selling their labour has become the only means of family survival with subsistence farming further becoming a sideline, means greater insecurity and therefore greater revolutionary potential.

The labour aristocracy thesis draws a distinction between the urban and rural worker. The claim is that in fact the workers in the urban sector enjoy a high standard of living and thus cannot be seen as a revolutionary class.

Despite the lack of empirical evidence to this claim one must point to the hypocrisy of sharply differentiating between urban and rural workers but not drawing a distinction between the various strata within the urban proleteriat.

It is my contention that there is an African proleteriat capable of organising social change. While the labour aristocracy theory contains some truth in that there is a category of workers whose conservatism is produced by high wages, this strata is small and as such cannot cast doubt upon the efficacy of the proleteriat as a political force in Africa, capable of social change.

However, this assertion must be treated with cautionary reference to the problems posed by the process of capitalistic development. Many difficulties are faced by those who seek to organise the labour force. The main difficulties are posed by the state as a functional tool of the international bourgeois and the collaborationist petty bourgeois. The function of the state has already been discussed above. However, with reference to the organisation of labour a few observations may be made.



First the state ensures the existence of a large, albeit not inexhaustible reserve army of workers. Secondly in many countries it has outlawed or repressed the right of workers to strike or form effective trade unions. Thirdly the promotion of higher wage earnings for a small strata of the working class can possibly drive a split within proletarian ranks.

To counter these problems the workers must engage progressive factions within the petty bourgeois - especially those with whom they have close contact; the progressive lawyers, doctors and other elements in the professional strata which are dissatisfied with their role as servants of international capital. Contact with workers from developed countries through international organisations is essential to bring pressure to bear on the state: internationalisation of the class struggle through organisations such as the International Labour Organisation can only bear positive results.

### Conclusion

In this part of the essay I have looked, albeit briefly, at the various theoretical foundations for the study of the structure of politico-economic relations between the industrialised states and the under-developed world. The search for a model which will suit a situational study of dependency relations in Southern Africa has been met with an exposition of the salient points of the theoretical models. An outline of the irrelevant and relevant points of each model has been given.

Starting with the modernisation model to the study of the development process, I rejected in entirety the theoretical approach adopted by this model for its failure to grasp the implications of the under-developed world's chronic economic dependence on the West. However an exposition of the theory helps us to understand the reality of Western exported development strategies which have contributed to the immiserisation of the populations of third world countries.

Galtung's theory of imperialism gives us a new perspective from which to look at the issue of dependency. His approach to the study of the role of organisations is valuable to the understanding of the impact international institutions have had on the third world. It is true that modern society is characterised by organisations and organisational networks; that social interaction between people takes place within an organisational framework. For a change to occur in society, the organisation as a vehicle of change cannot be ignored since it is largely through organisations that the West maintains its superior economic and political position. Change can only occur by means of guided social action and the organisation must be at the forefront of any such social action. That is, in order to counter organised power use must be made of organised power.

Frank and Wallerstein introduce us to the historiology of dependency theory, providing an analytical approach to the study of the dynamism of capitalist development. They provide us with a framework within which to study the evolution of capitalist interaction with the third world. However, there is lacking a precise class analysis to help us understand how revolutionary change can occur and break down the chains of dependency. This is provided by a Marxist analysis of classes alongside a mode of production analysis.

The modes of production analysis shall be employed here as the basic structure used in Part II of the paper. This is so because this writer feels after having examined other theories that it is the best approach towards an understanding of both international and internal relations of the capitalist system. Part II of the paper will therefore seek to trace, as briefly and as clearly as possible, the development of a capitalist mode of production from contact with the Europeans up to the contemporary period, and the creation and maintenance of dependency relations between the BLS countries and South Africa - such dependency emanating from the transformation of the social production process.

PART II. THE GROWTH OF SOUTH AFRICAN CAPITALISM AND THE  
DEVELOPMENT OF DEPENDENCE RELATIONS WITH BOTSWANA, LESOTHO  
AND SWAZILAND

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The history of South Africa, since contact with Europeans, reveals like most of Africa, a systematic domination aimed at repression and subjugation for political and economic gain. However, unlike the rest of the continent, European domination in Southern Africa was more intense and complex; the Europeans had come to settle.

(i) CONTACT WITH THE EUROPEANS AND THE EXPANSION  
OF A CAPITALIST MODE OF PRODUCTION

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Commercialism and the Settler Communities

Contact between Africans and Europeans on the sub-continent began with the establishment of a lucrative trade route around the Cape of Good Hope to India and China. In 1653 the Amsterdam based Dutch East India Company established a half-way station in what is now known as Cape Town. This was to provide fresh supplies - meat and vegetables - to the sea-going European vessels passing on their way to India and the East Indies.

The essential purpose for establishing the station was initially, not to provide a base for European expansion into the interior of Southern Africa. The venture was carried out by a trading company whose interest was solely to provide supplies and resting facilities for its profitable trade. However, this later required the use of land to grow vegetables and sustain herds. For this purpose land was taken by force from the Khoi tribes inhabiting the Cape Peninsula.

The Khoi had, prior to settlement of Europeans, been largely engaged in pastoral activity with limited agricultural production in the Western Cape. Their contact with Europeans had largely been to barter fresh meat and vegetables in exchange for iron implements with ships passing by. The settlement in the Cape saw their dispersion from the Western Cape as they were relentlessly driven further inland by the settlers.

The impact of Khoi displacement is what distinguished, at this period, European influence upon Southern Africa from almost all other African colonial situations. Elsewhere in Africa, the colonialists were usually faced with the problem of reshaping communal societies into capitalist ones geared to suit the needs of a capitalist mode of production situated at the metropolis. The Cape saw the establishment of a totally new society which replaced the pre-existing mode of production and also replaced the indigenous community.

What was established at the Cape was a capitalist mode of production whose essential feature was private ownership of the means of production. Denoon and Nyeko, asserting that capitalist and commercial relationships were established immediately the settlement was located put it thus:

"the immigrant community contained within itself only three kinds of people; company officials governing the whole community, then the owners of productive property (land, cattle, sometimes slaves), and finally those who performed labour for the owners of property (either as slaves or as wage labourers)." (Southern Africa Since 1800, 1984, p.19).

Thus prior to the nineteenth century European settlement in the Cape was initiated by the requirement of a successful merchant capitalist company and not by a European state. This occupation, requiring a great deal of capital and manpower and the imposition of commercial production for the market, was to unleash formidable forces which would serve to transform the whole region.

In Cape Town itself and in the surrounding districts, capitalism manifested itself in a rather rudimentary form. The Dutch East India Company took over the ownership of land wrested from the Khoi. Due to commercial and administrative problems the company found itself unable to conduct agricultural and pastoral production. The strategy employed was to release company employees (called freeburghers), grant them rights to land and oblige them to sell their products to the company. In this way the company maintained its monopoly over the market for pastoral and agricultural products.

Labour was provided mainly by slave labour imported from other African communities in Angola, West Africa and Madagascar. Individual Khois, who had become alienated from the land were also used as labour. The rest of the labour force was made of up immigrants paid a wage.

With more settlers arriving at the Cape towards the end of the eighteenth century, expansion of commercial pastoralism speeded up with a new dynamism. No longer was pastoral production centred around the freeburgher. A new breed of settler called the trekboer began moving into the Eastern hinterland. The activity of the trekboer was to occupy lands in the interior, moving whenever grazing fields became exhausted. They were tied to Cape Town through the sale of their herds to the company in exchange for supplies to maintain them for long periods in the interior.

The rapid expansion was not met with only passive resistance by the local inhabitants. The Khoi communities which had resettled in large numbers in the North East offered armed resistance, raiding trekboer settlements and reclaiming cattle and sheep. To the East the trekboers also met fierce resistance from the Xhosa and to the West the San. The scope of this paper does not allow for a systematic analysis of African resistance to settler expansion. However, it must be mentioned that the further North the Europeans moved the more resistance they met. The trekboer was not given to peaceful negotiation over the issue of land and the various indigenous groups within the interior - the Zulus, BaSotho, BaVenda and the San - having learnt from the bitter experiences of the Khoi, were not willing to accommodate the aspirations of the trekboer and bitterly fought back.

When the British government took over the Cape in 1806 after the collapse of the Dutch East India Company in Europe (due to the European wars) they abolished slavery. The structure of Cape society, however, remained the same with the affluent citizens of Cape Town still living on the production of the uneducated and backward farmers and pastoralists in the interior. What is most significant about the European inhabitants of the interior was their religion. They described themselves as Christian and used the bible as a source of literacy. This did enable them to register claims to lands they

occupied. However, of more significance was their use of the Christian religion to justify the misconception of the superiority of the white race over all others. This attitude was derived essentially from a perversion of the Calvinist teachings of Christianity at the time and further justified by Lutheranism. Thabo Mbeki puts it succinctly:

"From Calvinism the Boer took the doctrine of predestination and perverted it. For Calvin, the chosen of God were those who survived the jungle of capitalist enterprise in industry and trade and emerged as successful men of business, without regard to race or nationality. In the patriarchal economy this was transmuted to read: the chosen of God are those who are white. For his part Luther said: 'An earthly kingdom cannot exist without inequality of persons: some must be free, others serfs, some rulers, others subjects.'" (South Africa "The Historical Injustice" in Conflict and Change in Southern Africa, ed. Chap. 5, p.136, 1978).

This was an attempt to rationalise, justify and make acceptable the enslavement and exploitation of the black people by the white. As a psychologically demented fixation of the Boers this racist ideology was to be imprinted on the whole history of Southern Africa beginning with this period of expansionism initiated by the trekboer.

The trekboer, with only his herds for a livelihood and hungry for new pastures had to contend with raids from the San and counter-attacks from the Xhosa at the turn of the century. There was no adequate protection for them from the Cape government. To counter-attack they often formed commandos amongst themselves and elected their own leaders - they could no longer rely on the British who infuriated them with their peace efforts. These unofficial efforts at self-government marked a significant period in the attitude of the trekboer - who was to become known as the Afrikaner. As the trekboer began to move beyond the colonial boundaries of the Cape they formalised their previous efforts at self government. The commandos were militarised with all the men in the community forming themselves into groups, sharing a common military purpose. A leader was elected to represent them at community level.

By 1836 these groups, faced with the stalwart resistance of the Xhosa to the East and the colonial policy of the British, began moving North-Westwards in what came to be known as the "great trek". This "great trek" was not so much a big concentrated movement of people but rather the movement of distinct groups in search of new pastures further north. They shared the common goal of searching for land and acted in concert by uprooting settled local communities and chasing them further north or into the mountainous regions of the Orange Free State. However what they did not share as a community was the same political aspirations. Some groups saw the trek as an extension of colonial rule from the Coast to the interior, others wanted complete independence from the British.

Despite aspirations for self-government on the political front, commercially the trekboer was still tied to the colonial community of Cape Town (and later Port Elizabeth and Port Natal). These were the only outlets of the sea and they were controlled by the colonialists. Furthermore, because of the nature of pastoralism the trekboers were often small nomadic groups and thus could not consolidate enough power to counter colonial annexation of the new lands. Taken together these factors serve to show that the boers were not masters of their own destiny or autonomous societies. They exercised commercial pastoralism where previously subsistent pastoralism had been the norm. However, this commercialism was being exercised in the interests of capitalism in the Cape.

The British annexation of the Cape as a Crown colony in 1806 saw the expansion of colonial frontiers. Many battles for control were fought between British regiments and indigenous groups. The British, being masters at the art of occupation, saw that the military strategy was not enough to stabilise the frontiers. They had to employ political and social strategies to maintain reasonable stability.

The main strategy adopted was to try and settle indigenous communities on annexed lands hoping that they would build up stable communities based on agricultural production. This policy proved a failure in one sense because these lands were still involved in hot dispute with both Europeans and Africans claiming them. On the other hand, they reveal the beginning of a well defined attitude to property rights.

Again, colonial rule brought with it a different attitude to the labour policy existing in the Cape. In 1806 Britain outlawed the slave trade throughout the empire. By 1834 when slave labour was finally abolished the emphasis was on a disciplined labour force working for a wage.

### Social Transformation and the Mineral Revolution

So far we have been considering the expansion of the new society from Cape Town into the interior. African societies were drawn into certain market relationships with the Europeans which had a profound effect on the social base. Most of the frontier communities which came into contact with the trekboers were dispossessed and dispersed.

Despite the violent confrontation market relationships did persist between Europeans and Africans throughout the nineteenth century. These relationships were marked by trade in cattle, sheep, hides and ivory in exchange for cloth and other trade goods, including horses and guns (see Denoon and Nyeko pp.74-76). This trade had far reaching consequences for the communal base - or pre-capitalist mode of production - of the indigenous communities. Within the colonial boundaries Africans were transformed from being subsistence pastoralists into being traders or cheap labour for the Europeans. Beyond the frontiers they could combine subsistence production with production for trade with Europeans.

Trade in cattle and sheep meant a concerted effort on the part of the Africans to use land for a profit motive rather than for subsistence. This change saw the creation of a peasant society within the colonial boundaries which was more or less becoming immersed in the capitalist mode of production conducted by the colonialists. John Saul and Roger Woods define peasants as "those whose ultimate security and subsistence lies in their having certain rights in land and in the labour of family members on the land, but who are involved, through rights and obligations, in a wider economic system which includes the participation of non-peasants" ("African Peasantries" ed. 1971, pp.113).



The peasantisation of the indigenous communities had dire consequences for the structure of the community. A formerly self-sufficient society was systematically being divided, with those who could get hold of more land becoming better off than other members who had less access - that is, there was the creation of a semi-feudal mode of production alongside a developing capitalist society.

This social transformation was to take an even more dynamic turn by the 1870's. Until then colonial Southern Africa's major export on the international front had been wool. In 1867 diamonds were found on the banks of the Orange River. This was to have the most notable impact on Southern Africa. Before long large numbers of diamonds were found, so large as human experience had never encountered before. Thousands of prospectors flocked to the region.

Initially this produced a rather disarrayed community of small prospectors with no central control over buying and selling. Trade in diamonds at first involved ad hoc buying and selling. The international diamond market would, however, not be able to tolerate this form of market relations; diamonds commanded high prices and if the market was to retain the high value of diamonds control over marketing practices had to be established. The obvious thing was to consolidate ownership of the various claims.

Such consolidation could take two forms; either the prospectors amalgamated their claims and mined the diamonds collectively as small companies or a big company with enough capital to buy the necessary claims could form a monopoly. The latter occurred. The holding company which undertook to establish a monopoly was the De Beers Consolidated Mines Co. financed by the European giant, Weinher, Beit and Company - and headed by John Cecil Rhodes - son of an English clergyman.

Under the monopoly of the De Beers Consolidated Mines Company the structure of the labour force changed. No longer was the labour process a matter of one man employing a handful of Africans to do the hard jobs. The company required a disciplined labour force.

The new policy was to employ a white labour force to do the jobs that required skill and a black labour force to do the manual work. Wage levels between white and black were highly skewed with the black labourers being provided with just adequate accommodation and food to ensure a healthy and vigorous labour force. The other discrepancy in labour relations was that while whites were more or less a permanent labour force, the blacks were recruited on a contract basis (contract labour) and forced to live in compounds for the duration of their contracts. This policy thus ensured the long-term availability of a regular supply of migrant labour which could be disciplined at the companies' will with the colonial administration's approval - Cecil Rhodes was Prime Minister of the Cape (1890-6).

The milestone of this period was the Glen Grey Act of 1894. It sought to solve the problem of displaced African populations. The Afrikaners who now controlled and owned fertile lands in the Orange Tree State and Transvaal wanted the locals removed from their lands. The more liberal sections wanted to see more individual ownership of lands amongst Africans. The compromise reached was that they could own land but were not allowed to vote for the Cape Parliament which was entirely white. Thus under the Glen Grey Act a few African families were allowed to own some land whilst retaining the majority as seasonal migrant labourers for the white farmers, pastoralists and the De Beers Mining Company.

The Glen Grey Act was a compromise between the hard minded Afrikaner and the liberals. However Rhodes as Prime Minister and billionaire was not satisfied with just claiming (by first using force then compromise) the lands of the Orange Tree State and the Transvaal. He had nourished a vision of British colonial expansion from Cape Town to Cairo in the North for some time. In 1890 he dispatched a column towards what is today known as Zimbabwe and Zambia to conquer the vast grasslands occupied by the Amandebele and Tshona communities north of the Limpopo River. The column heading North avoided conflict with the war-like Mandebele. They met little resistance from the Tshona whom they effectively subdued.

Each man in the column had been promised two prospecting claims and a two thousand acre farm. One of their contemporaries described them like this, "such a mixed lot I never saw in my life, all sorts and conditions, from aristocrats down to the street vagrant, peers and wastes of humanity mingling together like a hotchpotch" (from Basil Davidson's "The Africans" Part V Channel 4 1982). This was the breed of men who eventually succeeded, through systematic and brutal dispossession of the Mandebale, in gaining for Rhodes the lands of the Zambesia (later to be named Rhodesia).

So far we have looked at; individual and commercial company's alienation of the African from his means of existence (the land); how African societies were disrupted and forced into becoming active members of the new capitalist mode of production; the coming into being of a division of labour underpinned by a racist attitude towards labour relations. This attitude and social transformation was to establish itself along similar lines in the gold fields of the Transvaal. The labour reserves for the gold mines were to be partly situated in what was later to be known as the "high commission territories" - British colonies supplying labour to the Transvaal gold mines. The fate of these territories is discussed later.

The reader may also have noted that dispossession and occupation were effected mainly through and for commercial interests. This leaves the question of the role of the imperial forces.

### British Involvement

The British presence in Southern Africa at first was intended to protect vital trading routes and interests in the Indian Ocean and Asian empire;

"Over £90 million worth of trade involved the Cape route (as compared to £65 million through Suez), and by that broad period (1880) Asia accounted for 23.4% of British exports....and India alone had some £270 million of British capital invested in the Raj". (Deryck M. Schreuder "The Scramble for Southern Africa, 1877-1895", 1980 p.18-19).

