

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

THE LEGAL AND ECONOMIC TECHNIQUES FOR
CONTROLLING OF AND MAXIMIZING REGIONAL
BENEFITS FROM TRANSNATIONAL CORPORATIONS
(TNCs): STRATEGY OPTIONS FOR SADCC.

By

KAYONE S. AKWAAKE

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Zambia in partial fulfilment of the requirements
for the degree of Master of Laws (LLM).

University of Zambia
P O Box 32379
LUSAKA


1988

(ii)

DECLARATION

I .. *KAYONE S. AKWAAKE*

do solemnly declare that this dissertation
represents my own work which has not previously
been submitted for a degree at this or another
University.

Signed..... 

Date..... *14th November 1988*

This dissertation of KAYONE S. AKWAAKE
is approved as fulfilling part of the
requirements for the award of the degree
of Master of Laws by the University of
Zambia.

Signed:.....*Dugandu*.....

Date:.....*14TH NOVEMBER 1988*.....

ABSTRACT

Transnational Corporations, in banking, agriculture, mining and other financial institutions dominate most SADCC member states economies, providing advanced technologies, managerial skills, markets and some capital to so called "modern" enclaves mainly producing for exports. The majority of regional populations live at bare subsistence levels in underdeveloped rural areas, providing a ready source of low cost labour. The major share of investable surpluses accrue to the TNCs, as significant proportion of them shipped out as profits interest, dividends and through transfer pricing.

The main theme of this thesis is centred on the necessity of restructuring the inherited institutional structures, shaped and perpetuated by legislation, to negotiate more successfully with transnational corporate affiliates on a national and regional basis to maximize transfer of the technology, the training of skilled and managerial personnel, market opportunities, and retention of domestically generated investable surpluses.

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source of inspiration.

Lastly, I would like to point out that I shoulder full responsibility for all errors made in this study. All parties mentioned and others not mentioned have been and, are only responsible for the right things in my study and have nothing to do with the wrong issues, those parts contain my own assumptions and conclusions. In a nutshell the final responsibility lies solely with the author, and he will be answerable for mistakes contained in this work.

Kayone S. Akwaake.

DEDICATION

To the founding fathers of
SADCC, the late Kwame Nkrumah and
all the progressive sons and
daughters of Africa.

TABLE OF CONTENTS

Map of SADC Member States.....	i
Abstract.....	v
Acknowledgements.....	vi
Dedication.....	ix
List of Abbreviations.....	x
President Nyerere's Partial message to Cancun Conference 1981.....	xiii
<u>INTRODUCTION</u>	1
 <u>CHAPTER ONE</u>	
1.0 The Historical, Institutional and Legal Setting.....	11
1.1 Historical Background.....	11
1.2 Institutional Setting.....	18
(i) The Summit.....	24
(ii) The Council of Ministers.....	25
(iii) Sectoral Commissions.....	26
(iv) Standing Committee of Officials.....	27
(v) The Secretariat.....	28
1.3 The Legal Status of SADC.....	29
 <u>CHAPTER TWO</u>	
2.0 The Role of TNCs Prior and After the Formation of SADC.....	38
2.1 The Role of TNCs Prior to the Formation of SADC.....	38
(i) TNCs and the Drain of Invest- ible Surpluses.....	45

2.2	TNCs and Regional Integration.....	48
	(i) Parallel Investment.....	50
	(ii) The Effect on Local Political Forces...	52
	(iii) Sectoral Factors.....	55
2.3	The Role of TNCs After the Formation of SADCC.	57
2.4	SADCC - An Assessment.....	64

CHAPTER THREE

3.0	National, Regional and International Controls of TNCs.....	83
3.1	National Control in General.....	87
	(i) Government Policy Statements.....	95
	(ii) Nationalization.....	104
	(iii) Constitutional Provisions.....	106
	(iv) Legislative Provisions.....	111
	(v) "Investment Codes"	117
3.2	Regional Control.....	123
	(i) The Andean Common Market (ANCOM).....	124
	(ii) Implementation of the Code.....	128
	(iii) TNCs and ANCOM.....	130
	(iv) OECD.....	132
	(v) The European Economic Community (EEC).....	135
3.3	International Control.....	136
	(i) Attempts by the United Nations (UN)...	136
	(ii) UN Commission on TNCs.....	138

CHAPTER FOUR

4.0	The Objectives and Strategies of SADCC countries concerning TNCs.....	148
-----	--	-----

4.1	The Nature of the Provision for the Control, Protection and Encouragement of Foreign Investments.....	152
I.	Provisions for the Control of Foreign Investment.....	152
(i)	Equity or Local Participation in the Investment.....	153
(ii)	Sectors open and/or closed to Foreign investment.....	154
(iii)	The nature of capital invested.....	158
(iv)	The Nationality of the Investor.....	158
(v)	The Nature of Technology Required..	159
(vi)	Criteria for Approval; and.....	160
(vii)	Administration of the "Investment Codes" by an Investment Authority..	162
II.	The Nature of the Provisions for the Protection and Encouragement of Foreign Investment.....	164
(i)	Incentives with respect of customs duties on imports.....	165
(ii)	Grants and subsidies.....	165
(iii)	Protection from Competition.....	165
(iv)	Exemptions with respect to income or business profit taxation.....	165
(v)	Guarantees with respect to foreign exchange availability and repatriation.....	165
(vi)	Exemptions with respect to other taxes and fess.....	165
(vii)	Guarantees with respect to dispute settlement.....	165
(viii)	Guarantees against expropriation and nationalization; and.....	165
(ix)	Other miscellaneous incentives.....	165
4.2	A General Assessment of the Investment and of SADCC member states.....	166

CHAPTER FIVE

5.0	SADCC's Policy on Foreign Investment and the Legal and Economic Techniques for Controlling of and Maximizing Regional Benefits from TNCs as Strategy Options for SADCC.....	175
5.1	SADCC's Policy on Foreign Investment.....	175

5.2	Proposed Legal and Economic Strategy Options for SADCC.....	183
I.	SADCC Sector on TNCs.....	183
(i)	Rationalization and Harmoniza- tion of Investment Laws Unit.....	185
(a)	Scope of Rationalization and Harmonization.....	189
(b)	Rationalization and Harmo- nization Methods.....	190
(ii)	Negotiations on Transfer of Technology Unit.....	193
(a)	Technology Transfer at the National Level.....	193
(b)	Technology Transfer at the Level of SADCC.....	196
(iii)	Transfer Pricing Monitoring Unit	198
(a)	Constitution of a Proposed Unit.....	199
(i)	Information Storage..	199
(ii)	Technical Section....	200
(iii)	Investigation Section	200
(iv)	Powers of a National Branch/Unit.....	201
II.	Towards an Investment and Investor Compliance Code.....	201
III.	What a Host State Wants.....	206
IV.	Nationalization.....	208
V.	Establishment of Research and Development Centre (R and D).....	210