Thus for Britain, its initial involvement in South Africa was to protect the interests of companies and trading merchants in the metropolis. So vital was this strategic role that the British could not afford to lose hegemonic power at the Cape. In order to maintain the route the British had to realise that control of the Cape and the broader regions beyond were essential.

The British recognised that they did not have a monopoly over colonies in Africa. The discovery of gold and diamonds in the hinterland in the late 1860's altered Britain's policy underlining a new dimension in colonial policy; Britain must now seek to achieve and maintain an inviolate supremacy in Southern Africa. In tropical Africa the British had been mainly concerned with advancing colonial jurisdiction at an almost leisurely pace. In Southern Africa it was accepted that control had to be asserted over certain coastal and interior areas which were now of vast economic and political importance;

"the future development of South Africa was heavily dependant on its peaceful evolution as a modern plural and capitalist society, in which the British role was clearly absolutely crucial". (Schreuder p.20).

British expansion was to be conditioned by local inter-state politics and the balance of power within continental relationships. Portugal, the other colonial power in the region (Angola and Mozambique) was becoming a weak colonial power in the horizontal inter-continental power relationships of Europe and colonial Africa. On the other hand, Germany, under Bismarck, had also embarked upon a scramble for colonies in Southern Africa. The annexation of South West Africa as a German colony meant that an independent variable of great significance had been introduced. This and the fact that the Germans were also seeking alliances with the boer in the Transvaal and Orange Free State Republics meant that the British had to act decisively in pursuing their policy of hegemony in the region. The scramble for Southern Africa had begun.

This scramble was to result in British annexation of the Transvaal, the crushing of the Zulus in the Natal region, the granting of protectorate status to Bachuanaland, BaSotholand and Swaziland. As the emphasis of this paper is centred around the B.L.S. countries it is the latter events which are considered in some detail.

(ii) THE HIGH COMMISSION TERRITORIES -  
BLS AND THE UNION OF SOUTH AFRICA

The High Commission Territories

Although the emergence of the Batswana, BaSotho and Swazi as national groups must historically be traced to the African migrations of the 14th and 15th centuries, the factors which consolidated these societies into nation states must be attributed to the expansionist policies of the Afrikaners and the necessities of British imperial policy. As has been noted above, the Afrikaners, having occupied the northern lands of the Free State, the Transvaal and parts of Natal, were engaged in a relentless push to claim as much land as they could through violent means. The pressures of Afrikaner expansionism is claimed by many historians to have been the cause of British intervention in Bechaunaland, BaSotholand and Swaziland. (See for example R.P. Stevens in Southern Africa in Perspective ed. Potholm and Dale 1972, pp.98-99 and Wilson and Thompson, A History of South Africa to 1870, pp.445-446.) This may be true, especially in relation to the Swazi and BaSotho, but it is unlikely to have been the sole cause. The dictates of British imperial policy to a large extent necessitated the annexation of these lands - and this is particularly true of Bechuanaland.

The northeast (Bechaunaland) was seen by many as being of vital strategic importance. The Germans, who had colonised South West Africa in 1884 saw Bechaunaland as a gateway to the Transvaal and linkage with the Afrikaner state extending down to the Atlantic ocean. This posed a serious problem for the British who saw their monopoly over port facilities - Cape Town, Port Elizabeth and Port Natal - being threatened. Furthermore the British had declared Rhodesia a British colony and the only routes to the new colony were through the Transvaal and the

north east lands. It was this fear of losing hegemonic power on the sub-continent that prompted the British to annex Bechaunaland as a British "protectorate"<sup>1</sup> in 1891.

The same fate befell the Swazi and BaSotho whose lands were declared British protectorates in 1890 and 1868 respectively. The BaSotho, constantly being harassed by the Afrikaners of the Orange Free State, sought British help to ward off further encroachment. British intervention was in the first instance initiated by the pleas of the BaSotho peoples. It would, however, be foolhardy to expect that the British intervened solely because they were interested in protecting the BaSotho peoples. As early as the 1840's the British had recognised the importance of BaSotholand and had recognised the BaSotho people as "friends and allies". A friendly people between the Cape colony and the Transvaal was strategically vital given that the BaSotho were masters of the Drakensburg range which would prove to be vital to British interest during the Anglo-Boer war.

The Swazis, also under pressure of Afrikaner encroachment, which threatened to swallow all Swaziland into the Transvaal, were led to appeal to the British for protection. This was granted on a similar basis as that of Bechaunaland and BaSotholand. The lands occupied by the Swazis were seen as of certain economic importance by the Afrikaners and British. It was the gateway from the north-eastern Transvaal to the port of Natal. The British, though reluctant to interfere at the beginning, could not rule out Swaziland's strategic importance, and in 1880 intervened.

British concern and involvement in the scramble for the frontier lands of the Swazi, Batswana and BaSotho was therefore marked by strategic questions rather than humanitarian ones. It was an involvement and intervention which kept an eye on the possibility of securing metropolitan interests and at the same time (especially in the case of Bechaunaland and Swaziland) meeting the demands, in kind and resources of the local colonialists (Rhodes in Bechuanaland) and Afrikaner frontier agencies for expansion (Swaziland).

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<sup>1</sup>The term is actually misleading, since what was actually effected was colonisation.

For the legal scholar, the means used for determining the subsequent boundaries of Swaziland are of particular interest. At the heart of the scramble for Swaziland can be identified two sets of "legal" documents: "the documents that killed us", as Swazi oral tradition would maintain.<sup>2</sup> The first set consisted of very local documents and involved concessions granted by the Swazi king to the frontier agents of Afrikaner expansionism. The second set were a series of constitutional (treaties?) agreements entered into between the British and Afrikaners delineating rights to the land in Swaziland. The concession documents indicated how, at ground level, a local creeping position was taking place as the Afrikaners of the Transvaal moved in to take Swazi territory piecemeal. Given that the Swazis occupied rich grazing lands also suitable for agriculture and potentially rich in minerals, concessionaires poured into Swaziland intent on using legal documents to defraud the Swazi king and deprive the Swazis of their natural resources. What was in fact happening was that economic warfare disguised as legal contracting of land had been declared on an unsuspecting people. Schreuder describes it:

"Were the Swazis aware that they were signing away their land and sovereignty in perpetuity in the concession documents? It seems unlikely. For a start, the king wrongly presumed that the concessions merely granted usufructs of Swazi resources, 'In granting land concessions' as a missionary recorded, 'Mbandzeni had always been under the impression that he had granted the lifetime of the actual petitioner'. It is also apparent that the king and his counsellors never fully grasped the meaning and intent of the dozens of concessions thrust before them - some on highly technical subjects....everything from land to minerals, banking to farming, print to oil extraction, takking to building, photography to pawn-broking was in fact covered". (The Scramble for Southern Africa, pp.278-279.)

What is also of significance about this particular form of appropriation is that by the late 19th Century the form through which Europeans took land off locals was now transformed from the rudimentary violent techniques employed at the beginning of expansionism to more subtle

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<sup>2</sup>See Schreuder at pp.278-286.

forms couched in legal camouflage. This was due not to the fact that the Afrikaners had become civilised but can be attributed to the development of an industrial capitalist society in South Africa which saw no need to conquer when legal means could be used to the same effect, and also to British imperial policy representing the interests of this new society. The moral validity of laws allowing for what was clearly fraudulent agreement was never questioned. In fact the British as the colonisers saw to it that such agreements were given effect (Schreuder pp.279-286 and Bonner "Kings, Commons and Concessionaires", 1982 Chap.10).

These concessions and the second set of documents - conventions entered into between Britain and the Transvaal had by 1890 reduced Swazi territory by half and had effectively ensured that what was left was not in Swazi hands but those of the concessionaries, what had been established in so far as metropolitan interests were concerned was an indirect collaboration empire of settler authority. This system ensured that the British could control Swaziland without the maximum cost of running a direct and expensive trusteeship form of rule. This system also allowed for harmony with the Afrikaners of the Transvaal who retained, under the convention of 1884, certain specified agricultural and grazing rights. This arrangement lasted until the outbreak of the Anglo-Boer war of 1899 when the running of Swaziland was undertaken by the office of the British governor in the Transvaal until 1906. After that date authority was transferred to the British High Commissioner at the Cape who was already responsible for administering Bechaunaland and BaSotholand - hence the phrase, "high commission territories".

The high commission territories can be seen as colonial properties of Britain in the South African periphery. Their position as colonies was unique in two senses. First they were what can only be described as colonies of a colony. Their position was unlike other African colonies under British rule in that Britain exercised control through another colony giving rise to a metropolis (Britain), semi-periphery (Cape Colony), periphery (B.L.S.) relationship. The second feature arose out of their geographic placement. Being landlocked they were inextricably tied both politically and economically to South Africa. Economically the territories would be used as a huge labour reserve



for the gold and diamond mines of South Africa. They also shared a common feature with other African colonies; the transport and communications system was outward looking, geared towards export outwith the continent. For the high commission territories being landlocked meant that whatever commodity they produced would have to depend on the South African transport network. Politically the territories were bound together to share the same fate through British colonisation being later administered from what was initially a British colony - handed down to the Afrikaners. It is without doubt that even though the British high commissioner interposed a British presence between the territories and the subsequent Union of South Africa, it was South Africa which would reap the benefits from the strange periphery - semi-periphery - metropolis relationship. In other words the semi-periphery would play the major role in shaping future events in the periphery as opposed to the metropolis being the major influence. As shall be seen later, what is being asserted here is that even though the British colonised the high commission territories and administered them under the name of the crown it would be South African political and economic influence which would determine the future internal and international relations of these territories.

#### The Union of South Africa

By 1895 the Afrikaner drive towards autonomous government which began with the trekboers (discussed above) had been realised. The Afrikaners now controlled the Orange Free State and the Transvaal (also known as the South African Republic) as separate republics from the British colonies of Natal and the Cape Colony. As in Kimberly (diamonds) in the Orange Free State, gold reserves of immense quantities had been found in the Rand area around Johannesburg in the late 1870's. This in effect completed the mineral revolution. The main feature of appropriation of gold in the Transvaal was foreign capital - mainly British. Therefore, even though the local government in both the Orange Free State and the Transvaal were in Afrikaner landowners hands, the fact that the major products - gold and diamonds - which accounted for almost 95% of total exports and were foreign controlled meant that those states were what Denoon and Nyeko call "classic banana republics" (Southern Africa Since 1800 pp.96-107).

However, the Transvaal, under the stalwart leadership of the Afrikaner, Paul Kruger sought to undermine the status quo. The Afrikaners' hatred of British control born of the old trekker days drove Kruger and his government to impose strict fiscal arrangements. He imposed high taxes and high rail-freight costs which left the mining companies with minimal profit margins. The Transvaal also recognised that Britain could be undermined through the importation of other European metropolitan capital which would interject, allowing for more autonomy. Although the Transvaal's prosperity did attract speculators and bankers from all over Europe, Kruger was faced with the frustrating fact that the Transvaal being landlocked - in fact circled by British controlled territory - it was still heavily dependent on British ports to export its wealth. It was this frustration which led Kruger to court the Germans in German South-West Africa with the possibility of gaining access to the sea from the west. Germany, already becoming a major European industrial power, was seen by the British as a threatening presence and Kruger's actions they could not tolerate. The Transvaal, being the wealthiest of the states in South Africa could not be allowed to fall into German hands. This would have had the effect of totally disrupting British hegemony in the sub-continent. Since the Napoleonic wars Britain had been the major power in Europe and effectively controlled the world's seaways. At the turn of the century this monopoly of world power was being challenged by other nations such as Japan, the United States and Germany. Towards the end of the nineteenth century it had become obvious that Britain could not retain its hegemonic power in Southern Africa through mere control of the Cape peninsula and the major ports. The wealth which had been discovered in the interior meant that if South Africa was not to become a playground of metropolitan conflicts Britain must gain total economic control and keep the whole cake for itself.

Rhodes saw the Transvaal as the key to total British control. The imperial office already deeply concerned over Kruger's policies allowed Rhodes to send a small band of armed men to the Transvaal to remove Kruger. This group, led by a crony of Rhodes called Jameson, were defeated by the Afrikaners. The failure of the "Jameson raid" (as it was subsequently named) was seen by Kruger as a victory over the British and increased his confidence to bring in Germany as a possible metropolitan ally. This raid pinpoints the change in attitudes

regarding the imperial factor. Schreuder suggests that:

"the raid represented, in certainly its seamiest light, the disturbing power of the New Imperialism's continuing role in Southern Africa. The energy, the belligerence, the impatience, the greed, the expansive zeal of the local empire makers and conquerors, merely took on new forms as this force of the New Imperialism turned away from territorial objectives per se, and was instead, channelled into commercial, diplomatic and subversive strategies for advancing the particular aims of the groups involved." (The Scramble for Southern Africa, p.315).

The failure of Rhodes' actions deeply offended the British imperial office. Joseph Chamberlain, the British Colonial Secretary (1895-1903) immediately dispatched Alfred Milner as the new High Commissioner to the Cape. Milner upon arrival in South Africa set about to reassert British influence. His conclusion was that the only way to deal with Kruger would be to give him an ultimatum; he could either give voting rights to the so called "Uitlanders" who represented British interests, or face the British armies. Kruger's options were limited, he could not grant the white Uitlanders the vote as this would mean the risk of losing control over the Transvaal's state machinery and on the other hand he could face the military might of British forces and still risk losing. He chose the latter option and in late 1899 the Anglo-Boer war broke out.

This war epitomises the highest stage in the scramble for Southern Africa. Whoever came out as victor would control the sub-continent and its resources - both human and material. In the event the British won the war. But the consequences of victory were highly unusual; in this historical epoch the vanquished would usually become subservient to the victor. However this was not the case for Southern Africa.

On 31st May 1902 the Afrikaners surrendered and signed a peace with the British. On that date the Union Jack was the flag that flew in all the South African States. Britain viewed South Africa as one of its settler colonies occupying the same position as Canada and Australia on the imperial policy agenda. This meant that local elections could be held along a multi-party system. The Afrikaners having organised themselves into cohesive political units under the leadership of Afrikaner generals decisively won local elections along these lines: Transvaal - 1907 Het Volk party led by Generals Louis Botha and Jan Smuts, Orange Free State - 1908 Orangia Unie led by Generals J. Hertzog and Christia de West, Cape - 1908 coalition of Afrikaners and English speaking whites led by J.X. Merriman<sup>3</sup>.

The Natal was largely controlled by English speaking whites and had been self governed prior to and after the war. The consolidation of Afrikaner power after the war would seem to suggest that even though the British had won the war they were losing the peace. However these resultant events are misleading. Britain had disposed of the German threat and had made South Africa safe for British capital. This must be seen in view of the post-war events as the main aim of the imperial factor - the maintenance of a lucrative market for British goods and investment. British capital controlled the major resources - diamonds and gold; gold by this time had become the staple export.

The winning of local elections by Afrikaner groups, made possible by British imperial policy towards South Africa, also created the mood for the most important historical event of the era - the unification of all the states of South Africa as one single state. The union of South Africa was not only desired by the Afrikaners, imperial policy was very accomodating since a union meant political stability for the region. In 1908 and 1909 conferences were held at the Cape to discuss the proposed union. The delegates drafted an Act of Union which the British imperial government passed into law in 1910. This created the Union of South Africa led by Louis Botha with Jan Smuts in close attendance.

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<sup>3</sup> See Denoon and Nyeko, p. 133

The Union was achieved through some clever manoeuvring by the imperial office. Britain recognised the need to harmonise its relations with the local settler community. At the same time the creation of a successor state to protect imperial interests was recognised as more important than conflict with the Afrikaners.

All these events occurred without any consultations with the majority of the peoples of South Africa. The imperial office would not grant any political rights to Africans since this was vehemently opposed by the Afrikaners who were to become the custodians and guardians of British capital. What had in fact happened was that the British and Afrikaners had entered into a social contract in which they agreed that the British, on the one hand, would bring the Afrikaner into the modern world by agreeing to share political power with him, and that the Afrikaner, on the other hand, would agree not to stand in the way of the advancement and domination of British capital. They also agreed that the African majority would not be party to this contract. They (The Africans) would remain at the disposal of the parties to the contract to be used in whatever manner the parties saw fit.<sup>4</sup>

The question that must be asked is why did the British succumb to Afrikaner wishes to impose backward practices insofar as the indigenous population was concerned. The only possible explanation would seem to be that British capital at this period still clung to primitive methods of accumulation. This is evidenced by historical fact. In the early 1800's the British had abolished slavery. They however had another method for the Cape - the Vagrancy Act of 1809 (see Mbeki "The Historical Injustice" p.137). This in effect provided that all Khois not in the employ of a white person were vagrants and thus criminals. In order to prove that you were not a vagrant you had to produce a pass. In order to get a pass you had to enter into a written labour contract with a white employer. This in effect was a new form of forced labour aimed at controlling labour supplies for British capital. In Europe by the late 19th century such methods had disappeared with the worker having the right to vote thus able to express his wish and influence on matters of state. In Southern Africa this was not to be the case. Effectively capitalism means the maximisation of profit through increased accumulation. This

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<sup>4</sup>Discussed by Mbeki "The Historical Injustice"

drive towards more and more profit must be gained at minimum labour cost to the capitalist. Accumulation in South Africa would thus ensure that this goal is realised through maximum exploitation of labour, which could be realised through the use of primitive methods of accumulation. Unlike Europe where the role of the working classes had been decisive in the bourgeois battle against feudalism and was thus owed a debt by the capitalist class, in South Africa British capital owed nothing to the African masses. One of the most significant features of the Anglo-Boer war pointed out by Denoon and Nyeko (pp.122-124) was the fact that the British did not employ the help of Africans to fight the Afrikaners. This was a striking anomaly since in all their colonial wars the British had engaged locals to help them - East and West African troops, Indian solidiers, Maoris in Australia. This feature, however, is not confusing when one considers that British capital did not wish to become indebted to Africans.

The attitude of British capital compounded with the racist ideology of the Afrikaner thus created the scene for a continuation of a primitive and unjust system of labour exploitation. The Union of South Africa was to extend its barbaric labour practices to all migrant labour from without the Union.