VI. Technology Acquisition Board.....	212
VII. Need for Clear Contractual Terms...	214
VIII. Discouragement of "Brain Drain"....	215
IX. Improvement in Management Contract Negotiations.....	215
X. Technology Licence Agreement.....	222
XI. The Nature and Extent of Incentives	223
XII. The Role of National and Regional Planners.....	225

CHAPTER SIX

6.0 Summary and General Conclusions.....	234
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LIST OF ABBREVIATIONS

SADCC	Southern African Development Co-ordination Conference
EAC	East African Community
BLS	Botswana, Lesotho and Swaziland
ECOWAS	Economic Community of West African States
CONSAS	Constellation of Southern African States
MULPOC	Multilateral Programming and Operational Centre
FLS	Frontline States
PTA	Preferential Trade Area for Eastern and Southern African States
TNCs	Transnational Corporations
PAFMECSA	Pan African Freedom Movement of East, Central and Southern Africa
ECA	Economic Commission for Africa
EEC	European Economic Community
ADB	African Development Bank
UN	United Nations
SATCC	Southern African Transport and Communications Commission
AMAX	American Metal Climax
GDP	Gross Domestic Product
U.S.A.	United States of America
BP	British Petroleum
UNITA	National Union for the Total Independence of Angola

ZAPU	Zimbabwe African Peoples Union
MNR	Mozambique National Resistance
LLA	Lesotho Liberation Army
U.K.	United Kingdom
FRG	Federal Republic of Germany
NAM	Non-Aligned Movement
ICFTU	International Conference of Free Trade Unions
WCL	World Confederation of Labour
OECD	Organisation of European Cooperation and Development
OAS	Organisation of American States
GNP	Gross National Product
GATT	General Agreement of Tariffs and Trade
UNCTAD	United Nations Conference on Trade and Development
NIEO	New International Economic Order
ANCOM	Andean Common Market
CIMEA	Council for Mutual Economic Assistance
ECOSOC	UN. Economic and Social Council
ICSID	International Convention on the Settlement of Investment Disputes between States and the Nationals of Other States
R and D	Research and Development
UNCTC	United Nations Centre on Transnational Corporations

NDC National Development Corporation

EPG Eminent Persons Group

\$ Dollar

ANC African National Congress of South
Africa

SWAPO South West African Peoples Organisation
(SWAPO of Namibia)

SITET Special Investigations Team for
Trade and Economy

".....We who have been condemned
by the fate to manage poverty".

Mwalimu Julius Kambarage
Nyerere: At the Cancun
Conference, Mexico,
October, 1981.

INTRODUCTION

"The Second All African People's Conference held in Tunis between the 25th and 30th January, 1960, did stress African Unity....., and gave equal weight to the political, economic and cultural aspects of African Unity 'neo-colonialism, bulkanization'. were cited as divisive forces to be combated by joint action and vigilance, by the establishment of schemes for economic co-operation among African States with the hope of social development which it hoped would give real content to political independence"¹

The above quotation is a clear manifestation that the formation of SADCC did not come as a result of a new idea calling for such regional economic co-operation among independent African states. By and large regional economic groupings have existed for a long time among different developed and developing countries respectively. Regional co-operation especially among developing countries is gaining momentum due to the fact that they have realised that the so called economic aid would not bring about development in their respective economies. Their strategies have to be based on self-reliance and co-operation among themselves.

These strategies were outlined in the Declaration of Non-Alignment and Economic Progress.²

In a nutshell the 'Declaration' stated that self-reliance was the optimum exploitation of natural resources of developing countries as well as the development of their technological and scientific potentials and the creation of a viable economic structure.³ The strategy of economic co-operation among developing countries, called for the intensification of interaction and communication among developing countries as a substitute to economic dependence and unequal interaction with developed countries.⁴

Regional economic co-operation in Africa on the whole dates back to the era of colonial rule. International-regional economic links, were established by the colonial powers between the various territories under their rule. There were various agreements, and legislative enactments, which resulted in the creation of a number of economic institutions to regulate trade between and among the colonies. Examples were the Portuguese Colonial Economic Union and the Federation

of Rhodesia and Nyasaland.

Another observation is that all the nine SADCC member states had had experience of one kind or another with the GATT permitted regional groupings. For example, Mozambique and the People's Republic of Angola were under the Portuguese colonial economic union; Zambia, Malawi and Zimbabwe had until 1963 been grouped in the Federation of Rhodesia and Nyasaland; Tanzania was at one point a member of the defunct East African Community (EAC) and the BLS⁵ states have been tied to the Southern African Customs Union for quite a long time now.

It should be further noted that, Africa for the past several years has witnessed the emergence of regional organisations in Southern, Western and Eastern Africa. Some of them appear to be more or less explicit challenges to the South African - dominated subordinate system inherited from colonial days and especially Pretoria's defunct projected Constellation of Southern African States (CONSAS). Notable among these regional and sub-regional organisations are the Lusaka based Multilateral

Programming and Operational Centre (MULPOC); the Frontline States (FLS); the Southern African Development Co-ordination Conference (SADCC); the Preferential Trade Area for Eastern and Southern African States (PTA); and a network of specialised agencies and bilateral joint commissions.

The experience of SADCC member states in the above mentioned colonial and neo-colonial regional economic groupings appeared to have influenced these countries to come up with a unique and innovative sub-regional arrangement, devoid at this stage of legal complexities which had been a common feature in earlier arrangements. ⁶ SADCC could rightly therefore be said to be a 'test case' because its institutional framework is not top heavy argues indicated elsewhere in this thesis.

It would also appear that the problem faced by the founders of SADCC was mainly institutional. That is how to unite their divided political economies shaped by decades of colonial rule to depend on South Africa and the TNCs. South Africa, up to now, remains dominated by a well-armed minority

regime which together with the TNCs, aim at exploiting regional markets and resources (both human and natural), rather than facilitate development to meet the needs of the people. It is beyond doubt that even the pre-empted CONSAS' main aim was to increase the sub-region's perpetual dependence on South Africa and TNCs regardless of what South Africa says.

Against this background, one hopes to state here that, the main theme of this thesis is an attempt to show how SADCC member states jointly and severally can develop appropriate economic and legal techniques to maximize the potential regional benefits and minimize potential or possible detrimental impacts of TNCs' presence and involvement in the sub-region and realise SADCC's stated objectives. It is the view of the author that, notwithstanding one of SADCC's cardinal objectives of reducing its economic dependence, particularly, but not only on the Republic of South Africa, SADCC does not have a policy on foreign private investment, of which TNCs forms a major component.

This being the position, one is left in darkness as to how the above objective will be realised

by SADCC, taking into account that most TNCs in SADCC countries are either headquartered or have vested interest in South Africa let alone their home countries.

It is submitted that notwithstanding SADCC's unique approach to solving regional problems as well as the divergent and dissimilar member states policies regarding TNCs or any form of foreign investment, SADCC if it is to succeed as an economic entity, is under a duty to have a policy on the encouragement, protection and control of TNCs or any form of foreign investment. SADCC member states are therefore urged in this thesis to put aside their differences in size, economic set-up, natural endowments, level of development, ideology and politics and concentrate more as a group on the fulfilment of SADCC's stated objectives. If not, it would appear SADCC's objectives will not be soon realised.

The thesis is divided into six Chapters excluding the introduction. Chapter one deals with the historical, institutional and legal framework of SADCC. The Chapter states and examines

the various historical reasons for the formation of SADCC. It also discusses SADCC's aims and objectives as well as its various institutions. The Chapter further attempts to discuss the legal setting of SADCC.

Chapter Two discusses the role of TNCs prior and after the formation of SADCC. The Chapter also gives a synopsis of the general reaction or attitude of TNCs towards regional economic integration. The chapter concludes with an assessment of SADCC to justify the author's hypothesis that there is need for a common SADCC policy on TNCs, if SADCC is to realise its stated objectives.

Chapter Three gives a brief account of the various general attempts at the national, regional and international levels for the control, encouragement and protection of TNCs. The Chapter further discusses the general reaction of TNCs to these various attempts.

Chapter Four attempts to give a general discussion of the objectives and strategies of SADCC member states concerning TNCs. However the author

would like to confess that, in his discussion, especially with regard to national "investment codes/ he relied heavily on secondary materials, rather than the actual laws. On the whole however, the author under this chapter has attempted to prove the diversity among the SADCC member states' policies on TNCs. As a consequence, the diversity is well manifested in the various ministerial and presidential policy statements, "investment codes", ⁷ and legislative and constitutional provisions.

Chapter Five proposes some legal and economic strategy options for SADCC. In other words, it is a follow up to Chapter Four. It tries to rectify the diversity element discussed above, especially under Chapter Four. This chapter is the core of this thesis. The chapter on the whole proposes a common SADCC approach to dealing with TNCs, and as such it recommends inter alia the establishment of a SADCC Sector on TNCs, using the present SADCC institutional setting. This sector will be divided into various sectoral units.

The last Chapter deals with the summary and conclusions whose main emphasis is on the need for

SADCC as an economic entity to evolve a policy on TNCs which will rationalize or harmonize the divergent policies of member states on TNCs, especially in the area of investment, taxation, exchange control regulations, customs duties, investment laws, etc. It is put forward that such harmonization or rationalization of various policies and investment laws will eventually culminate in the drawing up of an investment and investor compliance code and other various institutions for the sub-region.

NOTES AND REFERENCES

1. N.B. Thompson, Africa and Unity: The Evolution of Pan Africanism (London Longman 1971), p. 135.
2. See the Deliberations of the Third Summit Conference on Non-Aligned Nations, held in Lusaka, September, 1970.
3. O. Jankowitsch et al. "The World Without Super Powers: The Collected Documents of the Non-Aligned Countries: Oceans Publications, New York 1978. pp. 46-49.
4. See Documents of the Non-Aligned Conference 1961-1978 pp. 46-49.
5. BIS - stands for Botswana, Lesotho and Swaziland.
6. One has used the phrase 'at this stage' because whether SADCC will remain devoid of legal complexities is debatable. SADCC is in the process of growth with the potential organic development of legal complexities.
7. That is according to the information I have collected from secondary materials.

CHAPTER ONE

1.0 HISTORICAL, INSTITUTIONAL AND LEGAL SETTING

1.1 HISTORICAL BACKGROUND.

The roots of SADCC are rather obscure. However there are three complementary views regarding the evolution of SADCC.

The first being the reduction of dependence particular but not only on apartheid South Africa, whose system is detrimental to the political and socio-economic policies and welfare of her neighbours. In actual fact this view was as a result of the political stand taken by the Frontline States committed to assisting in the political and economic liberation of Namibia and minority ruled South Africa. These countries realised the need not only for political but also for economic co-operation through a legal framework.

Under the first view therefore, the origins of SADCC can be traced to an informal grouping, the Frontline States, founded in 1974 to pursue a specific political objective of legitimate independence under black majority rule first of Rhodesia

and later of Namibia and South Africa respectively. The Frontline States were a descendant of the Pan African Freedom Movement of East, Central and Southern Africa (PAFMECSA) and its successor the Conference of East and Central African Heads of States whose objective was to unite the peoples of these regions in order to rid the Southern part of Africa of colonial bondage and white minority governments.

Because of the ideological differences that existed in the Conference, the organization was quietly dissolved and its role in the development of Southern Africa was quickly assumed by the Frontline States. Prime Minister Mugabe speaking about the evolution of SADCC, has claimed paternity on behalf of both the Pan African Freedom Movement of Eastern, Central and Southern Africa (1958-64); the Conference of East and Central African States (1966-74); and the Frontline States in the following words:

"We view the evolution of SADCC as part of our own history. Though formally launched only last year, to us, is but a part of the unfolding manifestation of the historic spirit of Pan-Africanism.

More immediately, SADCC represents the expression in more sharply focused and telescoped form, of the ideas of the Pan-African Freedom Movement of East, Central and Southern Africa (PAFMECSA), 1958-1963, the Conference of East and Central African Heads of States (1966-1974) and the Frontline States".¹

The second view, is the role of transnational corporation in SADCC member states. SADCC member states argued that their operations and unholy alliance with racist and apartheid South Africa culminated in the wanton exploitation of their wealth at the expense of their citizens. As a result their economies were and still are tied to that of racist and apartheid South Africa - hence the need to disengage themselves from both TNCs, South Africa and South African based TNCs. This will be found in SADCC's first objective which aims at reducing dependence, particularly, but not only on South Africa.

The third view is that, SADCC was a result of:

"diplomatic initiatives of African and Western States for a massive reconstruction programme in Southern Africa after years of war. In other words some kind of 'Marshall Plan' for the region to be financed by Western Countries".²

On the whole and notwithstanding the various views on the evolution of SADCC, it is submitted that, as the liberation of Rhodesia appeared increasingly imminent the Frontline States concentrated their efforts on the strategy for attaining political independence in the two remaining countries of Namibia and South Africa. However, they recognised that the struggle for majority rule in South Africa and Namibia would be long and protracted. In addition they further recognised that their economic dependence on racist and apartheid South Africa was a major constraint on their policy making. They therefore gave priority to removing the constraints that economic dependence placed on their policy making especially their foreign policy.