Aside from the internal consequences of the Act of Union the peoples of the high commission territories had to contend with a new drive by the Afrikaners to incorporate them into the Union.

The possibility of incorporation was a very real one at the 1908-1909 Cape conferences. For the Afrikaners incorporation was a natural geographical and economic consequence of union. Geographically it was desirable that white economic and political domination be established over the whole region as soon as possible (Stevens pp.102-103). Economically the three territories were almost totally dependant on the adjacent South African colonies - especially the Transvaal - for markets and employment. It is this dependence which must now be looked at.

(iii) Dependency Relations 1910-

Historically the roots of the dependency links which were to dominate relations between the high commission territories and South Africa should ultimately be traced to the 19th century activities of capital in the region. We have seen the events which led to the transformation of the mode of production in the region. However, formalisation of dependency links must be traced to the 1910 Customs Agreement between the Union of South Africa on the one hand and the high commission territories on the other. The issue of incorporation is of great relevance to an understanding of the formal ties.

Prior to and after the 1910 Act of Union it was taken for granted by the British and Afrikaners that Britain, in due course, would hand over, if not sovereignty, then protection of the three territories to South Africa. That the British viewed the transfer as favourable was of no doubt. The one obstacle to incorporation was the policy obligation the imperial government had declared in London in 1908, that "pending any grant of representation to 'natives', no 'native' territory now administered by the Governor or High Commissioner will be placed under the control of the new Responsible Governments" (Stevens p.100). To the observer this policy consideration would seem to take into account the wishes of the local population, that is, the British would seek representations from the locals. There was no doubt that the African population of the territories were vehemently opposed to any rule by Afrikaners. Thus, one may be tempted to believe that Britain's refusal to transfer the territories to South Africa was based upon considerations for the plight of the locals. This view is one shared by Arnold Isaacs who states (at p.30) that "....the British felt obligated to the peoples of these territories who loathed having to come under the white minority of the newly to be formed Union". Ronald Hyam, who seems to believe that the refusal by Britain to transfer the territories was a repudiation of Afrikaner native policy (i.e. apartheid) states that, "without transfer the territories stood as a living argument against that policy and a reproach to the ideology which underpinned it" (The Failure of South African Expansion 1908-1948 at pp.75-76).

The belief that Britain was acting solely upon the policy of "the necessity of prior consultation" with the African people of the territories is misleading when related to Section 151 of the 1909 South African Act as amended by Britain and which set out the issue of incorporation. This Act in part stated (Section 151):

"The King, with the advice of the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General-in-Council may undertake the government of such territory upon the terms and conditions in the Schedule to this Act." (As quoted by Stevens p.101).

The point about Section 151 is that it gave absolutely no mention of consultation with Africans but only representation by Afrikaners. It also shows that the territories were viewed as British property at the disposal of the Crown. Taking Hyam's argument that imperial policy on the issue was dictated by desires to express repugnance for Afrikanedom's native policy seems to be more reasonable. This is so because it would have been fitting with imperial policy that the territories be used as political tools against the growing extremist Afrikaner element in Union politics.

It was to be that the African population in the three territories would thus live under the threat of incorporation until the mid-1960's. Section 151 of the South Africa Act was the legal vehicle upon which the British government could legally dispose of the territories without the necessity of consulting the Africans. The future of the territories had been decided without consultation with the local people. British attitude to the three territories reflects the rudimentary approach of the powerful metropolis states to the concept of acquisition of territory. It is no surprise that Britain saw the territories as property in the private law analogy which meant that a right to self



determination did not exist for those inhabiting the property or territory. This right, now recognised as a fundamental one under international law, was denied to the local people because they were simply a commodity to be disposed of together with the territory.<sup>5</sup>

This attitude is further reflected in the use of the adult population of the territories as seasonal migrant labour for the mines of South Africa and the lack of British investment capital in the territories. British capital had invested heavily in the South African mining and industrial sectors. It was therefore only logical that the territories be used by capital as labour reserves. It was also expedient to British interests that Bechuanaland, BaSotholand and Swaziland became markets for South Africa's agricultural products. The white South Africans had to be given a piece of the cake even if this meant suppressing local production through giving effect to concessionary agreements obtained through the most unlawful means. Concessionary agreements had given white South Africa the right to turn productive land into large concerns producing for external markets.

Britain's refusal to incorporate the territories must therefore not be seen as an attempt to allow for the autonomous development of capitalism within these territories. In fact the opposite is true. South Africa was accorded the dominant role and the territories were destined to become heavily dependent on South Africa in every way. It was through the Customs Union Agreement that this relationship would be made formal and more secure and efficient. This gave off an atmosphere of legality which was welcome to the parties involved, i.e. Britain and South Africa. Looking at this relationship Isaacs puts it thus:

"The similarities between the... territories and the 'native reserves' put aside for South Africa's black majority were indeed very close. Their posts and telegraphs, money affairs including their currencies, as well as their customs and tariffs were entirely run by the South African government. A large percentage of their working population was employed inside S.A. Also higher education for their children was only available in South African institutions...(pp.31-32).

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<sup>5</sup>For a discussion of the issue of territory and self-determination see Anthony Carty "The Decay of International Law" 1986 Chap. 4.

Such was the extent of the dependence on South Africa that the socio-economic base necessary for cultural and economic development had been completely disrupted. Traditional societies based on a land-tenure system of production were alienated from the land in order to service South African capital. Whatever infrastructure was provided was not for the benefit of the local population. It was strictly geared towards the needs of white South Africa with skeletal railway and road systems developed for purposes of transporting primary products into South Africa. Such were the problems faced by these countries at independence that it led one author to observe:

"Both the natural and the human resources of the former Territories are underdeveloped, and any meaningful economic programme for them must not only develop natural resources but also provide industrial skills and economic opportunities for the Africans. The proportion of skilled to unskilled members of the labour force must be progressively increased from the current low figure of under five per cent of the total force until it approaches the level obtaining in developed countries." (Dr. H. George Henry writing in Richard P. Stevens, "Lesotho, Botswana and Swaziland" 1967 Pall Mall).

Suffice it to say that these thoughts were echoed by the locals but such thoughts were to be dashed by the reality of the dependency links.

On the question of incorporation the Afrikaners never did get their wish to see a white dominated Southern Africa. By the late 1950's a new political mood gripped the whole continent - independence was forthcoming. The winds of change which swept through Africa did not bypass the peoples of the high commission territories. Through internal and international pressure the British conceded independence to Bechuanaland on 30 September 1966 to become Botswana, to Basotholand on 4 October 1966 adopting the name Lesotho and to Swaziland on 6 September 1968.

However, despite the euphoria of independence a new reality began to unfold itself in the whole of sub-Saharan Africa. It had been political independence which had been granted. Economic and cultural independence

were almost non-existent. The question which was asked by many was, is there any meaning to political independence when you do not control your own economy. Botswana, Lesotho and Swaziland (BLS) did not only not have control over the productive process, they were also economically and to a lesser extent politically dependent on neighbouring South Africa. Production and the movement of capital in South Africa determined the productive capacity of the BLS which in turn affected the political process. This relationship is seen by Richard Dale as the South African Legacy<sup>6</sup>. Unlike other former colonies in Africa whose subsequent relations would be determined by former colonial ties, the BLS relations would be determined not extensively by their former colonial ties to Britain, but by their ties to a former British colony, later a member of the "old" British Commonwealth. The extent to which the BLS were dependant on Britain can only be seen through an appraisal of the movements of British capital within South Africa. As has already been mentioned, the foreign mining capital in South Africa was largely British. It was the mining sector which gave rise to the subsequent growth of the manufacturing base of South Africa leading to its definitive status as the leading industrial state in Africa. The results of the mining sector whose productive capacity and profitability depended largely on cheap labour from the BLS may be seen in the theoretical approach adopted by Johan Galtung (see Part. I). A relative spin-off effect of the mining sector was the birth of a local industrial sector initially geared toward the immediate needs of the mining sector. This was to become a general spin-off creating base industries through the capacity of the mining sector to generate foreign exchange. Foreign exchange is essential to the establishment and development of a manufacturing sector within the international capitalist economy. Most developing economies seldom have the economic capacity to generate enough foreign exchange - through the exportation of capital goods needed by the industrialised countries - to fulfill high capital import requirements necessary to establish a viable manufacturing sector. These problems were not faced by South Africa whose huge

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<sup>6</sup> "Botswana" in Southern Africa in Perspective Essays in Regional Politics ed. Part 3, Chap. 2, pp.111-112.

export earnings enabled it to overcome inadequacies of foreign exchange.

The point being made here is that the growth of the South African economy largely depended on the mining sector's earnings which were largely controlled by British concerns. This is the economic link which ties the BLS to Britain in the first instance. Therefore when looking at the international economic dependence of the BLS, one must look first to the South African connection and not to Britain. This of course must not be taken to mean that modern forms of dependency links (for example bank loans) have not manifested themselves, creating direct dependence relations between Britain and the BLS. However, through investigation I suspect one would find that South African based British concerns are largely responsible - the scope of this paper does not allow for such an investigation.<sup>7</sup>

The South African connection is therefore the referral link in dependency relations between the BLS and Britain.<sup>8</sup> However one must be careful not to put too much emphasis on this connection (South Africa - Britain) as it would be construed to mean that South African capital is itself dependant on Britain or other metropolises. What is meant here is that any view that Britain is the core of the BLS periphery is highly doubtful in the contemporary period. Some researchers in fact see South Africa as the metropolis or core of the Southern African periphery (see for example, P. Selwyn Industries in the Southern African Periphery I.D.S. 1975). The descriptive terminology of writers would seem to depend upon whether the study is carried out as one of a regional sub-system or an international one. When viewed from an international perspective it is arguable that South Africa is not the Core. Without moving into the intricacies of what the truth is - this would depend on a highly empirical study beyond the scope of this paper - we are

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<sup>7</sup> For a treatment of the spin-off effects of the mining industry in South Africa see Jill Nattrass, The South African Economy "Its growth and change" 1981, pp.129-161.

<sup>8</sup> The relations of south African capital to international capital are discussed by First, Steel & Gurrey in The South African Connection "Western Investment in Apartheid" 1972; also see Elizabeth Schmidt, Decoding Corporate Camouflage "US Business Support for Apartheid" I.P.S. 1980.

looking at regional relations and it is highly unlikely that there is any other country which can claim to have the same dependence links as those established between the BLS and South Africa. The core-semi periphery-periphery relationship described elsewhere in this paper as being between Britain, South Africa and the BLS countries is certainly true of the period that was being discussed. However, the evolution and growth of the South African economy must put paid to this type of relationship in the post-second world war era.

This point also brings us back to the theories discussed in Part One. Wallerstein's description of a possible three-way relationship (core-semi periphery-periphery) in the world capitalist system seems to be fitting to our study up to the 1940's. Both Wallerstein and Frank tended to believe that the autonomous development of capitalism is not possible in the periphery. However Wallerstein's argument for a semi-periphery (befitting of early South Africa) that, even though the semi-periphery has a large degree of political autonomy in decision making the economy is still largely controlled by the metropolis is doubtful when applied to contemporary South Africa. That South Africa is today a fully integrated capitalist state with all the attributes of the modern industrial capitalist economy cannot be doubted. This point is partly recognised by Wallerstein writing in 1985 an "The Stages of African Involvement in the World Economy"<sup>9</sup> who still maintains that South Africa is a semi-peripheral country and puts it into the same category as Zaire, Nigeria, Algeria and Egypt. This rejection of a fully integrated capitalist economy in South Africa warrants a further look at the nature of the political economy of South Africa, through the mirror of the modes of production analysis chosen in Part I of this paper.

As mentioned above, the development of the mining industry in South Africa had an enormous impact on capital accumulation and that this created spin-off effects which were to result in the diversification of capital allocation. The fact that most of the initial mining stock was foreign controlled cannot by itself warrant a conclusion that the economy would subsequently be controlled by foreign interests,

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<sup>9</sup> In Political Economy of Contemporary Africa 2nd edition 1985 Sage ed. p. 54.

giving rise to South African dependence on foreign capital. Indeed, such a conclusion may be taken for granted given that in most undeveloped economies, dependent on mining for export earnings, relatively little growth takes place since they produce raw materials to be consumed by industries in developed countries from which the initial investment originated. It is now an established policy of primary product exporters to plead the case for re-investment of these surpluses exported to the western world. However, it is equally true that political intervention by the state may force locally based foreign concerns to reinvest their earnings in the local economy. This is the epitome of political independence; being able to control the productive process through political decision making must necessarily ensure the protection of local interests, that is, development.<sup>10</sup>

The thesis being presented, therefore, is that through control of the state machinery the South African government was able to force increased reinvestment. Political independence attained early in the century laid the basis for political intervention. The strategies adopted by the former generals of the Anglo-Boer war were not dissimilar to those which had been used by Kruger in the Transvaal. The aim was not to remove foreign (British) ownership but rather to force the international capitalists to make South Africa a viable economy.

Coupled with abundant cheap labour, huge agricultural potential, a pleasant climate and appealing landscape, the vast mineral resource potential attracted huge capital inflows and skilled labour from Europe. Combined with the rise of nationalism in the inter-war period these factors combined to produce the rapid development of South Africa into an industrial empire resulting in a politico-socio-economic structure unequalled in Africa. This is what differentiates between South Africa and the four countries mentioned by Wallerstein. The rise of capitalist relations in South Africa are very much unlike those of the rest of African countries. However, this is not enough to

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<sup>10</sup> See Nattrass Chap. 8 and Heribert Adam "South Africa: Political Alternatives and Prognosis" in Conflict and Change in Southern Africa 1978, ed. Chap. 9.

adequately explain the development of capitalism in South Africa. English capital had a monopoly in the pre-second world war period. Even though early political independence had given rise to the rise of what is termed a "truly national bourgeoisie" by Adam (p.220) - an essential component of autonomy - inroads had to be made into this monopoly. This was done through a plea by the nationalists to Afrikanerdom's ethnicity. The ability to consolidate Afrikaner support for economic mobilisation came from the Afrikaner's psychological fixation as a purist group with a God-given right to "their" land and resources. The strategies adopted laid emphasis on a "buy Afrikaans" policy aimed at their "psychological susceptibility for an ideal of collective sacrifice and solidarity, particularly among the growing dislocated and proletarianized Afrikaner workforce in the cities." (Adam p. 221).

With full Afrikaner control of the state machinery after the elections of 1948 where the National Party (NP) won a resounding victory over the more liberal elements of South African politics, the stage was set for full state participation in the economy. Through parastatal organisations and wholly state owned corporations such as ISCOR - steel and iron, FOSKOR, ESCOM - electricity, SASOL - oil from coal, and SOEKOR, the state was able, by the early 70's to consolidate at least 11% of the capital share in the industrial sector, (Adam, p. 221, Nattrass, p.163). The ability to harness the ethnic vulnerability of the Afrikaners and consolidate capital gains underlines the particular strength of the state as a bullwark of state capitalism - a point dismissed by the dependencias who do not see the role of the state as a vehicle of development.

Together with the rise of state capitalism emerged the only African national bourgeoisie. The emergence of this group was strongly influenced by the policies of a nationalist government whose aim was to create an atmosphere of South African ownership of capital. Examples of the dispersal of capital into different sectors can be seen in the practices of the mining giants. The link between the growing mining sector and the infant manufacturing industry were

initiated by the mining companies as early as the beginning of the century. Nattrass gives us two examples of diversification - the giant Dee Beers' move into the explosives industry and the decision by Goldfields to move into the industrial sphere. She also records that one of the major mining groups in the industry, Anglo American, "was to all practical purposes locally orientated rather than foreign orientated, since from 1924 on nearly 90% of its total economic activities were centred in Southern Africa" (pp. 144-145) taken from Innes, D: The Mining Industry in the Context of South Africa's Economic Development, 1910-1940, I.C.S. 1977). This early diversification can partly be attributed to apartheid's labour policy. This ensured that mineowners had a large supply of cheap, unskilled, black labour, whose docility was ensured by the state apparatus.<sup>11</sup> Diversification can also be attributed to the nature of monopoly capitalism in South Africa. Big monopolies tend to control not only core industries but also their service industries. In order to do this they have to diversify investment from the core industries.

Again the post-war period saw a massive rise in agricultural production through new incentives brought about by a policy of mechanisation. Today the agricultural sector, dominated by the large agribusiness multinational, Rembrant, provides 30% of the country's non-gold exports (Philip Ehrensaft 1984, p.85). The industrialisation and mechanisation of agriculture saw an increase in the ownership of the means of production by Afrikaner businessmen.

State encouragement has also allowed the Afrikaner controlled monetary sector to flourish. The movement of savings into Afrikaner insurance companies such as Sanlam and Santam and banks such as the giant Volkskas and the FVB investment company, the increased Afrikaner domination of important shareholdings in industry, mining and commerce, all point to the emergence of a strong bourgeois amongst the white Afrikaner. This bourgeois class may be the dominant strata of the bourgeois social class in South Africa. The fact that the state apparatus

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<sup>11</sup> The changing interests and attitudes of mining capital in relation to the labour process are discussed by Merle Lipton "Capitalism" and Apartheid", Chap. 5.



is stated nearly entirely by Afrikaners ensured a strong and dominant influence. This dominance is evidenced by the almost casual brush-off way the state is willing to treat multinationals such as Anglo-American on the issue of social change and sanctions.

This brief outline of the South African economy points to factors indicating a very strong economy which in terms of advancement is far ahead of Nigeria, Zaire, Algeria and Egypt - in terms of industrial output, economic growth and formation of social classes. It is a strong economy dovetailed to a strong, autonomous arms industry capable of generating highly developed military hardware unequalled in Africa. It is this enormous economic and military capacity which allows South Africa to play the role of imperial master on the sub-continent. It is also this strength which has allowed the state to hold on to its repugnant policy of apartheid despite international condemnation on all fronts.

Without condemning Wallerstein's description of South Africa as a semi-periphery one should point out that to categorise in such a general manner is theoretically dangerous. That South Africa exercises economic control and thus largely dictates policy is without doubt. The three countries being discussed in this paper are formally "independent" but have been held through their short lives as hostages of South Africa's policies. The relationship which exists between these states can only be defined as core-periphery relations, albeit with South Africa as a continental metropolis with pariah status on the international arena.