In May 1979, therefore, Foreign Ministers of the Frontline States met in Gaborone, Botswana, to map out and discuss strategies for regional economic co-operation. At this meeting, the participants agreed to convene a meeting in July the same year in Arusha, Tanzania, with donor governments, and international development institutions to map out strategies and discuss a regional programme for economic develop-

ment in Southern Africa. ³ On 3rd July 1979, a Summit Conference called SADCC I was convened at Arusha. Those who attended included development Ministers from Frontline States and representatives from nine donor countries, the United Nations Agencies, the Commonwealth Secretariat, the Economic Commission for Africa (ECA), the European Economic Community (EEC) and the African Development Bank (ADB). The aim of inviting various agencies and institutions was to secure pledges, from them, for financial assistance, and technical services for the projects that would be undertaken and to afford them the opportunity to know and study SADCC's basic goals, programme and structure and to explain to potential co-operating partners the main parameters of such regional co-operation and the policy assumptions on which it was being constructed. ⁴

The Summit further agreed that, the other independent countries of Southern Africa should be invited to participate in the drawing up of the Declaration on Southern African Development Co-ordination. Consultations were accordingly held with Swaziland, Lesotho and Malawi.

The nine SADCC member states, that is, Zambia, Zimbabwe, Peoples Republic of ZAngola, Malawi, Lesotho, Botswana, Swaziland, Tanzania and Mozambique finally launched SADCC at their Summit of Heads of State and Government held in Lusaka on 1st April 1980, at which they adopted, the Lusaka Declaration entitled "Southern Africa: Toward Economic Liberation". They also adopted a Programme of Action in which they identified priority sectors which included inter alia, transport and communications, food and agriculture programmes; manpower development, industry; energy; mining; industrial development and trade and unfortunately excluding private foreign investment especially by TNCs. In this Declaration, the member States declared their commitment to co-ordinate their national development programmes at regional level.

The Declaration was signed by all the nine member States. The development objectives of SADCC as set out in the Lusaka Declaration are as follows:

- "(a) the reduction of economic dependence, particularly, but not only on the Republic of South Africa;

- (b) the forging of links to create a genuine and equitable regional integration;
- (c) the mobilization of resources to promote the implementation of national and inter-state and regional policies; and
- (d) concerted action to secure international co-operation within the framework of a strategy for economic liberation".⁵

In addition the Declaration outlines the basic commitment of SADCC member States to pursue policies aimed at economic liberation and intergrated development of their national economies. On the question of funds, SADCC members recognised the need to seek external financial support especially from governments and international donor agencies. Very little attention was paid to the role of private foreign investment, especially the TNCs at SADCC's inception.

It is important to note that, SADCC's need for external financial aid, it would appear does not mean that SADCC will beg for it, but rather it will be negotiated from the position of strength. Prime Minister Robert Mugabe has this to say on the question of external financial assistance:

"Ours is not a begging bowl. We know that the region is rich in resources which the industrialised world needs. We also know that, as a result of recession, many enterprises in the industrialised world are not working to capacity and are in need of contracts. We are willing to come to an agreement by which our resources can be made available provided that this happens in a way consistent with our development objectives. The attitude of the SADCC States to international co-operation is based on the recognition of overlapping interests and agreements freely negotiated between equals".⁶

1.2 Institutional Setting

SADCC's institutional framework for the conduct of regional trade and programme co-ordination among Member States is very fragile and its approach to the implementation of its objectives very pragmatic. The Lusaka Declaration is a unique "Memorandum of Understanding and Co-operation", because unlike others, it is legal in character. Apart from the Southern African Transport and Communications Commission (SATCC), the Memorandum also leaves room for the creation of institutions, in the strict sense when the need arises to co-ordinate sectoral programmes. It also lays down rules and procedures of how the objectives were to be imple-

mented, or what would happen in the event of disputes or disagreements especially between a **member** state and a foreign investor or between SADCC and a foreign investor who refuses the jurisdiction of the Summit.

The problem for the founders of SADCC was that despite the obvious agreement on goals, there was a huge diversity between the member states in ideology, politics, size, language, culture, resources and level of development. Membership ranges from "Marxist" to "Capitalist States". It is noteworthy that, the failure of the East African Community and the general lack of success of other African economic groupings e.g. Economic Community of West African States, (ECOWAS), etc., had instilled a fear of supranational bodies. It had already taken fifteen years to try to negotiate the Preferential Trade Area (PTA) of Eastern and Southern Africa and still not all countries had agreed, so it seemed hopeless to try to negotiate a detailed SADCC treaty.⁷ Too many economic groupings and other international bodies seemed top heavy talking ships, and SADCC states could not afford to pay for or provide personnel for yet another international bureaucracy.

SADCC therefore decided to adopt a decentralised approach. This approach was defined by the late Sir Seretse Khama of Botswana when the members were considering the Modus operandi. He said:

"We should not begin by building elaborate institutions and interstate bureaucracies. Any institutions should be instrumental to co-operations or result from it".⁸

He further stated that:

"SADCC has no treaty, no central authority, no common currency and not even a common language..... To understand SADCC it is important first to know what it is not. SADCC is not an embryonic federation of States seeking to mould the development of national economies on the basis of an overall master plan. SADCC is not a common market although increased trade is certainly a priority. If SADCC states do not have a common ideology it is because that was never intended,⁹ and would be impossible to achieve".

From the foregoing, one could clearly see that SADCC is neither a customs union nor a free trade area. It is not a common market either. The above was also reflected by the late Sir Seretse Khama, in the following words:

"Intra-regional trade can increase without the creation of a free trade area or a common market. Each one of the States in SADCC has experience with those models of trade creation. For

example, the Federation of Rhodesia and Nyasaland, the Portuguese Colonial 'economic union', the East African Common Market, the Southern African Customs Union, all were or are, free trade areas or common markets. All have served to limit our development, to enrich externally based firms and interests and to hamper national planning. We collectively reject models which would lead to gaps, between stronger and weaker states and conflicts of interests which would seriously undermine mutual trust and contain the seeds of dissolution".¹⁰

Another observer endorsed the observation of the late Sir Seretse Khama when he said that customs unions previously established in Eastern and Southern Africa which included members of SADCC had demonstrated all the problems associated with this type of arrangement. He further argued that gains from cooperation tended to accrue predominantly to the strongest state within the Union - Southern Rhodesia in the Federation of Rhodesia and Nyasaland. He concluded that in none of these cases had the stronger states shown willingness to forgo significant benefits in order to induce the less privileged parties to maintain the arrangement. He said if SADCC had decided to create a free trade area, it would have faced problems similar to those which led to the

demise of the East African Community (EAC), i.e. severe imbalance in the distribution of gains from regional cooperation. ¹¹

Another preliminary observation is that, although SADCC's objectives include the reduction, particularly of dependence on South Africa, SADCC was not only formed as a specifically anti minority ruled South African organisation because it has been pointed out by the founders of SADCC that the extent of economic dependence on South Africa by many of SADCC member States would be undesirable whatever political character of that country. That is even if majority rule is attained in South Africa the dependence will still be undesirable. It has been further argued that SADCC is just a logical step aimed at the strengthening of the individual economies of the SADCC member states and the economy of the region as a whole and that at present most of the countries of the region are vulnerable to economic sabotage because of their excessive dependence on South Africa on imports and transport facilities. ¹²

Be that as it is, the guiding principle by which SADCC seeks to achieve economic liberation particularly from South Africa is the method of selective disengagement by which the organisation gradually reduces the dependence on the basis of sector-by-sector analysis and maintaining ties with South Africa only where the costs of disengagement could not be easily absorbed.