Arguably the most important tool through which South Africa exercises its control is via the Customs Union Agreement.

#### (iv) The Customs Union

A customs union has been in existence between South Africa and the BLS since 1910. The 1910 agreement was concluded between South Africa and the British administration responsible for the three high commission territories. It was an agreement which was made without consulting the peoples of the territories concerned. Seen in light of the

circumstances surrounding the issue of incorporation (discussed above), it was simply a concession granted by the British to the Afrikaner's quest for the territories. This agreement was designed to meet the requirements of a free customs union under which it was agreed that the territories would adopt and maintain South African customs and excise duties to apply on a reciprocal basis. This would allow for the equitable sharing of revenue from customs and excise duties. It would also allow for the free interchange of products and goods produced within the customs union.

For all intents and purposes this agreement was favourable to the South African government since it was founded on the basis of the understanding that the territories would eventually become part of the Republic of South Africa. When it became apparent in the early 60's that Britain was going to relinquish control not to South Africa but to the locals, the mood on both sides shifted. The South Africans saw the agreement as inadequate in terms of protecting their interests and the BLS viewed the agreement as being wholly unfair given South Africa's developed economy.

The case for the BLS was summed up by the Botswana Transitional Plan for Social and Economic Development 1966.

"The actual tariffs levied are determined by South African interests. High protective duties imposed to protect South African industry tend to diminish the total revenue collected. In such cases the diversion of customers from cheaper overseas imports to more expensive South African manufacturers results in a transfer of spending power from (BLS) consumers to South African producers. (reproduced; Dale "Botswana"). (p114).

It was also felt by economists in the BLS that since they could not levy a duty on imports from South Africa this in essence meant that whatever competing industries they tried to establish would be undercut by cheaper products from South Africa. This pointed to the immense economic power of South Africa when compared to the BLS. The total percentages of revenue received by the BLS in 1966 reflects the imbalance; Botswana 0.27622 per cent, Swaziland 0.14900 per cent,

Lesotho 0.88575 per cent compared to South Africa's 98.68903 per cent (Dale p.114).

One of the most glaring inequalities of the customs union was the fact that the decision making was undertaken unilaterally by South Africa. The 1910 agreement made no provision for any consultation procedures. This reflects the South African legacy inherited by the BLS. The agreement was essentially entered into between Britain and South Africa with the high commissioner signing for the BLS. In a multilateral agreement decisions were unilateral. This anomaly is reflected in the South African decision to institute a purchase tax in 1969 without consulting the other members of the union. This was done despite the fact that such a tax would have a serious impact on the economies and living standards in the BLS (Weisfelder 1972:134).

A new Customs Union Agreement was signed on December 11, 1969. This purported to meet many of the objections put forward by the BLS. Many concessions do appear in the 1969 agreement. Many attribute these concessions to the South African government's "outward looking" foreign policy.<sup>12</sup> This policy was designed to make friends in Africa due to continuing isolation of the Republic. These concessions, however, they may appear on paper, must be looked at with the disparities existing between the economies of the BLS and South Africa (discussed below).

The 1969 agreement as it appears, terminates the 1910 agreement and has as its main features as follows:

(a) With certain exceptions provided for within the agreement there should be free movement of goods within the customs area (Articles 2 and 3).

(b) South African customs and tariff duties and sales duty should be applied to all goods imported into the area, and that there should be identical rebates, refunds or drawbacks on these duties (Article 4(1), (2) and (3).)

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<sup>12</sup> For a general discussion of the "Open Door" Policy. See R.J. Southall "South Africa" in *The Political Economy of African Foreign Policy* ed. 1985; J. Barber *South African Foreign Policy 1945-1970*, 1973; J.E. Spence *South African Foreign Policy: The Outward Movement in Southern Africa in Perspective*, 1972 ed.

(c) The government of South Africa should give the other parties adequate opportunity for consultations before imposing, amending or abrogation any duties with respect to goods imported into the area (Article 15).

(d) The governments of the BLS may impose protective duties on goods imported into their area - whether from within the union or outside - in order to enable new industries to meet competition from other producers within the area, and that the party imposing such protective measures shall do so only after consultation with other members, and that such protective measures shall not be imposed for a period of more than eight years (Article 6).

(e) After specifying certain industries which are of potential importance to their economies, the BLS governments may be given "sympathetic consideration" by the South African government in terms of the non reduction of, and possible increase of tariffs on products in competition or the allowing of customs duty relief on any material inputs required for the specified industries (Article 7). Such non-reduction, increases or relief shall be only for a specified period and the Government of South Africa may reduce or abrogate any excise duty applicable to goods produced by that industry which may be harmful to that industry (Article 9).

(f) All goods grown, produced or manufactured (as opposed to imported goods covered by Article 4) in the area should be subject to South African excise and sales duties (Article 8), and South African laws relating to customs, excise and sales duty should be adopted in the BLS (Article 10).

(g) Each party may maintain its own restrictions or prohibitions on the importation into or exportation from its area of any goods for economic, social, cultural or other reason (Article 11).

(h) The revenue from customs, excise, sales and any additional duties should be pooled and the BLS receive a share which is determined by a formula reflecting a percentage on the value of total goods

imported, produced and consumed in each area; such percentage obtained plus a multiplying factor of 1.42 will thus represent each parties' share (Articles 13 and 14).

(i) There should, with exceptions of public policy or security considerations, be freedom of transit for imports or exports of any of the parties and transport rate discrimination is prohibited (Articles 15 and 16).

(j) Should a party feel that exports from another party's area are being introduced into its area in increased quantities or in any other manner so as to cause or threaten serious injury to producers or manufacturers in its area, it should request consultations with the exporting partner so as to reach a "mutually acceptable solution" (Article 17).

(k) A party may not without the prior agreement of the other parties enter into a separate trade agreement with any other party which is outside the customs area which agreement allows for concessions on duties which are in force within the customs area (Article 19).

As can be seen this agreement provides for certain advantages to the BLS countries, in particular the provision on the protection of industries in their area. One would be tempted to conclude that it is a fair agreement based on equitable sharing of revenues enhanced by a multiplying factor intended to compensate for the polarisation of the South African economy. However when one considers that the BLS' exports are primarily agricultural or primary products with industrial production playing a minor role in economic development this conclusion becomes an illusionary vision of South African policy. The disparities between the partners are reflected in the following tables which should give one a rough idea of the products exported and imported by each member and their relative incomes and payments.<sup>13</sup>

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<sup>13</sup>Source: Arnold H. Isaacs Dependency Relations Between the BLS and South Africa.

BOTSWANAImports in various categories of goods (in millions of Rands)

	<u>1973</u>	<u>1974</u>
TOTAL	<u>111,7</u>	<u>121,5</u>
Vehicles	16,2	18,0
Mineral Oils	6,2	13,7
Steamboilers; machinery	17,5	9,7
Iron and Steel	9,2	8,3
Electrical Machinery	6,3	4,7
Clothes	3,1	4,7
Beverages	3,5	4,6
Meal products	4,2	4,0
Sugar and Sugar products	1,9	3,0
Paper	2,0	2,5
Furniture	1,8	2,2
Rubberware	1,4	2,1
Textile products other than Cloothing	1,1	2,0
Footwear	1,2	1,9
Cement and Building Material	1,8	1,7
Tobacco	1,3	1,6
Wood	1,2	1,7
Synthetic Yarns	1,1	1,4
Pharmaceutical products	1,1	1,3
Milk products	1,1	1,4
Soap	1,2	1,2
Coffee, Tea	0,9	1,1
Knitting	1,3	1,0
Spare Parts for Aeroplanes	0,3	1,4

(Source: "Exportmarkten": landengroep 12; III kwartaal 1977,  
bijlage II (a), p. 27)

Exports of various kinds of goods (in millions of Rands)

	<u>1973</u>	<u>1974</u>
TOTAL	<u>63,7</u>	<u>82,9</u>
Mining Products	23,2	38,4
Meat and Meat Products	30,7	32,8
Hides, Skins	2,0	1,6
Animal Products etc.	0,5	0,8
Other Products	7,3	9,3

(Source: "Exportmarkten": landengroep 12; III kwartaal 1977,  
bijlage II (b), p. 28)

## LESOTHO

### Imports in various categories of goods (x R1 000)

	<u>1973</u>	<u>1974</u>
TOTAL	<u>67,962</u>	<u>84,702</u>
Maize and Maize products	5,062	3,456
Livestock and products	16,014	16,202
Clothes	10,107	13,216
Machinery and Transport equipment	6,893	8,307
Blankets	4,302	6,652
Petroleum products	2,836	5,219
Chemical products	2,776	4,006
Footwear	2,415	3,591
Other products	17,557	24,053

(Source: "Exportmarkten"; landengroep 12; II kwartaal 1977,  
bijlage II (a), p. 80)

### Exports in various categories of goods (x R1 000)

	<u>1973</u>	<u>1974</u>
TOTAL	<u>8,285</u>	<u>9,734</u>
Livestock	1,998	1,526
Wool	3,190	3,452
Mohair	1,526	1,589
Diamonds	255	902
Other products	1,316	2,265

(Source: "Exportmarkten"; landengroep 12; II kwartaal 1977,  
bijlage II (b), p. 80)

## SWAZILAND

### Exports of selected commodities, 1966-1971 (x R1 000 000)

	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Forest products	8,2	6,9	7,3	9,3	12,3	12,4
Sugar	10,2	9,5	9,1	10,5	11,8	11,5
Iron Ore	8,5	10,0	9,0	9,6	11,0	12,2
Asbestos	5,0	5,8	6,0	6,2	5,2	5,6
Citrus Fruits	1,2	1,4	1,8	3,5	3,6	4,4
Meat and Meat Products	1,3	1,9	2,3	1,3	1,7	1,9
Other	4,0	4,7	3,8	4,1	4,6	6,8
	<u>38,4</u>	<u>40,2</u>	<u>39,3</u>	<u>44,5</u>	<u>50,2</u>	<u>54,8</u>

(Source: Surveys of African Economies, Vol. 5, 1973  
Table 26, p. 219)

Value of Imports by Commodity, 1968-1971 (x R1 000 000)

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Food and Live Animals	4,1	5,0	4,8	4,6
Beverages and Tobacco	1,6	1,8	2,4	2,4
Crude Materials	0,4	0,7	0,5	0,7
Fuels and Lubricants	2,9	3,1	3,5	3,8
Edible Oils and Fats	0,2	0,2	0,2	0,2
Chemicals	3,1	3,2	3,6	4,3
Manufactures and Materials	7,1	8,3	7,5	7,4
Machinery and Transport Equipment	10,0	9,2	11,2	13,0
Miscellaneous Manufactures	4,0	4,8	5,0	5,0
Other	0,7	1,1	4,0	4,7
	<u>34,1</u>	<u>37,4</u>	<u>42,7</u>	<u>46,1</u>

(Source: Surveys of African Economies,  
Vol. 5, 1973 Table 28, p. 220)

SOUTH AFRICA

Imports into various categories of goods  
(out of a total of 99)

(x R1 000 000)

	<u>1975</u>	<u>1976</u>
TOTAL	<u>5.561,8</u>	<u>5.886,4</u>
Organic Chemical Products	117,2	129,0
Various products for the Chemical Industry	100,6	107,3
Plastics	134,6	171,8
Paper, Carton and their Products	98,3	110,6
Synthetic Cloths etc.	75,4	116,3
Iron and Steel and their Products	405,5	213,4
Machinery etc.	1.287,3	1.298,3
Electrical Machinery	532,2	639,3
Cars, Tractors and other Vehicles	935,1	874,4
Aviation	78,7	290,4
Optical, Measure & Precision Instruments	155,1	157,7

(Source: "Exportmarkten": landengroep 12; II kwartaal 1977,  
bijlage III (a), pp. 36-38)

Exports into various categories of goods  
(out of a total of 96)

(x R1 000 000)

	<u>1975</u>	<u>1976</u>
TOTAL	<u>3.989,6</u>	<u>4.500,7</u>
Fruit	175,9	140,1
Grain	324,2	247,5
Sugar and Sugar products	288,5	215,2
Products from Vegetables and Fruit	105,1	135,3
Salt, Soil, Stone, lime, Cement etc.	138,6	194,4
Ores etc.	198,4	291,8
Fuels, Petroleum and their Products	51,2	112,0
Wool etc.	136,9	203,6
Pearls, Precious Stones and Metals	419,5	548,7
Coins	575,3	338,0
Iron and Steel and their Products	251,3	453,2
Copper and its Products	123,0	158,0
Nickel and its Products	62,4	104,4
Machinery etc.	111,3	112,8
Other Products	265,6	296,7

(Source: "Exportmarkten": landengroep 12; II kwartaal 1977,  
bijlage III (b), pp. 39-41)



From these figures one can discern that the BLS are largely dominated by their partner's economic strength. It would thus be wrong to view the concessions to BLS industries as simply a ruse by South Africa to gain friends. South Africa's "outward" looking foreign policy was not merely an aim to gain the co-operation of African countries which were willing to swallow their distaste of its racial policies,

"The outward movement had major political-diplomatic and military-strategic objectives but had an underlying material basis in the requirement of South African based capital for increased resources, larger markets, expanding spheres for investment and maintenance of the existing supply of foreign migrant labour". (Southall p.233).

This factor representing an "underlying material basis" can be observed within the customs agreement. Even though articles 6 and 7 serve to provide for protection of BLS' industries, when read together with article 17 the advantages gained through these articles are somewhat diminished. Article 17 can be seen as an escape clause which protects South African industry. It effectively prevents BLS from setting up industries which are similar and are thus potentially competitive in regard to South African industries. The clause, therefore allows South Africa to wilfully destroy any chance of industrial growth in the BLS areas by simply preventing the establishment of industries which are directly in competition with her own products. The pay-off under this arrangement is twofold in favour of South Africa, not only can it prevent similar industries being set up but it can also enjoy the benefit of importing from her "partners" products which do not necessarily prevent her own industries from finding markets (Isaacs pp.32-37, Selwyn p.117-119). This conclusion is borne out by the fact that by the time of the agreement (1969) South Africa already had a fully fledged manufacturing base covering most of the base industries necessary to an economy with BLS lagging far behind. This means that any attempt to establish an industry in these peripheral areas is doomed to failure.<sup>14</sup>

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<sup>14</sup>For an interesting discussion on the failure of Lesotho to establish an assembly plant for motor vehicles and attempts by Swaziland to establish a fertilizer plant see Isaacs pp.37-38.

The agreement provides that there shall be "free interchange of goods in the region." Taken as read this implies that the BLS may not only export to and import goods from South Africa (or the international market) but may trade with each other. However this is not the case. They are compelled to trade with South Africa in the region not least because they are primary products exporters and thus need South Africa's refining facilities (Isaacs: 39) but also because the rail and transport system of Southern Africa runs from north to south and not east to west (Colclough p.10). South Africa therefore controls the distribution networks. The extent to which trade between the BLS countries and South Africa has been entrenched is reflected in the following figures.<sup>15</sup>

Imports and Exports, 1976: Source Direction and Value (million US \$)

Country	Total Exports	% going to region excl. RSA	% going to RSA	% going to rest of the world	Total Imports	% from region excl. RSA	% from RSA	% from rest of world
Botswana	176.15	9.1*	15.1	75.8	187.65	12.2*	81.4	6.4
Swaziland	193.66	0.8	20.1	79.1	135.25	0.7	87.4	11.9
Lesotho	16.9	0.6	89.9	9.5	177.30	-	94.4	5.6
Total	386.71	10.5	125.1	164.4	500.2	12.9	263.2	23.9
South Africa	8843.24	11.0	na	89.0	6736.69	4.3	na	95.7

Source: Calculated from trade matrix, presented in Economic Dependence and Regional Co-operation, Sector paper prepared for the SADCC, Arusha, July 1979, Table 8, p.52 (mimeo).

Notes: \*Mainly Zimbabwe

These figures show not only a lack of direct trade links between the BLS countries but a marked dependence on South African products which account for an average 90 per cent of their total imports. For Lesotho the situation is worse, being geographically surrounded by South Africa, it not only exports the relatively minimal goods it produces to South Africa, it is also chronically dependent on South African products whose value far outstrip its revenue from exports. This means that for revenue it is hugely dependent on the migratory labour it exports to South African mines.

<sup>15</sup> Reproduced in Botswana's Economy Since Independence 1983 ed. p.11.

It is plain to see that for South Africa the BLS forms an adequate market for its goods, a market which finds institutional protection in the customs union agreement. Put another way, within international capitalist relations where the powerful producers (incl. S.A.) are in direct competition with each other for markets, South Africa has a haven in her backyard where her products are not met by international competition. This all points to the benefits of a strong economy, a regional hegemony which allows South Africa to dictate the terms of trade.

On the issue of consultation the agreement provides (Article 20) for a Customs Union Commission. The commission is supposed to meet once a year for "the purpose of discussing any matter arising out of this agreement". It comprises representatives of all the contracting parties. Its powers are limited to using its "best endeavours to find a mutually agreeable solution to the particular problem or difficulty". Upon discussion the representatives are requested to report to their respective governments with the view that "remedial measures" will be considered by the governments. As we have seen one of the major complaints by the BLS in relation to the 1910 agreement was the fact that South Africa could take unilateral decisions without consulting its partners. Article 20 was supposed to remedy this deficiency. Looking at the almost non-existent powers of the commission one is bound to be sceptical; the commission has absolutely no powers of enforcement except to recommend to respective governments with a view that such governments will undertake to remedy the "matter". Given the power of South Africa it is doubtful that it will agree to take measures which it views as detrimental to its economic position when requested to do so by its weaker partners. In actuality if Article 30, which provided that South Africa will give the other partners adequate opportunity to consult before it imposes, amends or abrogates any customs duty, is invoked by the BLS countries not only can these countries not enforce a decision under the consultation clause, the agreement itself provides South Africa with a broad escape clause under paragraph 2 of Article 5. This provides that 5(1) shall not be applicable:

"if the imposition of, or the removal of, or an amendment to any customs duty either forms part of the measures of the government of South Africa designed primarily for fiscal

purposes, or is resorted to as an interim measure designed to assist a local industry in the customs and pending the completion of an investigation by the appropriate South African authorities".