In a nutshell it must be stressed that, SADCC has opted for a decentralised, non-bureaucratic structure that requires the maximum participation of the member states. Each member state is given a responsibility of co-ordinating development programmes in one or more subject areas. For example, the Peoples Republic of Angola, is responsible for co-ordinating energy; Botswana co-ordinates agricultural research and animal disease control; Lesotho is responsible for soil and water conservation and land utilisation; Mozambique for Transport and Communication; Zimbabwe is responsible for food security; ¹³ Tanzania for industry and trade; Malawi for fisheries, wildlife and forestry; Swaziland for manpower development and Zambia for mining and was also given the responsibility

of investigating into the possibilities of setting up the Southern African Development Fund.

It is noteworthy that Member States retain their authority in a key way. No projects are carried out by SADCC as a body, instead projects which are in a particular country become the responsibility of that country. If a project crosses a national boundary, such as a railway or a road, it is divided into two projects administered by the two countries, not by SADCC. Regional studies are administered by the country that is responsible for the subject area e.g. Zimbabwe for food security.

SADCC hopes to achieve its objectives through the five organs as embodied in its "Memorandum of Understanding". The five organs of SADCC are arranged in a hierarchical order of importance. These are: The Summit; the Council of Ministers; the Sectoral Commissions; the Standing Committee of Officials; and the Secretariat.

1.2 (i) The Summit

The Summit is established by Article II of the "Memorandum". It consists of all the heads of

States or governments of the Member States. It meets annually in any capital of any member state and is chaired by one of them.¹⁴ It is the supreme body of SADCC and its function is the overall "direction and control of the functions of SADCC and the achievement of its objectives". Like the Authority of the PTA, the Summit reaches its decisions by consensus.¹⁵ It is undeniable that the essence of this provision is to allow the widest possible consultation and agreement necessary in reaching a decision. However its drawback lies in that it could easily give rise to a veto power to any single member or a small group of them. Under Article IV the Summit is empowered to set up sectoral commissions when it deems fit.

1.2 (ii) The Council of Ministers

The Memorandum establishes the Council of Ministers to supervise the programmes of SADCC. It consists of nine Ministers, one from each member state. It also meets at least once annually and is presided over by a Chairman who in his absence is assisted by the Vice-Chairman. Both of them are elected from their number. It is the principal

that its established would depend upon the development of a programme of concrete regional energy projects.¹⁶ It would appear this decision reflects SADCC's determination not to create institutional structures prematurely.¹⁷

The Convention so created shall become a binding agreements between the member state and registrable with the U.N. under Article 102 of its Charter.¹⁸ This being the case, this approach makes it clear that co-ordination of the various economic policies in the sub-region would be undertaken through the medium of international conventions entered into between all the member states. The advantage of this approach lies in the fact that a binding operational mechanism is provided in which the sectoral commission acts as a medium through which co-ordination could be implemented by member states as opposed to the setting up of say an independent multinational project.¹⁹

1.2 (iv) The Standing Committee of Officials

Article V establishes the Standing Committee of Officials to service the Council of Ministers. That is its functions, inter alia, is to do preparatory work for consideration by the Council of Ministers.

decision making body of SADCC. Like in the case of the Summit, to which it is subordinated, its decisions are also taken by consensus. Under Article III (?) the Council may, at its discretion appoint Ministerial Committees for programmes in functional areas. These Committees so appointed report to the Council.

1.2 (iii) Sectoral Commissions

The Memorandum empowers the Summit to establish sectoral Commissions as and when it deems necessary. In addition, any such commission so established shall be governed by a convention adopted by the Council and ratified by the member states. An example of such a Commission is the Southern African Transport Communications Commission (SATCC) governed by the Transport and Communications Convention.

There was an attempt to draft a Convention on the establishment of the Southern African Energy Commission in 1982, however, this did not materialise. Its establishment was postponed by the Council of Ministers at its Luanda Meeting in June 1982. The reason advanced by the Council was to the effect

Under the same article, sub-paragraph five, the Council may appoint Sub-Committees of Officials for programmes in functional areas and may designate SADCC Member Governments to Convene meetings and coordinate the work of such sub-committees. Every such sub-committee shall report to the Standing Committee. Like in the case of other institutions the decisions of the Standing Committee shall be by consensus.

1.2 (v) The Secretariat

This is established under Article VI and is headed by an Executive Secretary who is appointed by the Summit. It inter alia, co-ordinates SADCC programmes. It became operational on 1st July, 1982 and has its headquarters in Gaborone, Botswana.

The functions of the Executive Secretary include the general servicing of and liaison with various SADCC institutions; co-ordinating the execution of the tasks of SADCC, custodianship of SADCC property and such other functions as may from time to time be approved by the Council. ²⁰

On the whole, power to set SADCC policy and to select SADCC regional projects rests solely with annual meetings of the nine heads of state, and with regular meetings of the Ministers of the nine SADCC countries. In addition a key feature of SADCC is the regular technical meetings of government officials, which serve both to keep tabs on progress, and to **exchange** information and ideas.

Much as we have talked about SADCC's institutional setting, one question that still remains to be answered is the legal character or legal personality of SADCC.

1.5 The Legal Status of SADCC

This is embodied in the Memorandum of Understanding on the Institutions of the Southern African Development Co-ordination Conference,²¹ signed by all the nine member states in Harare, Zimbabwe on 20th July, 1981.

The "Memorandum of Understanding" provides that SADCC institutions were to serve as the machinery for regional co-ordination and decision making.²²

The "Memorandum of Understanding" sets out clearly the agreement of the parties and creates certain rights and obligations on the member countries.²³ In other words though the instrument is called a "Memorandum of Understanding", the member states have

seriously bound themselves together in such a way that their commitment to the objectives are virtually legal obligations. The instrument makes SADCC more of an international organisation than a treaty as defined by the Vienna Convention on the Law of Treaties, when it defines the treaty as:

"An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two more related instruments and whatever its particular designation" ²⁴

The SADCC "Memorandum of Understanding" is not yet registered or deposited with the UN in accordance with Article 102 of the UN Charter. However, this does not affect SADCC' status as an international organisation. SADCC is therefore fully governed by international law like any other international economic institutions such as the Preferential Trade Area for Southern and Eastern African States (PTA), the Economic Community for West African States (ECOWAS) etc. whose treaties were deposited with the U.N.

In addition the UN General Assembly Resolution NO. 37/248 of 21st December 1982 on Co-operation

between the United Nations and the Southern African Development Co-ordination Conference was adopted to achieve formal recognition of SADCC by the UN and therefore increased support of SADCC by the UN specialised agencies. The Resolution recognised SADCC.

"... as a sub-regional organisation whose work is consistent with the objectives and principles of the UN Charter".