Who determines what are fiscal purposes is not provided for and naturally it must be assumed that it is the government of South Africa, just as it decides what necessitates interim measures. However the point is that not only does the clause act as an escape clause but it further strengthens the thesis that the agreement is in itself wholly unequal. This is further evidenced by the fact that under Article 10 the BLS countries are obligated to apply South African laws with respect to customs, excise and sales duty thus not allowing for the formation of indigenous rules relating to trade in general.

That trade with countries outside the union is severely affected by Article 19 is provided by the fact the BLS, being parties to the ACP-EEC Lome convention, are allowed to export goods duty free into the EEC, but because of this article, they cannot enjoy duty free imports from the EEC. Further, the article limits the amounts of trade between the BLS and other countries further north on the sub-continent as they cannot give favourable terms to products outside the area. Article 19 also restricts the ability of BLS to participate fully as equal partners in the treaty for the Establishment of the Preferential Trade Area for Eastern and Southern Africa States; see particularly Article 3(4)(a)(xii) and Annex XII; "Protocol Relating to the Unique Situation of Botswana, Lesotho and Swaziland". This treaty is reproduced in 1982 I.L.M. p. 479. So that despite having trade links with other centres, the BLS are cocooned in an assiduously asphyxiating agreement which ensures that South Africa collects on all fronts.

The issue of restrictive measures on trade links with other peripheral states on the sub-continent brings us directly to the pertinent question; with their sovereignty compromised by events beyond their control what steps are being taken by the BLS to secure their economic independence from South Africa. It is this question to which we must now turn in the third part of this paper.

## Conclusion

This part of the paper has charted (a) the development of capitalism in South Africa (b) its rise to become a dominant centre in the Southern African periphery (c) the creation of dependency links between South Africa and the BLS states, and (d) the institutionalisation of these dependence links through the Customs Union Agreement. What has therefore been seen is the use of purportedly legitimate means by a powerful state to perpetuate chronic dependence links with its weaker neighbours.

As a general conclusion to this study Part III will seek to identify the cause of action to be taken to eliminate the dependence links.

### PART III

#### Economic Independence - an attainable goal?

##### (i) Introduction

This part of the paper will serve as a conclusion of the discussion undertaken in Part II. That is, the issues raised here will seek to find an answer to the question of eliminating dependence. The method chosen will not only concentrate on Southern Africa but will also pursue a discussion of the response of the Third World in general to the issue of economic independence. Such a general overview of collective action is imperative when seeking to address the issue of the role of the BLS acting in concert with other states to eliminate dependency; not least because the BLS states are international actors in their own right.

However, before undertaking such a task one must be aware that the issue of economic independence is a wideranging one. It is one which has been tackled across the whole range of the social science disciplines. For our discussion the questions pertaining to economic independence shall be tackled using the political-economic format and international law; international law because the major focus will be on organisation which presupposes the existence of rules of both the procedural and substantive forms and this in turn involves the law since the law is pre-eminently about rules. The use of law as a basis of analysis will, however, be limited by the fact that it is political-economic events which dictate the formation of organisations and thus the rules which accompany organisations. It is also true that enforcement of rules in the international arena is not dictated by the requirements of an international legal order but by the political order which allows nation states to behave in a manner largely dictated by their interest; be they collective or individual interests.

The organisation must therefore be seen as a vehicle through which states seek representation and fulfillment of their interests. This is a point mentioned in the first part of the paper.<sup>1</sup> It was through the use of

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1 Johan Galtung's theory of imperialism.

organisations that the Western world was able to legitimise its overall dominance just as it is through an organisation that South Africa maintains crippling dependence relations with the BLS.

Thus one of the factors presented by Johan Galtung's theory is the ability of peripheral states to counter economic domination by centre states through collective action. For purposes of our present study this has been initiated by Southern African states through the formation of the Southern African Development Co-ordination Conference (SADCC) whose avowed goal is the elimination of the economic dependence of the member states. It is this organisation which will be at the centre of the discussion since the goal here is to try and seek answers to the question of dependence links between the BLS and South Africa.

However a study of SADCC cannot be undertaken in isolation since its member states do make up part of a wider spectrum of states engaged in similar struggles. It is also of importance to note that the formation of SADCC was partly as a result of these wider struggles being played out on the international fora such as the United Nations, resulting in more concentrated effort at the continental and regional levels. For these reasons an outline of the efforts made at the United Nations with particular emphasis on the Charter of Economic Rights and Duties of States (CERDS) and the New International Economic Order (NIEO) shall be given. At the continental level focus will be on the efforts of the Organisation of African Unity (OAU).

The format chosen is first a discussion of the U.N. efforts which will serve to give a wider picture of the structural analysis. The O.A.U. will then be considered. Lastly the structure of SADCC will be given. It is not the aim here to look at the organisational functions of the organisations (with the exception of SADCC) but rather to focus upon whether or not there is reason to believe that collective action can succeed given the adoption of strategies for economic independence within these organisations.

(ii) Economic Independence: A Global Consensus?

It was in the early 1960's that the decolonisation process touched Africa. This was to result in the largest influx of states becoming members of the United Nations. For centuries the so called dark continent's population had been pawns in other peoples designs. Now they were being recognised as human beings worthy of membership in the international community. Together with other deprived nations Africans were being given the opportunity to become players rather than mere pawns in global affairs. A transition was taking place at the United Nations. The custodians of world security were being asked to pass some of their global influence to these new states. A new generation of nations, born in this present century and hardened by a long and bitter deprivation, were bent on revising the agenda of world order; a world order shaped by the powerful and designed to deprive the majority of their rights to share in global wealth.

Third world influence in global affairs was to be initiated in that all embracing body, the United Nations. It presented the new international actors with the only forum which truly recognised their right to voice their grievances and partake in the decisions affecting their interests. The U.N. General Assembly provided the means through which the third world states could seek to counter the assymetrical economic relations (discussed in Part I) existing between them and the industrialised nations of the West. It was through the General Assembly that international economic community relations entered a new phase; the phase when the third world declared its intention to overturn the existing international economic order and replace it with a new one.

On May 9, 1974 the General Assembly adopted the declaration on the Establishment of a New International Economic Order <sup>2</sup> and in December of the same year adopted the Charter of Economic Rights and Duties of States. <sup>3</sup> These resolutions laid down not only the demands of the third world but, together with the Programme of action on the Establishment of a New International Economic Order (GA Res. 3202 (S-Vi) 1974 ILM p270), consist of a series of principles and rules relating to the establishment of a new order.

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\*2 GA Res/3201 (S-Vi) 1974 I.L.M. p.715).

\*3 GA Res/3281 (XXIX) Brownlie Basic Doc. p.235 3rd ed.



Resolution 3201 states that the new order must be based on "equity", sovereign equality, interdependence, common interest and cooperation amongst all states irrespective of their economic and social systems", and that it "shall correct inequalities, and redress existing injustices", and "make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations." The principles upon which the declaration is founded range from the sovereign equality of states, self determination of all peoples, broad cooperation, right to nationalise as an expression of sovereignty, regulating the activities of multinationals, just and equitable pricing of primary products, strengthening collective self reliance among developing countries to the promotion of producers' associations.

The Program of Action then identifies the various international economic sectors in which effort must be made to redress the severe economic imbalance in the relations between the developed and developing countries. Through Article VI of the Program of Action the Charter of Economic Rights and Duties of States then lays down the broad rules which will regulate the establishment of the NIEO.

The fundamental legal question which must be answered is, do the instruments provide us with a regulatory procedure which can or should ensure adherence by the community of states? To find an answer one must turn to the ongoing debate about whether or not General Assembly resolutions have legal effect, that is, is the General Assembly capable of making law to regulate the behaviour of States. There are various views offered by international jurists on this issue; there are those who maintain that General Assembly resolutions are binding on member states of the U.N. and those who assert that even though these resolutions may have some legal impact they are not capable of creating law. The crux of the issue is thus on the norm-creating function of the General Assembly.

The first view, on the binding nature of resolutions, is demonstrated by the PATNA DECLARATION adopted by international jurists from India and Nepal which declares in part,

"that the resolution of the General Assembly passed by more than three fourth majority of membership be treated as enunciating a principle of international law." <sup>4</sup>

This is a wide and perhaps too extreme an interpretation of the powers accorded the General Assembly by the U.N. Charter which under Article 10 empowers it to "discuss" and make "recommendations." However some jurists have tended to bypass Article 10 and bring the debate into the ambit of the creation of binding obligation under certain circumstances. For example Professor Ingrid Delipus writes that:

"It is true that resolutions of the General Assembly are binding when they repeat rules which exist in customary international law..."  
(International Law and the Independent State p.13).

de Arechaga asserts "These Declarations may constitute a source of rules of international law in a way similar to the formation of a consensus in conferences for the codification and progressive development of international law." ((159) Recueil des Cours 1978 p.31). If this is the process through which a resolution may be recognised as forming a norm of international customary law then it would be difficult to grant customary law status to the NIEO or CERDS.

Taking Professor Delipus' view that resolutions are binding when they repeat rules which already exist in customary law it may be enlightening to point out what constitutes a customary rule is still a matter of great debate among jurists. <sup>5</sup> de Arechaga's assertion on codification is worth further consideration. Brownlie suggests that the process of codification is "the setting down, in a comprehensive and ordered form, of rules of existing law and the approval of the resulting text by a law determining agency", (Principles of Public International Law p.31). If this definition is taken as a true representation of codification then it would be extremely difficult to claim that the General Assembly is a "law determining agency". It is generally agreed that what constitutes law determining agencies in terms of the sources of international law are

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4 Reproduced in "International Law through United Nations" edited by R.C. Hingorani p.201.

5 See Carty "Decay of International Law", 1986 at pp.25-26.

judicial decisions and the teachings of highly qualified jurists (Article 38(1)(d) of the Statute of the World Court).

Given that the principles embodied in Resolution 3201 and the rules in the CERDS were not unanimously adopted at the U.N. their validity as authoratitive principles and rules becomes even more doubtful. The Western industrialised states to whom the demands enshrined in these instruments were directed, accepted as general principles most of what is contained in Resolution 3201 but made certain reservations, particularly as regards the clauses of article 4(e) and (f). These clauses are the ultimate expression of the sovereignty of the State over its natural resources and economic activities. Article 4(e) describes the rights of the State to exercise "effective control, exploit, nationalise and transfer ownership to its nationals" as inalienable and that the right to nationalise is an expression of "the full permanent sovereignty of the State." Article 4(f) provides that where there has been "foreign occupation, alien or colonial domination or apartheid" the State is entitled to full compensation and restitution for all resources exploited and depleted. As regards 4(f) Britain was quite emphatic that it could not accept the formulation. Rejecting both 4(e) and (f) Mr Richards the British representative stated:

"We do not ... interpret the Declaration as in any way affecting international obligations in relation to States' sovereignty over natural resources, nor do we accept the apparent obligation for compensation referred to in paragraph 4(f) (1974 ILM pp.763-764).

On the question of permanent sovereignty over natural resources the U.S. delegate could not find the formulation under paragraph 4(e) acceptable on the grounds that it "does not couple the assertion of the right to nationalize with the duty to pay compensation in accordance with international law" (1974 ILM p.746).

This rejection by the industrialised Western States of what may be considered a vital expression of economic sovereignty was dealt the second blow when the General Assembly voted on the adoption of the CERDS. This

was adopted by a majority vote of 120 in favour, 6 against (Belgium, Denmark, West Germany, Luxembourg, United Kingdom, United States), and 10 abstentions. Again the contentious issue involved the question of permanent sovereignty over natural resources and the right of the state to dispose of its resources in a manner which suits its development needs and provide compensation according to its domestic law (Article 2(2)(C) CERDS). Without going too much into the intricate arguments for and against compensation for nationalised property it will suffice to show that the Western States adhere to certain standards when it is their interests which are at stake.

Traditionally, when there was no effective opposition to the formulation of rules of customary law, the interference by the State with foreign owned property was regarded as a violation of acquired rights. However by 1962 the rules were changed with the majority of states claiming it a right to nationalise property in accordance with domestic law. It was conceded under Resolution 1803 (XVII)(Brownlie p.23) that "appropriate" compensation would be paid. This vague formulation (appropriate compensation) was of course open to wide interpretation with the Western States arguing that the correct interpretation should be "adequate, prompt and effective compensation". This argument was carried forth to the negotiations over the CERDS Article 2(2)(c) with the Western States' rejection of the whole Charter after a failed amendment. Article 2(2)(c) was seen: (a) as a total rejection of international law with respect to nationalised foreign owned property and (b) as a means by which to circumvent international obligation and base the issue of compensation wholly on subjectivity (de Arechaga pp.302-303).

With respect to these criticisms Jimenez de Arechaga points out that under international law the formulation of 2(2)(c) is a legitimate one. Under the local remedies rule national law and local remedies have to be exhausted before resort to international measures; international law provides that "a state may take up the case of its national and make a claim on its behalf", and this right is not precluded by the Charter (de Arechaga pp.303-304).

If therefore the true motive behind the industrialised countries' rejection was not the exclusion of international regulation what was it? It is

difficult to find an answer based within the confines of international law. However one could look at new forms of regulating foreign investment, particularly at the bilateral investment treaty. The bilateral investment treaty seeks to establish a lex specialis between two parties with a view to creating a mutual regime of investment protection. The features of these treaties do show that regulation is two-way. However when one considers the fact that they are generally entered into between an industrialised state on the one hand and a developing state on the other, the effect of protection is one sided; it is the industrialised state which is the exporter of capital to the developing nation and as such it is the industrialised states' investment which is really being protected.

The fact that they are a recent phenomenon of international relations must attract the view that they are intended to create special relationships intended to circumvent customary rules of international law (see M. SORNARAJAH State Responsibility and Bilateral Investment Treaties pp. 80-83). It is worth noting that the refusal of Western States to accept the fact that the majority of nations do not adhere to their traditional norms of customary law in relation to state responsibility for foreign investment means that the development of new rules is diversely affected. The creation of lex specialis regimes provides them with the ammunition needed to bypass the expressed view of the majority. The conclusion reached therefore must be that as long as international law and in particular the formulation of new customary rules, runs against their interests they will not accept it. This statement is not designed to mean that the principles enshrined in the NIEO, which these states have rejected, are now customary law. However it is very difficult to believe in the traditional sources of international law when the views of the overwhelming majority of states counts for nought in the face of a handful of powerful states' dissent. There is no international lawyer who would justly disagree that had the dissenting view come from a handful of states belonging to relatively poorer members of the international community their dissent would count for nought in terms of blocking the formation of a new customary rule.

That international law has failed to regulate the behaviour of states with regard to foreign investment cannot be doubted. The basis of regulation

initiated in the General Assembly through consensual procedure seems to have failed the emergent states. The NIEO and CERDS were based on a naive faith in the ability of rules to alter global patterns of wealth distribution and economic activities. There seems to have been no realisation that law itself is not neutral or value free. Without acknowledging the balance of power relations and the huge economic power exercised by multinationals which is tied up to world capitalist trade, it is extremely difficult to derive binding rules to regulate economic activities. Some international lawyers have argued for the implementation of the NIEO under the ambit of human rights, expressly the right to development.<sup>\*7</sup> The problem faced by the human rights argument is that (it is agreed that the right to development is one which involves states as the main participants) it has to establish the source of this right. Rose D'sa resorts to the argument that the NIEO is the vehicle through which this right is expressed. She however falls into the sterile argument (discussed above) for recognition of General Assembly Resolutions as binding and thus giving legal effect to this right (D'sa pp.143-144).

Broadly defined the right to development goes beyond economics or resources; "it extends to the maximisation of happiness via the enhancement of life and life possibilities for the individual, whatever his or her status or position in life" (Allott p.6). The underprivileged of the world are the holders of this right and it is the duty of governments to implement it. This view by Allott seems to be based on utilitarian principles which again do not consider the reality of the international order. If the industrialised nations are the duty holders how are they to be compelled to share the global wealth? Paul Brietzke adopts a more pragmatic approach by saying that it is only through international consensus that this right can be implemented (p.27). However such international consensus is hardly likely given that the industrialised states emphasize political and civil rights whilst developing states look to social, economic, and cultural rights as those paramount to them. Thus the case for the right to development is not effective for progress towards economic independence at the moment. It is beset by the problem that the

\*7 See for example Brietzke "Development as a Human Rite" p.25-27; D'sa R. "The Right to Development and the NIEO with Special Reference to Africa" pp.140-144; Allot, A. "Development for What? - False Gods and Holy Writ". pp.1-8.

holders of the correlative duties and rights have no common ground upon which to found a basis for implementing human rights in general.

Does this then mean that we have to dismiss the NIEO as impractical or are there other avenues through which it can be channelled to give rise to implementation? A striking feature of the NIEO is that it purports to be "new" and the demands inherent within it are supposedly geared towards transforming the present world economic order. Is it in fact "new" and does it constitute demands which are no more than pliant requests for the greater integration of third world economies into the Western dominated world capitalist economy? If credence can be lent to the demands of the NIEO, is there any justification in the criticism that it is in fact a rhetorical rebellion of the third world based upon a modern mythology of change? These pertinent questions must be answered if we are to find answers to whether the NIEO is a credible means towards a transition from dependency to the ability to control the economic destiny of the dependent state.

The Brandt Commission has tried to answer the second question by outlining strategies which it believes are necessary for the eradication of inequalities in the international economic order. The fundamental argument used is that the changes it suggests are in effect a promotion of "mutual interests" arising out of the increasing interdependence in international affairs (Brandt Commission Papers pp.395-402). The argument is pursued through a perusal of selected issues designed to exhibit that necessary economic adjustments are beneficial to both North and South in the short and long term (pp.403-416). Those covered are "energy and environment"; "food and agriculture"; "transnational corporations"; "migrant labour and brain drain"; "access to markets for manufacture and industrialisation"; "commodities"; "debt, financial flows and the international monetary system." The Commission does not attempt to give concrete proposals for the realisation of this "mutual interests" strategy. What it attempts is to outline broad proposals whose effectivity seems to depend upon a psychological reversal of the industrialised countries' economic policies. For example on the question of energy the Commission proposes that,

"the industrial countries should reduce the energy intensity of their own growth and make particular efforts to conserve world-wide petroleum supplies." (Commission Papers p.404).

This would mean that the industrialised countries should economise on their energy consumption and thus reduce output in industries which are heavily dependent on energy resources. This strategy, aimed at the industrialised states, is coupled with the suggestion that the less developed states should conserve their traditional energy resources and develop new forms. The first proposal seems to be largely impractical in that the Commission does not consider the fact that proposals aimed at governments do not necessarily mean that the real consumers of energy (the industries) have nothing to gain in such proposals; a capitalist economy is geared towards the maximisation of capital accumulation and energy plays a crucial role in this respect. Again the proposals on the role of TNC's in development seem to lack any realistic approach. The Commission suggests that the TNC's, "can bring to developing countries investment capital, technology, management and marketing skills" (p.407). Therefore they are a "potential force for development." The Commission accepts that transfer pricing, overpricing of technology through oligopolistic behaviour, distortion of technological choice, excessive or rapid exploitation of natural resources, distortion of wage and consumption patterns and interference through unfair competition among other things, limitations in know-how transfer and training of locals, the balance of payments effects of profit repatriation, taxation effects, political and economic interference are just some of the ill effects TNC's have on domestic economies. Despite this, the Commission seems to have an almost naive belief that there is, in their own words, "a very substantial mutual interest", in "harnessing the economic strength and experience of TNC's for development" (pp.407-408). The Commission does not undertake a study of the ideological dimension of international capital transfer. Despite the fact that the TNC's are an integral part of the expansion of capital on a global scale, most of the capital involved still has a national (metropolis) base in terms of its origin and its control. Most capital exports are between the developed countries and since the nationalisations of oil, this is all the more so true. The capital which is exported to



the developing countries does require that the host state gives political, military and economic support. With reference to Africa this support is provided by the local capitalist class which controls the state apparatus. If suggestions that the TNC's are to play a concrete role in development - meaning here the enhancement of the majority's economic, social and cultural prospects - are to be taken seriously the role of the social forces within the state receiving foreign investment via the TNC's must be assessed. The Commission does not seek to do this. It leaves open the internal role of the peripheral capitalist state and emphasises instead the hope that, through the NIEO - respect for sovereign equality - "attitudes, policies and procedures towards foreign investment in developing countries are likely to become progressively more 'positive' only if an atmosphere of trust and confidence is generated in the host country - TNC - home country relationships" (Commission Papers p.546).

There is a long list of issues tackled by the Brandt Commission which includes proposals on the reform of the General Agreement on Tariffs and Trade (pp.509-529) and the restructuring of the international monetary system (pp.567-706). These proposals are just that "proposals" which so far have been met with little, if any, implementation that has shown no signs of benefitting the developing countries. If anything, the international order has gone into further disarray with no prospects for peace in the middle-east, famine of horrific dimensions in Africa, debt crisis in Latin America. The situation is summed up by Shridath. S. Ramphal, Secretary-General of the Commonwealth,

"... As we turn toward the end of the century, the outlook is challenging almost beyond belief. It is as if a whole series of man-made disasters threaten our planet like tides rolling over us: tides of economic chaos that leave many a country struggling with social disintegration and political turmoil as economic conditions deteriorate: tides of human deprivation and misery that leave starvation and death in their wake and shame on common humanity: tides of anti-internationalism that batter the structures of international cooperation built patiently, and with sacrifice; tides of militarism

that imply a recrudescence of power and authoritarianism in our global society; and tides of arbitrariness and indifference to principle that erode the foundations of world order and make a virtue of extremism." (The Third World: a Look Before and After pp.58-59).

The only relief seems to come from "band-aid" type treatments which seek to herald a rejuvenation of world awareness, an awareness false in its implications as the role of the exporters of capital is hardened by tightened monetary policies, stricter barriers on international trade and lower commodity prices.

What, therefore, are the reasons for the failure of the NIEO? Or to return to the question asked above, is it really new or is it an attempt by the third world to attain greater integration into the world capitalist economy? On the political front it is hard to imagine why the political representatives at the United Nations should have presented a united front in the face of wide ranging proposals designed to integrate them into the capitalist world order. These states have diverse attitudes towards the philosophy and method of development—ranging from China's internal (as it was) socialist program to Brazil's export substitution oriented capitalist policies. Did the euphoria of presenting a united front blind the third world to the impracticalities of their demands? The question on whether the NIEO is in fact a "new" set of proposals is summarised in an answer given by Roy Prieswerk:

"Most surprising in what has actually been said are the number of proposed measures which are geared towards an intensification of existing economic relations. An entirely outward-looking concept of development is adopted: increased trade, more rapid transfers of technology, higher amounts of financial aid and better technical assistance. All the methods of 'improvement' put forward by the third world for the transformation of the world economy are geared towards a greater integration of their countries into a system that

looks very similar to the present one."

(Hidden Dimensions of the So-Called New International Economic Order p.35).

Prieswerk exposes the hidden dimension of "initiative development" which suggests that the third world more or less consciously were negotiating "to create societies resembling those of the supposed enemy." This involves a psychological dimension through which a process of "mental self-colonisation" is induced when faced with a model of the industrialized state. This brings us back to the issues discussed in Part I of this paper. It seems that the politicians of the third world did not reject (as did political-economists) modernisation theory. Johan Galtung cynically observes that,

"First the NIEO is essentially trade oriented; there is even talk of expanding the world economy ... Second, as far as improving world trade is concerned NIEO only aims at terms of trade. There is very little mention of changing the division of labour .. Third, to the extent that there is talk of improved terms of trade it is the deterioration in terms of trade that is discussed .. not the absolute level ... Fourth, to the extent that there is some talk of improvement of labour it centres on such tertiary sector institutions as transportation, insurance and finance institutions in general ... To summarize what the New International Economic Order means, when translated into world reality, is some kind of 'capitalism for everybody charter' (Galtung 1975, cited in Frank Rhetoric and Reality of the NIEO p.172).

This suggests that the NIEO has its foundations in a global confrontation between the international capitalist on the one hand and the peripheral capitalist who no longer wants to remain at the "margin" or "outside" but seeks to belong within the world capitalist system and participate in the decisions influencing its development.

With their proliferation into the world community of states, the developing countries seem to have embarked on a course which remains to today a collection of rhetorical demands which the powerful have simply brushed aside. Talks of sovereign equality became mere statements of what could be. Equality was attained where it counted least; the General Assembly of the United Nations. Where it matters most it is still the industrialised Western States who are in control. The security council and specialised agencies are still largely controlled by the West. The World Bank and the IMF are U.S. and to some extent West European controlled. It is now apparent that the West is not willing to relinquish its hold over the world's wealth. It has also become apparent that without concurrent political change in the world order there will be no economic change. The rules of international law cannot dictate change in policy; it is only through a political transformation that new rules able to regulate the economic behaviour of states in a just and equal basis will emerge. The failure of international law to provide protection for the third world within a capitalist world system does put grave doubts on the viability of international law. It lends credibility to the almost contemptuous attitude of political scientists that international economic legalism only provides a convenient reference point for what to do in the absence of contrary interests (see Tarullo p.534). Much of the problem lies in the inability of international law to provide new means for the creation of new rules designed to put right the inequalities existing between the first and third worlds. One of the basic problems is that of sovereign equality. The NIEO has much of its demands based upon a notion that all states are equal and therefore should share equally in the wealth of the world.

Western international legal theory has attempted to put into focus this claim of equality. Here we shall look at the eminent jurist Hans Kelsen in order to explore the mysterious nature of the concept of sovereign equality. Kelsen denies first of all the existence of lacunae in international law: "If there is no norm of conventional or customary international law imposing upon the state ... the obligation to behave in a certain way, the subject is under international law legally free to behave as it pleases ..." (Principles pp.438-439). Kelsen's words reflect the nature of behavioural patterns on the international fora. It essentially

means, for our purposes, that the powerful states can disregard any rules aimed at an equitable distribution of the world's resources on the grounds that they do not form part of international law. This, for example, was the attitude taken by the U.S. delegate at the negotiations for the adoption of the NIEO resolutions with respect to the issue of nationalisation (discussed above).

Kelsen, of course, is not a believer in a multidisciplinary approach to law. In his famous work, Pure Theory of Law, he seeks to purify the law by keeping it free from all foreign elements such as morality and politics. He asserts that the distinguishing factor between the legal order and other social orders is that the legal order is a Zwangsordnung, a coercive order. Thus coercion or the possibility of sanctions which can be applied forcibly in the case of commission of a delict, is the decisive criterion of a legal order (Kelsen "Principles pp.3-5 Kooijmans p.163). Kelsen applies this criterion to international law and comes to the conclusion that there are in fact international delicts because there are also international sanctions that can be applied in the case of such a delict namely reprisals and war (Principles pp.18-19). The cohesiveness and exclusivity of the legal order is compounded by the fact that a legal norm, and its validity can be traced back to a "higher" norm from whence the legal norm in question derives its authority. This theorising based upon a purely personal and speculative formal-logical analysis dismisses any material origins of human or state behaviour. The consequences of Kelsen's reasoning brings into derision ideas of the sovereign equality of states. If individual states can behave in any manner which suits them as long as there is no threat of legal sanction then the idea of sovereign equality has no place in the international legal order. It is the traditional rule of the sovereignty of individual states which counts. Any material foundation of a principle of sovereign equality must be dismissed as it cannot be traced to any higher norm and in fact may be said to be a contradiction of the supremacy of the state. According to Kelsen "if general international law provides for coercive acts as sanctions, the states concerned are authorised to execute them or, as this aspect of the principle of self-help is characterised, to take the law into their own hands" (Principles p.20). Equality in the law does not exist according to Kelsen. States are: "equal in so far as general international law

treats them this way, that is, insofar as general international law imposes upon all of them the same duties and confers upon all of them the same rights" (Principles pp.247-248). However some privileges are conferred by law on certain states which privileges are not shared by other states. Kelsen points to treaties which he says grant some privileges and excludes others. Taking the example of the United Nations he states:

"The Charter of the United Nations confers upon five great powers the privilege of the so-called veto right, without violating the principle of equality allegedly established by general international law. And in spite of the legal inequality of states under the Charter, the latter proclaims in its Article 2(1): 'The Organisation is based on the principle of the sovereign equality of all its Members.' It is evidently not equality in the law, but equality before the law which is meant by the right of equality attributed by jurisprudence to individuals as well as to states, in spite of the fact that men as well as states are in fact not equal." (Principles p.248).

On the question of sovereignty itself Kelsen dismisses the idea that it can be the basis upon which norms of international law are formed. It is a legal concept which means that a state, "must be subordinated only to international law, and not to the national law of another state" (p.249), and on equality; "It is an illusion to believe that legal rules can be derived from a concept such as sovereignty or any other legal concept. Legal rules are valid only if they are created by legislation, custom or treaty; and the legal rules constituting the so-called equality of states are valid not because the states are sovereign, but because these rules are norms of positive international law" (Kelsen The Principle of Sovereign Equality of States as a Basis for International Organisation p.210).

What Kelsen asserts, though in a highly abstract manner, is true; there is no such thing as the sovereign equality of states. However, the manner in which he approaches the issue of sovereignty is not realistic. To

opine that states are subordinate to international law is to neglect the historical dimension of state behaviour. One of the fundamental principles of the U.N. Charter is the non-interference in the domestic affairs of the member states of the U.N. It is not the place here to deal with the numerous instances - there is a wealth of literature on the subject - when powerful states have intervened in the domestic affairs of other weaker states; the most blatant violation of international law by the United States in recent times was its invasion of the small Caribbean island of Grenada. That sovereignty means the non-applicability of the national laws of one state in another may be true. However it is the most powerful state in the world which has enacted laws -antitrust legislation - which affect the domestic laws of other states. Maybe what Kelsen should have said was that the powerful states are those capable of sanctioning but are themselves not subject to any reprisals for violations of international norms.

To summarise: we have looked at the NIEO as being a set of demands supposedly aimed at a more just and equitable international economic order. These demands adopted by the General Assembly of the U.N. as resolutions we found to have absolutely no legal effect. A political-economic approach was then adopted which looked at the work of the Brandt Commission. This approach led to the conclusion that there is really nothing new about the NIEO except that it is an outline of proposals for the greater participation of the third world in the already existing international capitalist economic order. It was also discovered that the NIEO bypasses fundamental questions on the socio-political structures of the actors of the international community. Lastly it was observed that the basic principle upon which the NIEO is founded, "sovereign equality of states", is more a fiction than a reality; that international law, even in its traditional positivist form does not give credibility to the arguments for action based on notions of sovereign equality.

What has been said, in short, is that the NIEO is a set of rhetorical statements which never had or have much hope of implementation. What therefore, is the alternative? One of the proposals of the NIEO has been that of collective self-reliance. This proposal, unlike the many others, is not a demand aimed at the industrialised countries but would find

effect within the development strategies adopted by the third world countries. For purposes of this paper we look at the efforts at collective self-reliance in Southern Africa.

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(iii) Regional Co-operation: A Viable Alternative?

The idea of collective self-reliance is not new to African States. As early as 1960 independent African States recognised the need for collective action as a means to prevent new forms of colonialism. At the Second Conference of Independent States 1960, the heads of government recommended that: "independent African States should consider the possibility of introducing a system whereby economic and technical aid can be provided by them collectively". (Resolution reproduced in Brownlie. Basic Documents on Human Rights. p. 422. 2nd ed.). This was later broadened in the O.A.U. Charter whose article 2 provides, inter alia, that the O.A.U.'s purposes are, "to promote the unity and solidarity of the African States", and "to co-ordinate and intensify their collaboration and efforts to achieve a better life for the peoples of Africa". To those ends member states are requested to "co-ordinate and harmonize their general policies", particularly:

- (a) Political and diplomatic co-operation;
  - (b) Economic co-operation, including transport and communications;
  - (c) Educational and cultural co-operation;
  - (d) Health, sanitation, and nutritional co-operation;
  - (e) Scientific and technical co-operation; and
  - (f) Co-operation for defence and security
- (Brownlie's Basic Documents on African Affairs p.3).

Given the fact that independent Africa had inherited fragmented, retarded and virtually undeveloped economies and, colonial development had been entirely geared towards the export-import enclave, it is not surprising that the O.A.U. Charter adopted such a strong stance on the issue of economic integration. At independence there were strong feelings of pan-Africanism which faced insurmountable problems. Dominated by huge TNC's who are sometimes economically as large, or larger than the African governments themselves, with economic decisions largely influenced from outside, implementing economic integration and collective self-reliance was to prove a purposeful means only on paper and not in reality. This fact is not least due to the collaboration of certain governments with international capital. (see Part I).

However, despite the fall of the much heralded East African Community efforts to consolidate support for collective action have been on the increase in the past decade. The emphasis is on continental co-operation in general with regional schemes being the particular emphasis. In the Southern African sub-system recent shifts in attitude mark the commencement of the process of redefining regional and extra-regional relations. An attempt is being made by the Southern African States to look unto themselves rather than to foreign sources for new opportunities through which to develop and influence their own destiny. In direction and design there is much optimism that Southern Africa is achieving more autonomy. The most significant and distinct sign of this optimistic mood is the formation of the Southern African Development Co-ordination Conference (SADCC).

#### The SADCC

As the decade of the 1970's drew to a close, two contradictory but related developments occurred which were to indicate the emergence of a new framework for regional relations in Southern Africa for the 1980's. It was in 1979 that South African Prime Minister (as he was then) P.W. Botha announced a new strategy aimed at the realisation of the "outward" looking policy propounded by his predecessors: the forging of a "Constellation of Southern African States". It was also the year that the Southern African frontline states convened the first Southern African Development Co-ordination Conference at Arusha to launch a campaign for "economic liberation" from South Africa's regional economic hegemony.

Botha's scheme for a constellation was set on a course of failure from its inception. The plan was to involve the black "independent" homelands of South Africa and the independent states of Southern Africa in a regional economic union aimed at increased economic integration and political co-existence - a form of South African Commonwealth with South Africa as head. Botha however undermined the feelings of the black states. What they were being asked to do is participate in a venture which would permit minority white domination in the region with a new twist - black participation. The frontline states could not be lured by Pretoria's long stressed policy of "peaceful co-existence" and "non interference" while at the same time it continued its illegal occupation of Namibia, carried out repeated attacks on Angola and supported counter-revolutionaries in Mozambique.

The final blow against South Africa's strategy was struck on April 1, 1980. On that date all the independent Southern African States - Angola, Tanzania, Zambia, Mozambique, Zimbabwe, Botswana, Lesotho, Swaziland and Malawi - came together at Lusaka to form the SADCC. At this conference was adopted the Declaration; Southern Africa: Toward Economic Liberation. This spells out the broad policies and objectives of SADCC and reads in part:

Southern Africa is dependent on the Republic of South Africa as a focus of transport and communications, an exporter of goods and services and as an importer of goods and cheap labour. This dependence is not a natural phenomenon nor is it simply the result of a free market economy. The nine States and one occupied territory of Southern Africa (Namibia) were, in varying degrees, deliberately incorporated - by metropolitan powers, colonial rulers and sub-colonial structures centering in general on the Republic of South Africa. The development of national economies as balanced units, let alone the welfare of the people of Southern Africa, played no part in the economic integration strategy. Not surprisingly, therefore, Southern Africa is fragmented, grossly exploited and subject to economic manipulation by outsiders. Future development must aim at the reduction of economic dependence not only on the Republic of South Africa, but also to any single external State or group of States.

What is being expressed is a stance on regional relations. The members of SADCC are saying they can no longer stand by while South Africa exercises its economic will in the region. The declaration sets out the development objectives which it is believed will lessen dependency as

1. The reduction of economic dependence, particularly, but not only on the Republic of South Africa.
2. The forging of links to create a regional integration.
3. The mobilisation of resources to promote the implementation of national, interstate and regional policies.
4. Concerted action to secure international co-operation within the framework of the strategy for economic liberation.