In addition the Resolution recognised that SADCC has been mandated by the member states to co-ordinate projects and programmes falling within its competence and requested the UN Secretary General to take appropriate measures to promote co-operation between U.N. bodies and SADCC. ²⁵ In other words the UN recognises SADCC in as far as SADCC's role relating to matters intra vires its competence and not ultra vires its powers. ²⁶

Another observation is that, there is no doubt that the SATCC and any other commissions which may be established, also have an international role to play. ²⁷ SATCC was constituted by a formal agreement between the member states and as such is

entitled to be considered as a separate international legal person (organisation). In actual fact SADC is recognised as an international organisation which can represent the member states in respect of areas intra vires its competence relating to the co-ordination and development of the sub-region's transport and communications programme. ²⁸

Now the question is, does SADC possess all the salient features of an international organisation? Let us briefly look at Dale's definition of an international organisation. Sir William Dale defined an international organisation as:

"an association of states or other governments having agreed purposes, and one or more organs for carrying these out".²⁹

Considering the institutional framework of SADC as discussed in the preceding pages, it passes Dale's test which he used when he analysed the Commonwealth as an international organisation governed by international law. Professor Ian Brownlie on the other hand put forward three salient features of an organisation which possesses

international legal personality. These were as follows:

- (a) a permanent association of states, with lawful objects, equipped with organs;
- (b) a distinction in terms of legal powers and purposes, between the organisation and its member states; and
- (c) the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more states. ³⁰

However, we have been advised that these criteria should not be applied too rigidly, as elements of international personality are likely to be present in some measure in most international organisations.

In this case therefore, SADCC satisfies the first two criteria. ³¹ The third criterion, however, seems to raise more problems. Because, though SADCC has been given a degree of international recognition as an organisation distinct from its members, it cannot yet be said to operate as an independent entity on the international plane as a fully-fledged regional

economic organisation such as the PTA or the EEC etc., These two organisations are recognised by the international community as having competence in certain matters.

This being the position therefore, SADCC's international legal personality is limited in nature, because it is mainly effective between and/or among member states. However, Dr. Slinn argued that it is possible that SADCC may develop into an institution with a greater measure of legal personality as a result of powers conferred upon it by member states and of the acceptance of its competence on the international plane by the international community. ³²

It is one's belief that SADCC is in the process of a growth with the potential organic development of legal complexities. Most important it might prove, a powerful or potential instrument for change from dependence, which demands its analysis and understanding by lawyers whose central concern should be with that problem so critical to SADCC in particular and Africa and its peoples in general.

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8. Hanlon, 'SADCC', p.5
9. Hanlon, 'SADCC', p.5.
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12. SADCC: A Handbook, p.9.
13. The Head of the SADCC Food Security Unit, Samson Maruna, said in an interview published in the Herald Newspaper that Zimbabwe's food security programme, had been expanded to involve disease control, fisheries development, wildlife, forestry conservation and land use.

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29. W. Dale, "Is the Commonwealth an International Organisation"? International and Comperative Law Quarterly 31 (1982), pp. 451-473. See also Slinn, "The Southern African", p. 194.

30. I. Brownlie, Principles of Public International Law (Oxford: Clarendon Press 3rd (ed) 1979 p. 679. See also Slinn, "The Southern African" p. 195.
31. See Articles IX, X and XI of the Memorandum of Understanding, relating to the legal capacity of SADCC, immunities and privileges and the international character of the Secretariat. See also Slinn, "The Southern African", p. 195.
32. Slinn, "The Southern African", p. 195.

industries, especially in most of South Africa's neighbours. As a result increasing number of their people especially men, had no choice but to migrate to work as contract labourers on South African mines and farms, where most of the TNCs operating in the sub-region are based.

Most of the TNCs until recently, were and still are responsible for fuelling South Africa's rapid economic growth, which contributed to the further underdevelopment and dependence of her neighbours (SADCC countries) even after independence. Some TNCs in partnership with South African companies retained full control of the major means of production or commanding heights of her neighbours' disarticulated peripheral economies.¹ More harm was done by the TNCs in the banking, mining and agricultural sectors. For example the most well known banking TNCs are Standard and Barclays banks. The subsidiaries of the two banks, usually alone, but sometimes in collaboration with other transnational banks and/or local partners, controlled the sub-region's commercial banking systems, determining who should receive credit and how much.² TNCs or South African trading and commercial

companies shipped in high priced manufactured goods for those who could afford to buy them, and purchased the crude exports not handled directly by mining or agricultural business ventures. TNCs, frequently in partnership with South African mining finance houses, shipped away the sub-region's wealth for processing, either to their plants in their home countries in Western Europe and America or in their plants in South Africa,³ as most of them were and still are based in South Africa.

It must be further emphasised that, the TNCs and the mining finance houses with regional offices in South Africa deliberately took advantage of, and, contributed to the SADCC states' weaknesses by extracting their mineral wealth in crude form, along with the investible surpluses created in the process.⁴ They completely discouraged or neglected the potential for building up regional industrial **capacity** outside South Africa. TNCs in the mining sector are known for their habit of opening and closing of new mines. They ignore the opening of other deposits, especially when there is a likelihood of competition with their own existing investments.

In the area of oil for example, the major TNCs built their main African refineries in South Africa instead of the Peoples Republic of Angola (then known as Angola). This was done regardless of the fact that South Africa had no known oil deposits and Angola possessed some of the largest oil reserves or deposits in the world. The Angolan oil deposits are being exploited by a U.S. firm, Gulf Oil, since the colonial times. The construction of the main African oil refineries in South Africa by TNCs, especially Gulf Oil, demonstrates South Africa's strategic importance to world imperialism.

In order to reduce dependence, on oil imports from South Africa, some independent states in the sub-region built refineries. The case in point is that of Zambia and Tanzania who invested state funds in small projects built by the Italian firm AGIP. Notwithstanding these attempts, nothing much has been achieved in terms of independence from the major oil TNCs. Put together, their refinery capacity was barely a fifth of South Africa's because they were very very small.⁵ All SADCC member states except

the Peoples Republic of Angola remained dependent till now on refined petroleum imported at high prices through transnational corporate marketing networks.

The sub-region is also rich in deposits of iron ore, especially in Southern Angola. The TNCs involved in the exploitation of iron ore deposits is Krupp, of the Federal Republic of Germany. In Swaziland, Anglo-American Corporation negotiated a profitable, but exploitative contract to ship away all of Swazi's iron ore to Japanese steel firms. In addition other countries with ore deposits are Mozambique, Zambia and Tanzania, however theirs lay fallow. ⁶

None of the states in the sub-region has succeeded in setting up industries to process local raw materials into steel, except South Africa and Aouthern Rhodesia (now Zimbabwe). The two minority ruled regimes did this with the help from TNCs. This means that all of South Africa's neighbours, with the exception of Zimbabwe, had no choice but to import machinery and equipment embodying steel for their industrial, agricultural, construction and transport sectors, especially from South Africa's Iscor.

The mining of copper in the sub-region is mainly controlled by Anglo-American Corporation Newmont and American Metal Climax (Amax), especially in Zambia, Zimbabwe and Namibia.⁷ Only in Zambia, did these companies construct smelting and refining facilities to reduce the costs of exporting and shipping copper to their overseas buyers as well as their home plants. In South Africa, however, TNCs and South African copper firms made sure that copper fabricating factories were built.

Another interesting issue is, when Amax and Anglo-American Corporation opened their mine in Botswana, they rejected the government's request to built on-site processing facilities or to ship their output to Zambia's smelting-refining complex.⁸ What they did, was to ship the crude minerals to AMAX's refinery in Louisiana, after which it was to be reshipped to Metallgesellschaft's fabricating plant in the Federal Republic of Germany.⁹ In Namibia, AMAX and Newmont continued to ship much of that country's copper¹⁰ to the U.S. for processing, although at one stage they announced plans to build their own refinery in South Africa with a view to promoting industrial development in South Africa at

the expense of Namibia.

TNCs, especially in the mining sector, encouraged unco-ordinated national planning which culminated into the reduction of inter-African trade. For example the Zambian copper wire plant built with government funds and technological and managerial inputs provided by the U.S. firm, Phelps Dodge closed the previously existing Zambian market for the earlier built Zaire's wire plant.¹¹

To reduce its dependence on imported mineral fuels, South Africa because of her advanced technology, took measures to develop her neighbours' power. This became more demanding because of the rise in the costs of mineral fuel. The South African government was assisted by Portugal and TNCs in the building of the Cabora Basa dam in Mozambique and the Kunene River Hydro-electric Project in Angola and Namibia.

After independence, some SADCC states were not happy with this type of dependence on hydro-electric power plants controlled by Southern Rhodesia and South Africa. To reduce their depen-

dence on hydro-electric power, some states in the sub-region decided to built therr own hydro-electric power plants. In the case of Zambia, the Kafue Hydro-electric Project was built to reduce its dependence on the then illegal Smith Regime in the then Southern Rhodesia.¹² It was also aimed at providing additional power for new industries being built in the Kafue Valley.¹³

Tanzania also did the same, to facilitate the spread of industry and modern agriculture. This was done through the expansion of small scale hydro-electric projects. However, the much more extensive plans for a larger project at Stilger Gorge,¹⁴ to electrify the entire Tanzanian country side, proved too expensive to undertake until much later.

(i) TNCs and the Drain of Investible Surpluses

TNCs and South African Companies operating in the sub-region have drained away a major share of the limited investible surpluses produced in the sub-region. The drainage left South Africa's neighbours with little to finance more balanced, integrated national and regional development. The funds are withdrawn directly or indirectly in the form of

interests, profits, dividends and high salaries of expatriate personnel and through the manipulation of terms of trade. This is made possible because of the TNCs' control of the commanding heights of the economies of these countries. Seidman put the estimates from about 25 per cent of the gross domestic product (GDP) in the case of Zambia ¹⁵ to almost 40 per cent in the case of Namibia and Lesotho. ¹⁶

In a nutshell it could be argued that, the institutionalised domination exercised by South Africa with the assistance of TNCs perpetrated the present dependence and underdevelopment of the countries of the sub-region. As stated earlier on, most of the TNCs that control the major means of production in the sub-region are based in South Africa. Their main aim was and still is to ship out the sub-region's crude mineral and agricultural wealth; undermine its industrial growth through the sale of mass-produced manufactured goods; and drain away its investible surpluses. These have culminated into the **disruption** of rural family life as hundreds of thousands of male workers had to migrate to work

for poverty level wages in South Africa's mines and farms. However this trend changed in the mid '70's as South African mining TNCs and other firms employed jobless South Africans' instead of migrant workers. This was due to the mechanization of the South African industry which reduced on black migrant labour.

The problems of TNCs in the sub-region have not by-passed the criticisms of the international community as represented by the U.N. and its various specialised agencies. Such critiques have culminated in the holding of UN sponsored conferences which focussed worldwide attention on the involvement of TNCs in the sub-region. For example in May, 1977, the International Conference in support of the people of Zimbabwe and Namibia was held in Maputo, Mozambique.¹⁷ The Declaration issued after the conference denounced foreign economic interests in Southern Rhodesia (now Zimbabwe) and condemned as illegal the exploitation of natural resources in Namibia. This Declaration like many others called on all governments to ensure that TNCs under their jurisdiction did not violate UN sanctions against Southern Rhodesia. It also demanded governments to enact legislation consistent

with Decree No. I of the U.N. Council of Namibia, which declares the natural resources of that country to be the birth right of the Namibian people.

Having said that, it would be proper to conclude that, the economic realities urged the newly politically independent nations of the Southern African sub-region to demand for economic intergration¹⁸ and cooperation. Their main argument is that, colonially and neo-colonially imposed institutional structures had rendered all South Africa's disarticulated economies critically dependent on links with racist South Africa and the international finance monopoly capital,¹⁹ spearheaded by TNCs. This means that, as a result of many decades of this kind of systematic and preconceived underdevelopment, the gross domestic product (GDP) of the ten members in the sub-region, combined, totalled little more than a third of South Africa's.²⁰ Alone, however, and with few exceptions, their potential investible surpluses could scarcely finance more than one or two basic modern industrial projects.²¹

2.2 TNCs and Regional Intergration

Our main concern is to briefly give an overview of the experience of previous attempts at

regional intergration and to assess the ways in which the operations of TNCs have affected their success. This is with a view to give a broader perspective on the possible reaction of TNCs' towards SADCC.

The major point to be noted here is that, the attitude of TNCs attempts at regional intergration depend mainly on the effect this will have on their long-run world profitability and market shares. Their behaviour in anyone country or region will therefore be inevitably affected by the extent and nature of their substituting or complementary activities in other places or localities.

This being the position it is untenable that the attitude of TNCs towards regional or economic intergration will depend upon a number of factors such as: ²²

- (i) the individual size of participating countries,
- (ii) the type of intergration pursued; and
- (iii) whether, prior to intergration, such TNCs had established operations in the countries

In the alternative and without prejudice to the above, the attitude of TNCs towards regional economic intergration has also been said to depend upon the following major factors:²³

- (i) Parallel Investments;
- (ii) The Effect on Local Political Forces; and
- (iii) Sectoral Factors.

It is submitted that the two classifications on the attitude of TNCs towards regional economic intergration mean almost one and the same thing. It is just a question of wording. We shall now proceed to look at the last classification in the same order.

(i) Parallel Investments

Where TNCs have parallel investments in other neighbouring countries in the region they are less willing to look favourably upon regional economic intergration. The reason being that, partly they do not intend to jeopardize their existing diffused investments and partly it also arises from the fact that where scale economies in production are important, their existing diffused, parallel investments probably make it difficult for them to realise the same scale economies as

new entrants into the region who would be able to rationalize their investment from the outset, thus being better equipped to take advantage of these economies of scale.