The key to the achievement of these goals was identified at Lusaka as transport and communications. The delegates at the Lusaka Summit saw the dominance of South Africa's transport system and their dependence on it as paramount in their policy for change and immediately set up the Southern Africa Transport and Communications Commission based in Maputo. A Program of Action also formally adopted at Lusaka identifies the various areas of co-operation and the countries responsible for co-ordinating these areas. The areas of co-operation are as follows:

- regional food security (Zimbabwe)
- co-ordinated control of foot and mouth disease in cattle on a regional basis (Botswana)
- establishment of a regional sub-centre of the International Crops Research Institute for the Semi-Arid Tropics based in Botswana and co-ordinated with the heli of India
- regional industrial development (Tanzania)
- formulation of a regional energy conservation policy (Angola)
- sharing of national training facilities and assessment of need and opportunities for co-operation in manpower resources (Swaziland)
- establishment of a Southern Africa Development Fund (Zambia)
- forestry, fisheries and wildlife (Malawi)
- regional mining development (Zambia)
- soil conservation and land utilization (Lesotha and Zambia)\*

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\*Source: P. Meyrs The Southern African Development Co-Ordination Conference p.204 and Nsekela p.1.

The SADCC is a loosely knit organisation without any central control. At Lusaka the emphasis was not on institution building but on sectoral development projects seen by the delegates as a priority in terms of the fulfilment of SADCC objectives. A small secretariat has been set up in Botswana to handle the administrative work of the organization and act as a centre for co-ordination. Much of the work is carried out in the relevant government administrations responsible for co-ordinating particular projects. SADCC members are adverse to the notion of institution building as this cannot be a priority in development. Any institution building must serve the purpose of development. Or in the late Sir Seretse Khama words: "We must begin with concrete actions which help us to gain experience and define further fruitful ways of co-operation. We should not begin by building elaborate institutions and interstate bureaucracies. Any institutions should be instrumental to co-operation or result from it". (Nsekela p.xvii). This common-sense approach is further strengthened by the Sectorial Paper presented at the 1979 Arusha Conference which states that:

"Institutions should be designed first in terms of what they are supposed to do, second in their requirements for staff and finance and the availability of this staff and finance and only third in terms of internal institution considerations - the exact opposite of the normal administrative reform approach". (Nsekela p.38)

The Sectorial Paper stresses that institutional requirements with each state having a senior official in the relevant ministry or parastatal. Their work would then be co-ordinated through a small administrative body - the secretariat.

At Lusaka there were no illusions about the difficulties that SADCC would have to face. The main problem - as we have seen - is South Africa. Sir Seretse Khama writing in the introduction to the collection of Sectorial Papers edited by J. Nsekela states:

"There were no illusions at Lusaka that the advances of the recent past are now secure. Still less was there any failure to recognise that there would be opposition. The drive for national and regional development through co-ordinated action may be seen by some as a threat to their self interests. The struggle for economic liberation may therefore be bitterly contested," (p.xxi.).

This sobering thought has been realised all too clearly in the lifetime of SADCC. The response of South Africa to SADCC was summarised at the 4th Annual Conference (Lusaka) in 1984 in the 1982/3 Progress Report which states:

South Africa (has) intensified its aggression against SADCC states by invasion, military occupation, support for banditry, economic forms of destabilisation. As President Masire said at the opening of the Maputo Summit (1980), 'South Africa is trying to extract a high price from Member States for daring to establish SADCC; for contributing to the liberation of our brothers in Namibia, and for supporting the cause of democracy in South Africa'. (Proceedings of the Annual Conference, February 1984 p.9).

Despite this and other problems - such as drought and low commodity prices on the international market - each annual SADCC summit held since Lusaka has reported progress in most of the areas identified in the Program of Action.<sup>8</sup> For implementation of its projects SADCC depends on financial

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<sup>8</sup> Progress Reports of SADCC 2, 3, 4 and 5 - Proceedings pub. by SADCC Secretariat, Gaborone, Botswana.

aid from donor countries. Numerous pledges by invited governments for financial support have been secured. The 1981/82 Progress Report names the figure of U.S. \$664 million (\$487 million external, \$178 million domestic ) as secured to meet 27% of needs - up from 17% committed in 1980/81. At the time of the 1985 Conference held at Mbabane \$1,000 million had been committed to specific projects with another \$1,250 million still under negotiation. The problem of finance has so far not had much of the debt repercussions the rest of Africa is experiencing. Though, judging from the experience of the Latin American countries, the problem of debt will return with full force. At present the debt burden of the SADCC members (excl. Mozambique and Angola) stands thus:

Country	Total debt US \$ millions	IMF share US \$ millions	Debt per capita US \$
Botswana	530.3	-	589
Lesotho	244.1	4.3	175
Malawi	1073.0	127.0	165
Swaziland	260.4	13.5	372
Tanzania	3356.1	60.2	170
Zambia	4361.7	753.8	727
Zimbabwe	2967.9	259.3	396
Total	12793.5	1218.1	

Sources: IMF, World Bank and Bank for International Settlements. i.e. Produced in South Magazine July 1985.

Notes: total debts include short and long term debts for 1983; and I.M.F. loans at end 1984. Debt per capita is total divided by 1982 populations. Published debt data are known to substantially underestimate real levels

In 1984, according to estimates by South Magazine, Zambia, with the biggest debt of the SADCC countries was already paying to the I.M.F.

25 per cent of its export earnings and is already behind with its repayments. (p.32).

At this stage of SADCC's life it would be very difficult to estimate what future success SADCC may achieve, particularly with regard to economic independence from South Africa. However the pragmatic approach adopted is clearly the most important factor to this success. Despite this, there is always the danger of interference from South Africa. Not only does it pose a threat militarily but can cause havoc with the economies of the other states besides the BLS. The biggest problem is the political and economic heterogeneity of the member states. The ideological divide extends across the board ranging from hard-line Marxist Angola and Mozambique to capitalist Botswana and Malawi. The political contradictions become more manifest and concrete when viewing the member states policies towards the apartheid regime. The more conservative regimes see the objectives of SADCC as quite distinct from their relationship to South Africa. The ability of SADCC to provide developmental structures is taken hand in hand with whatever economic advantage can be gained from South Africa. Politically, therefore, the biggest problem is the lack of a distinct and unanimous policy toward South Africa; the economic problem being a transfer of dependence from South Africa to former colonial powers (plus the U.S., E.C. and Scandinavia) who have significant political, economic and strategic interests which are quite different from those of the SADCC members.

In conclusion it can only be said that given the fact that the dependence relations between South Africa and the BLS stem from a long drawn out historical progression of white domination, and that to remove these relations, given South Africa's military and economic might, is an awesome task, a different approach may be necessary. The BLS are essentially conservative states which do not pose much of a threat to South Africa. Their membership of SADCC can only benefit any struggle they undertake to diminish dependence relations with South Africa. However, whether they will undertake to effectively break off these links is doubtful. Earlier in the year Lesotho was seen by South Africa as becoming too radical and effectively blocked all economic trade resulting in a military takeover. The basic link in the dependence are the South African multinationals who provide most of the foreign capital in these countries. These control



industry, both manufacturing and mining. They also control the distribution sectors. There seems to be only two possible means of effecting change - political homogeneity and/or democracy in South Africa. Thus the road chosen by the BLS, both through the international fora and through regional efforts, does not promise to be an easy one. Efforts at political unity within SADCC have to be made and the danger of gaining new forms of dependency through financial loans from the West have to be realised and tackled at the grassroots. The Customs Union Agreement will no doubt continue to exist for some time in its present form. On its own, changes in its major unequal clauses will not affect South Africa's homogeneity. The roots of inequality lie in the historical process whose reversal can only occur through the intensification of political struggle and greater democratic awareness among the role players and their populations. The lessons of the failure of rules of international conduct to guarantee equality on the political and economic fronts must be read for what they are. The history of the coming into statehood of the BLS is not that of legal norms but of brutal dissemination of populations from the land by outside forces. The results have not had as much impact on the decision makers as on the reserve armies of the poverty stricken rural work force and the poorer sections of the urban workers. Averaging at 90 per cent of the population and facing worsening conditions both on the shopfloor and home, it is them who must now bear the burden of a brutal and exploitative historical process for which they are not responsible. International law in its traditional guise does not guarantee their future. The more conscientious branch of international law which seeks to include the individual as the main focus of an international legal order (human rights) is still young and faces almost impossible odds given that the perpetrators of violations of stated human rights are the decision makers whose interest is in trying to preserve power bases and who hope to work economic miracles in a largely hostile international economic environment at the expense of those who really matter. The efforts of politicians must therefore focus on the reality of international relations and adopt policies and strategies which are more concerned with development for human beings and not those aimed at enhancing their standing as a composite of the international capitalist class. SADCC provides a platform for just such policies and strategies and only time will tell whether the potential collective political power inherent therein will be harnessed and put to the greater benefit of those who matter - the people.

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## APPENDIX 1

### TEXT OF THE 1910 CUSTOMS AGREEMENT

CUSTOMS AGREEMENT  
BETWEEN THE UNION OF SOUTH AFRICA  
AND THE TERRITORIES OF BASUTOLAND, SWAZILAND  
AND THE BECHUANALAND PRECTORATE, 1910  
(AS AMENDED BY THE PROTOCOLS OF 1911 AND 1913)

Whereas it has been agreed to terminate from the 30th of June next the Customs Union Convention which at present exists between the Cape of Good Hope, the Orange River Colony, Natal, the Transvaal and Southern Rhodesia and which includes the territories of Basutoland, Swaziland, and North-Western Rhodesia and the Protectorate of Bechuanaland;

And whereas it is desirable that an agreement should be entered into between the Government of the Union, of South Africa (hereinafter referred to as the Union) and the territories of Basutoland, Swaziland and the Bechuanaland Protectorate (hereinafter referred to as the territories) under which

- (a) the territories shall maintain a tariff similar to that which exists in the Union of South Africa;
- (b) an equitable share of the duties collected on goods passing through the Union to the territories shall be paid to them, and vice versa;
- (c) there should be a free interchange of South African products and manufactures between the Union and the territories;

Now, therefore, His Excellency, the Governor-General of the Union and His Excellency the High Commissioner for and on behalf of the territories of Basutoland, Swaziland and the Bechuanaland Protectorate have agreed on behalf of their respective Governments upon the following articles:-

#### ARTICLE 1

The Customs Union Tariff, as it at present exists, shall be maintained between the contracting parties until altered by legislation enacted by the Union or the territories.

Provided that that portion of the Union known as the Province of the Cape of Good Hope shall, notwithstanding anything contained herein, be entitled to levy the surtax now existing in spirits, imported from abroad and entered for consumption in that Province.

## ARTICLE II

There shall be a free interchange of the products and manufactures of the Union and the territories with the exception of spirits and beers, the duties of Customs and Excise on which in the territories shall be the same as those for the time being in force in the Union.

## ARTICLE III

The adjustment of duties which shall include any Customs or Excise duty (except any Customs or Excise duty on Union manufactured spirits or Union manufactured beer) and any surtax between the parties to this Agreement shall no longer depend upon specific documents and consignments, but shall be determined on the basis laid down in section twelve of the Schedule to the South Africa Act, 1909, which for reference is herein quoted, provided that adjustments shall be made quarterly instead of annually.

There shall be paid into the Treasury of the Union all duties of Customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total Customs revenue of the Union in respect of each financial year the same proportion as the average amount of the Customs revenue of such territory for the three completed financial years, last preceding the taking effect of this Act bore to the average amount of the whole Customs revenue for all the colonies and territories included in the Union received during the same period.

## ARTICLE IV

The territories shall, as far as possible, conform to the laws and regulations for the time being in force within the Union in respect to refunds, rebates, abatements, suspensions, methylation, prohibitions, removals in bond or otherwise, and interpretations of the tariff.

## ARTICLE V

Nothing in this Agreement shall in any way prevent the importation free of duty into that portion of the Union known as the Transvaal Province for consumption therein of the products and manufactures of the Province of Mozambique as provided for in the Convention between the Government of the Transvaal and the Government of the Province of Mozambique, it being understood, however, that the Government of the Union will take the necessary steps to prevent the removal of any such goods to the territories unless due entry and payment of duty, if any, has been made.

## ARTICLE VI

This Agreement shall operate from the 1st July next, and the provisions thereof shall continue in force until the 30th June, 1911, and thereafter for periods of twelve months, provided that any party to this Agreement may give not less than three months' notice before the 30th of June of any year of its intention to retire therefrom as from the 30th of June following such notice, but provided further that should the Legislature of the union at any time amend the Customs Tariff or take any steps in conflict with the spirit and intent of this Agreement, any of the territories shall be at liberty to retire therefrom forthwith; and similarly should any of the territories amend the Customs Tariff or take any steps in conflict with the spirit and intent of this Agreement, the Union shall be at liberty to retire therefrom forthwith.

(published as High Commissioner's Notice No. 127 of 1914).

(Source: ETTINGER, S.J., The Economics of the Customs Union between Botswana, Lesotho, Swaziland and South Africa, PH.D. 1974).



## APPENDIX 2

### TEXT OF THE 1969 SOUTHERN AFRICAN CUSTOMS UNION AGREEMENT (SACUA)

#### AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA, THE GOVERNMENT OF THE KINGDOM OF LESOTHO, THE GOVERNMENT OF THE KINGDOM OF SWAZILAND TERMINATING THE CUSTOMS AGREEMENT OF 1910 AND CONCLUDING A NEW CUSTOMS AGREEMENT, TOGETHER WITH A MEMORANDUM OF UNDERSTANDING RELATING THERETO

#### Customs Union Agreement Between the Governments of Botswana, Lesotho, South Africa and Swaziland

The Governments of the Republic of Botswana, the kingdom of Lesotho,  
the Republic of South Africa and the Kingdom of Swaziland -

Being desirous of maintaining the free interchange of goods  
between their countries and of applying the same tariffs  
and trade regulations to goods imported from outside the  
common customs area as hereinafter defined;

Recognising that the Customs Agreement concluded on 29th  
June, 1910, as amended from time to time, requires modification  
to provide for the continuance of the customs union  
arrangements in the changed circumstances on a basis designed  
to ensure the continued economic development of the customs  
union area as a whole, and to ensure in particular that  
these arrangements encourage the development of the less  
advanced members of the customs union and the diversification  
of their economies, and afford to all parties equitable  
benefits arising from trade among themselves and with other  
countries;

Have agreed as follows:

#### ARTICLE 1

##### Definitions

In this Agreement, unless inconsistent with the context - "additional  
duties" means duties imposed in terms of Article 6 of this Agreement;  
"Botswana" means the area of the Republic of Botswana;  
"Common customs area" means the combined areas of Botswana, Lesotho,  
South Africa and Swaziland;

"customs duties", "excise duties" and "sales duties" mean customs duties, excise duties and sales duties as defined in the customs and excise. Legislation in force in the countries of the contracting parties;

"financial year" means the period of twelve months commencing on the first of April;

"Lesotho" means the area of the Kingdom of Lesotho;

"South Africa" means the area in respect of which the Government of the Republic of South Africa is a contracting party to the General Agreement on Tariffs and Trade;

"Swaziland" means the area of the Kingdom of Swaziland;

and cognate expressions shall be construed accordingly.

## ARTICLE 2

### Interchange of Domestic Products

Except as elsewhere provided herein, a contracting party shall not apply quantitative restrictions or impose any duties on goods grown, produced or manufactured in the common customs area on importation of such goods from the area of any other contracting party.

## ARTICLE 3

### Interchange of Goods Imported from outside The Common Customs Area

Except as elsewhere provided herein a contracting party shall not impose any duties on goods which were imported from outside the common customs area on importation of such goods from the area of any other contracting party.

## ARTICLE 4

### Customs and Sales Duties on Imported Goods

(1) Except as elsewhere provided herein, the customs tariff and duties and the sales duties as in force in South Africa from time to time shall be applied to goods imported into the common customs area from outside such area.

(2) Any rebates, refunds or drawbacks of customs duty or sales duty on imported goods granted by the Government of Botswana, Lesotho or Swaziland in respect of such goods for use in or used in any industry shall be identical to any such rebates, refunds or drawbacks in force in South Africa in respect of such goods for use in or used in a corresponding industry in South Africa.

(3) Subject to paragraphs (2) and (4), all other rebates, refunds or drawbacks of customs duty or sales duty on imported goods granted by the Government of Botswana, Lesotho, or Swaziland in respect of such goods shall be similar to any such rebates, refunds or drawbacks in force in South Africa.

(4) (a) A contracting party may grant a full rebate of the customs and sales duties in respect of goods imported into its area:

- (i) for the relief of distress of persons in cases of famine and other national disaster;
- (ii) under any technical assistance agreement; and
- (iii) in terms of an obligation under any multilateral international agreement to which such contracting party is or becomes a party.

(b) A contracting party may, with prior approval of the other contracting parties, grant a full rebate of the customs and sales duties in respect of goods imported into its area for such other purposes as may be agreed upon by the parties to this Agreement from time to time.

## ARTICLE 5

### Imposition and Amendment of Customs Duties

(1) Subject to the provisions of paragraph (2) of this Article, the Government of South Africa shall give the other contracting parties adequate opportunity for consultation before imposing, amending or abrogating any customs duty with respect to goods imported into the common area from outside such area.

(2) Paragraph (1) of this Article shall not apply if the imposition of, or the removal of, or an amendment to any customs duty either forms part of the measures of the Government of South Africa designed primarily for fiscal purposes, or is resorted to as an interim measure designed to assist a local industry in the common customs area pending the completion of an investigation by the appropriate South African authorities.

## ARTICLE 6

### Imposition of Additional Duties for Protective Purposes by Botswana, Lesotho or Swaziland

(1) The Government of Botswana, Lesotho or Swaziland may levy additional duties on goods imported into its area to enable new industries in its area to meet competition from other producers or manufacturers in the common customs area, provided that such duties are levied equally on goods grown, produced or manufactured in other parts of the common customs area and like products imported from outside that area, irrespective of whether the latter goods are imported directly or from the area of any other party to this Agreement and subject to payment of the customs duties applicable to such goods on importation into the common customs area.

(2) Before any such duties are imposed or amended the Government concerned shall consult the other contracting parties in terms of Article 20, and such parties may make recommendations thereon. If the recommendations of any such parties are not acted upon, the Government concerned shall inform the other contracting parties of the reason for its decision.

(3) Protection which is afforded to a new industry in terms of this Article shall not be given for a period exceeding eight years without the prior consent of the contracting parties.

(4) In this Article, "new industry" in relation to any contracting party means an industry which has been established in the area of that party for not more than eight years.

## ARTICLE 7

### Specification of Industries of Major Importance to Botswana, Lesotho or Swaziland

(1) The Government of Botswana, Lesotho or Swaziland may with the concurrence of the other contracting parties -

- (a) specify industries which are or are likely to be of major importance to its economy; and
- (b) specify periods in relation to such industries for the purposes of paragraph (2) of this Article.

(2) The customs duties applicable to goods, imported from outside the common customs area and competing with those of any industry specified in terms of paragraph (1) (b) above in relation to that industry be decreased or abrogated without the consent of the Government specifying the industry; and during such period the Government of South Africa shall with due regard to the interests of the other contracting parties and to the criteria usually applied by it in the consideration of representations for tariff assistance and relief, give sympathetic consideration to proposals by any other contracting party to increase any customs duty applicable to such goods or to afford relief of customs duty applicable to any material, used directly in the production or manufacture thereof and to requirements for such industries, where the Government concerned regards such increase or relief necessary to assist the establishment of such industry or to prevent its contraction.

#### ARTICLE 8

##### Excise and Sales Duties on Goods Produced in the Common Customs Area

(1) The excise duties and the sales duties as in force in South Africa from time to time shall be applied to goods grown, produced or manufactured in the common customs area.

(2) Any rebates, refunds or drawbacks of excise duty or sales duty granted by the Government of Botswana, Lesotho or Swaziland in respect of goods grown, produced or manufactured in the common customs area, for use in or used in any industry shall be identical to any such rebates, refunds or drawbacks in force in South Africa in respect of such goods for use in or used in a corresponding industry in South Africa.

(3) All other rebates, refunds or drawbacks of excise duty or sales duty granted by the Government of Botswana, Lesotho or Swaziland in respect of goods grown, produced or manufactured in the common customs area shall be similar to any such rebates, refunds or drawbacks in force in South Africa.

## ARTICLE 9

### Duties of Goods Produced by Specified Industries

(1) If goods grown, produced or manufactured in Botswana, Lesotho or Swaziland, by an industry specified in pursuance of Article 7 of this Agreement, are subject to excise duties, the margin of protection afforded by the customs duty applicable to such goods shall be maintained for the period specified under that Article and may be changed only with the agreement of the Government specifying the industry.

(2) During the specified period the Government of South Africa shall with due regard to the interests of the other contracting parties and to the criteria usually applied by it in the consideration of representations for tariff assistance and relief, give sympathetic consideration to proposals by such a Government to reduce or abrogate any excise duty applicable to such goods where such a Government regards such duty as injurious to that industry.

## ARTICLE 10

### Laws Relating to Customs, Excise and Sales Duties

Subject to the provisions of Articles 4 and 8, the Governments of Botswana, Lesotho and Swaziland shall apply laws relating to customs, excise and sales duty similar to such laws in force in South Africa from time to time.

## ARTICLE 11

### Import and Export Prohibitions and Restrictions

(1) The contracting parties recognise the right of each party to prohibit or restrict the importation into or exportation from its area of any goods for economic, social, cultural or other reasons.

(2) Except in so far as may be agreed upon between the parties from time to time, the provisions of this Agreement shall not be deemed to suspend or supersede the provisions of any law within any part of the common customs area which prohibits or restricts the importation or exportation of goods.

(3) The provisions of paragraphs (1) and (2) shall not be so construed as to permit the prohibition or restriction of the importation by any contracting party into its area of goods grown, produced or manufactured in other areas of the common customs area for the purpose of protecting its own industries producing such goods.

(4) A contracting party shall upon request by any other contracting party take such steps as may be agreed upon between the parties concerned (including action to make such steps legally enforceable within its area) to prevent the exportation of unrestricted exportation from its area to the area of such other contracting party of such prohibited or restricted goods imported from outside the common customs area or grown, produced or manufactured in its area or to prevent the exportation or unrestricted exportation from its area to a country outside the common customs area of such prohibited or restricted goods imported from the area of such other contracting party.

(5) The contracting parties shall co-operate in the application of import restrictions with a view to ensuring that the economic objectives of any import control legislation in any country in the common customs area are attained.

## ARTICLE 12

### Arrangements for Regulating the Marketing of Agricultural Products

(1) Whenever an arrangement for regulating the marketing of an agricultural commodity is in operation in any area of the common customs area, such arrangement shall be applied on an equitable basis to similar commodities produced in any other area of the common customs area and marketed in the area where the marketing arrangement is in operation, and the contracting parties concerned, cognisant of the advantages deriving from the effective operation of those arrangements, shall co-operate in such arrangements on a basis to be mutually agreed upon.

(2) The contracting parties agree to consult from time to time on matters affecting production and consumption of agricultural commodities and the improvement and extension of marketing arrangements, for such commodities.

## ARTICLE 13

### Pool of Customs, Excise, Sales and Additional Duties

Any customs, excise, sales and additional duties collected in the common customs area shall be paid quarterly into the Consolidated Revenue Fund of South Africa.

## ARTICLE 14

### The Pool of Customs, Excise, Sales and Additional Duties

(1) The common revenue pool of the common customs area shall consist of the gross amounts of customs, excise, sales and additional duties leviable and collected on goods imported into or produced in the common customs area, and any other duties collected in terms of Article 19 (3), but shall not include any duties rebated or refunded under the provisions of any law relating to customs, excise and sales duty (including any rebate or refund specifically provided for in any such law but which is paid from voted funds and not deducted from customs, excise and sales duty revenue).

(2) The contracting parties agree that in determining the share of Botswana, Lesotho or Swaziland of the common revenue pool in respect of any financial year the following formula shall be used:

The cost-insurance-freight value at border of goods from all sources imported during the financial year into the area of each party, plus the value of excisable and sales duty goods produced and consumed in such area during such year, plus the excise and sales duties paid thereon during such year shall be expressed as a percentage of the cost-insurance-freight value of the goods imported during the financial year into the common custom area, plus the customs and sales duties paid thereon during such year, plus the value of excisable and sales duty goods, produced and consumed during such year in the common customs area, plus the excise and sales duties paid thereon during such year. The amount calculated by the application to the common revenue pool of the percentage so obtained, enhanced by a multiplying factor of 1.42, shall represent the share of each of the three countries in respect of that financial year.

(3) There shall be paid from the Consolidated Revenue Fund of South Africa to the Government of Botswana, Lesotho and Swaziland, in respect of their share of the common revenue pool, amounts calculated on the following basis:

(a) in respect of the financial year 1972/73 and each financial year thereafter:



- (i) an amount resulting from the application to the formula referred to in paragraph (2) above, of the relevant data for the financial year two years before the financial year in question;  
plus or minus
  - (ii) a first adjustment in respect of the financial year two years before the financial year in question equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the latest available data for that particular financial year;  
plus or minus
  - (iii) a final adjustment in respect of the financial year three years before the financial year in question equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the final data for that particular financial year;
- (b) in respect of the financial year 1971/72:
  - (i) an amount resulting from the application to the formula referred to in paragraph (2) above of the relevant data for the financial year 1969/70;  
plus or minus
  - (ii) an amount in respect of the financial year 1969/70 equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the latest available data for the financial year 1969/70;
- (c) in respect of the financial year 1970/71: an amount resulting from the application to the formula referred to in paragraph (2) above, of the relevant data for the financial year 1968/69 except that in the case of import values 1968 data shall be used and that agreed estimates of the values of sales duty goods produced and consumed in the financial year 1969/70 and the sales duties collected thereon shall be included.
- (d) in respect of the financial year 1969/70: an amount equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, calculated on the basis of the relevant data for the financial year 1968/69, except that in the case of

import values 1968 data shall be used, and that no imputed allowances for the values of sales duty goods produced and consumed and the sales duties thereon shall be included.

(4) The amounts referred to in subparagraphs (a) and (b) of (3) above shall be determined and agreed upon between the contracting parties approximately six months before the beginning of the financial year in question.

(5) The amounts referred to in subparagraphs (a), (b) and (c) of paragraph (3) above shall be remitted in equal quarterly instalments during the financial year in question.

(6) The payment referred to in subparagraph (d) of paragraph (3) above shall be made before the end of the financial year 1969/70.

(7) The Government of South Africa undertakes to consult the Governments of Botswana, Lesotho and Swaziland prior to the introduction of changes in the fiscal structure of South Africa where these are expected to have a substantial effect on the structure of taxation measures relating to the common revenue pool.

(8) This Article shall be deemed to have come into operation on the first day of April, 1969, and to have been substituted from that date for the corresponding provisions of the Customs Agreement concluded on the 29th June, 1910.

## ARTICLE 15

### Rail and Road Traffic

(1) The contracting parties undertake that the transit through their areas of goods imported from outside the common customs area to or exported to a country outside the common customs area from the areas of the other contracting parties shall not be subject to transport rate discrimination.

(2) Each contracting party shall ensure that the tariffs applicable within its area to the conveyance of goods by publicly-owned transport to and from the other areas of the common customs area shall be no less favourable than the tariffs applicable to the carriage of similar goods within its area.

(3) Each contracting party undertakes to extend to the motor transport operators registered in the areas of the other contracting parties treatment no less favourable than that accorded to motor transport operators registered within its own area for the conveyance of goods or passengers for reward or in the course of any trade or business.

## ARTICLE 16

### Freedom on Transit

A contracting party shall afford freedom of transit without discrimination to goods consigned to and from the areas of the other contracting parties: Provided, however, that a contracting party may impose such conditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international convention to which it is a party: And provided, further, a contracting party shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purposes of protecting its security interests.

## ARTICLE 17

### Bilateral Consultations

Notwithstanding the provisions of Article 2, if, as a result of unforeseen developments, any product is being introduced into the area of one of the contracting parties from the area of another contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to producers or manufacturers of like or directly competitive products in the area into which such goods are so introduced, the Government of the latter area shall have the right to require the other party to consult at the earliest possible opportunity and to co-operate with it in finding as soon as possible a mutually acceptable solution.

## ARTICLE 18

### Consultations on Zoo-Sanitary and Phyto-Sanitary Matters

Subect to the provisions of Article 11, the contracting parties recognise the importance of measures prescribing zoo-sanitary and phyto-sanitary requirements aimed at the prevention of the spread

of animal and plant diseases, parasites and insects and agree to consult from time to time to achieve such aim in the common customs area with due regard to the need to facilitate the flow of trade in products affected by such measures.

#### ARTICLE 19

##### Trade Agreements with Countries Outside the Common Customs Area

(1) A contracting party shall not, without the prior concurrence of the other contracting parties and subject to such conditions as may be agreed upon by the contracting parties, enter separately into or amend a trade agreement with a country outside the common customs area in terms of which concessions on the duties in force in the common customs area are granted to that country.

(2) A contracting party may enter separately into or amend a trade agreement, other than a trade agreement mentioned in paragraph (1), with a country outside the common customs area, provided the terms of such an agreement or amendment do not conflict in any way with the provisions of this Agreement. Such contracting party shall, as soon as possible after the conclusion of the agreement or amendment, supply each of the other contracting parties with a copy of the agreement or amendment.

(3) (a) A contracting party, having an agreement with a country outside the common customs area which provides for the importation into its area from such country of goods at lower rates of duty than those applicable to like goods in the common customs area, shall collect the duties payable on importation into its area.

(b) Unless the contracting parties have otherwise agreed in respect of any such agreement, where such goods are to be removed from the area of such contracting party to the area of any of the other contracting parties the duties applicable in the common customs area shall become due and payable and the contracting party from whose area such goods are to be removed shall, prior to such removal, collect the differences between the lower duties paid and the duties applicable. If proof of payment of the differences in duty cannot be furnished in the area to which the goods are subsequently removed, the goods shall be liable to forfeiture.

(c) Any duties and differences in duties thus collected shall be paid into the Consolidated Revenue Fund of South Africa. Any payments due by that contracting party under such agreement with a country outside the common customs area, shall be paid on its behalf from the Consolidated Revenue Fund.

## ARTICLE 20

### General Consultations

(1) A Customs Union Commission shall be established, comprising representatives of all the contracting parties, for the purpose of discussing any matter arising out of this Agreement.

(2) The Commission shall meet once a year. A contracting party may, however, at any time request a meeting of the Commission for the purpose of discussing a matter connected with this Agreement and the Commission shall meet as soon as possible thereafter.

(3) Where contracting parties have consulted on a matter which may affect the rights of the other parties under this Agreement and arising under Article 12, 17 or 18 or on a matter arising under paragraph (5) of this Article, a report on the results of these consultations shall be furnished to the Commission before its next meeting.

(4) Where a matter has been referred to the Commission for discussion, the Commission shall use its best endeavours to find a mutually agreeable solution to the particular problem or difficulty and the representatives shall report to their respective Governments for consideration of any remedial measures.

(5) Any difficulty or problem arising out of this Agreement which does not directly effect the interests of all the contracting parties may, with the concurrence of all the contracting parties, form the subject of direct consultation between the parties affected with a view to seeking a solution thereof.

## ARTICLE 21

### Termination of 1910 Agreement

The Customs Agreement concluded on the 29th June 1910, as amended from time to time, shall terminate on the entry into force of this Agreement.

## ARTICLE 22

### Entry into Force of, and Withdrawal from, Agreement

This Agreement shall, subject to the provisions of Article 14 (8) enter into force on the 1st March, 1970.

If a contracting party wishes to withdraw from this Agreement that party shall give notice thereof to all the other contracting parties.

If after consultation the contracting parties fail to agree on the date and conditions of the withdrawal, this Agreement shall remain in force until twelve months from the date of such notice and shall then cease to apply to the withdrawing party.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Pretoria, in quadruplicate, in Afrikaans and English texts, each of which texts shall be of equal authenticity, this eleventh day of December, 1969.

For the Government of the Republic of Botswana:

J.G. HASKINS

For the Government of the Kingdom of Lesotho:

P.N. PEETE

For the Government of the Republic of South Africa:

J.F.W. HAAK

For the Government of the Kingdom of Swaziland:

L. LOVELL

### MEMORANDUM OF UNDERSTANDING

With reference to the Customs Union Agreement dated the 11th December 1969, between the Governments of Botswana, Lesotho, South Africa and Swaziland, it is desired to place on record the following additional understandings on which agreement has been reached among the four Governments and which shall be read with, and shall form part of the Agreement:

AD ARTICLES 3, 4, 8 AND 10

## Administration of Customs, Excise and Sales Duty Provisions

(1) The Governments of Botswana, Lesotho and Swaziland undertake to establish customs and excise administration capable of administering the terms of the Agreement and any arrangements thereunder, customs and excise storage and manufacturing warehouse provisions, excise provisions and the collection of excise duties and sales duty provisions and the collection of sales duties.

(2) The contracting parties agree that:

- (a) goods (including goods for warehousing) destined for Botswana, Lesotho or Swaziland and imported through any place of entry in South Africa (including Lourenco Marques and Jan Smuts Airport) shall be entered for customs, excise or sales duty purposes through South African customs and for that purpose the laws relating to customs, excise and sales duty of South Africa will apply to such goods as if such goods were destined for South Africa: Provided that if the laws relating to customs, excise and sales duty of Botswana, Lesotho or Swaziland as the case may be, should, in relation to such goods, differ in respect of any restriction, prohibition, tariff or rebate under the Agreement, the relative law of the country of destination of such goods shall in that respect be deemed to be the law relating to customs, excise or sales duty, as the case may be, of South Africa in relation to such goods;
- (b) goods destined for South Africa and imported other than by road through any place in Botswana, Lesotho or Swaziland shall be entered for customs, excise or sales duty purposes at the place of entry in South Africa. Goods so destined and imported by road shall be so entered at the place of entry into the common customs area;
- (c) goods destined for Botswana, Lesotho or Swaziland and imported directly into the country in question shall, subject to the provisions of subparagraph (a), be entered for customs, excise or sales duty purposes in that country;

- (d) goods for warehousing in any customs and excise storage warehouse established in the area of Botswana, Lesotho or Swaziland shall be cleared for warehousing at places of entry in South Africa for removal to such warehouse without further entry, but any clearance ex such warehouse of such goods and collection of any customs, excise or sales duty thereon shall be the responsibility of the country in whose area the warehouse is situated;
- (e) the administration of any customs and excise manufacturing warehouse (including the collection of any customs, excise or sales duty on the goods manufactured in such warehouses) in Botswana, Lesotho and Swaziland shall be the responsibility of the country in whose area the warehouse is situated;  
and
- (f) provisions relating to drawbacks of duty on goods used in the manufacture of exported goods shall be administered by the Government in whose area the exporter is situated, but the Government of South Africa shall accept responsibility for the processing of claims for drawback of any duty emanating from exporters in Botswana, Lesotho or Swaziland in respect of goods exported from the common customs area and payment of such claims shall be effected from the Consolidated Revenue Fund of South Africa.

Done at Pretoria, in quadruplicate, in Afrikaans and English texts, each of which texts shall be of equal authenticity, this eleventh day of December, 1969.

For the Government of the Republic of Botswana:

J.G. HASKINS

For the Government of the Kingdom of Lesotho:

P.N. PEETE

For the Government of the Republic of South Africa:

J.F.W. HAAK

For the Government of the Kingdom of Swaziland:

L. LOVELL



(Source: ETTINGER, S.J., The Economics of the Customs Union between Botswana, Lesotho, Swaziland and South Africa, PH.D. 1974)