The case in point is the Andean Pact's automobile industry - where Chrysler a company with parallel investments in a number of the region's individual member states was opposed to the regional intergration scheme.

Conversely new entrants to a region are likely to act positively to the imposition of a common market. This was well illustrated by the behaviour of two new TNCs in the Andean Pact region - Atlas Copco and Volvo. The two companies took advantage of the common market to introduce a rationalised production structure.

In the case of SADCC where almost all members deal with the same TNCs, a negative attitude against SADCC is inevitable. Because TNCs know very well that if SADCC comes up with a common policy towards them, it will be easier for SADCC to dictate terms for them. This is well manifested in the

present TNCs anti-SADCC attitude even prior to a SADCC-joint approach towards them (TNCs).

(ii) The Effect on Local Political Forces

The TNCs do not operate in a political vacuum. It is part of their policy and strategy to take into account the local political factors. Because some political factors may be a hindrance to their operations and as such the TNCs' reaction is bound to be hostile. Once again a case in point is Latin America. Two factors are worth noting in this case. The first one relates to the extent to which governments - attempt to control the activities of local and foreign investment on a wide front. Secondly local indigeneous business interests sometimes see regional integration schemes as a threat to their essentially local and foreign contracts and expertise.

In the case of the Andean Pact, the two situations did actually happen. As a result a co-ordinated opposition from both local and foreign capital was made possible through various agencies, including a Washington based business pressure-group, the Council for the Americas.

Looking at SADCC vis-a-vis the role of TNCs under this aspect, it would appear SADCC is seen as a threat by both TNCs and South Africa in particular and the imperialist camp in general. The political and investment climate was more conducive to TNCs, South Africa and her imperialist allies prior to the formation of SADCC. Because though individual countries have enacted "investment codes" or other legislation on the control of TNCs as well as policies towards them, these alone do not affect the operations and interests of TNCs. Most of the national "investment codes" are what can be named as 'investor protection codes' - rather than 'investment codes' per se let alone 'investor control codes'. They put more emphasis on the protection and inducement of foreign investment at the expense of control, thereby creating a war of incentives among SADCC member states. This state of affairs enables TNCs to use their policy of divide and rule and thereby creating unreasonable competition for foreign aid and foreign investment at the expense of national and regional development objectives.

SADCC's present set up though not directly concerned with the control of TNCs, is viewed by them as a stepping stone to control the activities of local and foreign investment on a wide front. The increase in trade between local indigeneous business interests and South Africa against SADCC's objectives, should be viewed as a manifestation of the former's opposition to SADCC. They consider SADCC as a threat to their essentially local and foreign contacts and expertise.

Another aspect worth noting is that, SADCC is both an economic and political union. It was born out of politics and as such would like to see an independent and democratic South Africa. This is a threat to TNCs especially those based in South Africa, who know very well that, South Africa's independence will be synonymous to the end of their exploitation in the sub-region. This is why some of the TNCs have become part and parcel of the so called South African policy of 'total strategy'. However, those who foresee the inevitable collapse of the apartheid system, have already started, pressuring the South African government to hold talks with the black majority with a view to bring about the end to apartheid.

Some have even gone to the extent of seeking audience with the ANC of South Africa or leaving South Africa for example, Barclays Bank and Anglo-American Corporation Ltd to mention but a few.

All these are TNCs attempts to win over the sympathy of the black majority and thereby creating a fertile ground for fundamental concessions for the protection of their interests in an independent and democratic South Africa.

(iii) Sectoral Factors

It must be pointed out that, there are a variety of sector-specific factors which affect the economies of location and as a result determine the attitude of TNCs to regional integration. The major ones are as follows:

Transport - to - value ratio - where this is high, the effect of regional integration is slight - and TNCs will probably remain relatively indifferent.

The second factor is where the enterprise's final output has either a poor shelf-life (for example bread) or is specific to individual markets (for example some food products).

Producers in this category, like their counterparts in the first category of enterprises are relatively indifferent to the onset of a common market.

Thirdly, is the fact that, in some situations, there are inherent economies of scale, especially in the processing industries and in those discrete - product sectors characterised by a significant variation in the final product. In these situations there is an inherent logic to rationalize production and the attitude of individual TNCs or firms to economic intergration will reflect whether they have prior investments in the region. If they have then the attitude will be negative.

In all the above situations, it would appear TNCs are opposed to any form of regional intergration schemes which will culminate in a common market.

In the case of SADCC, individual TNCs as influenced by various sectoral factors will act accordingly to protect their interests.

What we have seen is a general reaction of TNCs towards regional economic intergration. Let us now briefly look at the reaction of TNCs after

the formation of SADCC, which will not be very much different from the general attitude of TNCs towards regional intergration discussed above.

2.3 The Role of TNCs after the Formation of SADCC

It must be stated from the outset that, initially SADCC dealt only with governments and international organisations or agencies. As a result no SADCC policy was formulated to deal with TNCs in the sub-region up to now.

The role of TNCs in SADCC is both positive and negative. However the positive role is rather overshadowed by the TNCs' negative role. Most TNCs operating in SADCC w are still South African based and as a result are part and parcel of the so called South African Policy of "total strategy" against SADCC. In addition, some prominent TNCs representatives in the sub-region have stated that, private investors (TNCs) should not be expected to subscribe to some kind of SADCC political goals. This shows that they were not happy with the formation of SADCC. This was succinctly put by Wilfred Turner, director of the Southern African Association, which represent

British firms active in both SADCC and South Africa when he said:

"Private investors should have no political concerns, and should not be expected to subscribe to some kind of SADCC political goals".²⁴

He was further quoted as saying:

"If increasing trade with South Africa means people in the region are getting better off, than what the hell".²⁵

Wilfred Turner further argued that South Africa was a useful base for breaking into SADCC and that this should be accepted.²⁶ He reiterated his argument by saying that British firms have offices and technicians already in South Africa and that investment is not just money but also men and equipment. He also questioned why SADCC states did not want to use the firms in South Africa. The same point was also made by West Germany, U.S.A. and Britain when they told Mozambique that new investment would be made only through South African affiliates, and not directly and that they were supporting the non-aggression security pact between Mozambique and racist South Africa known as the Nkomati Accord as a means of encouraging this. This was denounced by President

Nyerere as blackmail in support of apartheid South Africa at the Gaborone Summit in July 1984.

In addition, in an answer to Wilfred Turner's argument, the Chairman of the SADCC Standing Committee of Officials, Lebang Mpotokwane closed the Commonwealth Institute Seminar on SADCC by declaring that SADCC member states did not accept their region and their states to be seen as appendenges of South African enterprises, agencies or countries which seek to relate them in that way and therefore could not be seen by SADCC to be co-operating.

In another development, Anglo-America's Executive Director, Etherdge, D.A., advised SADCC to:

"Subjugate its hostility towards South Africa to the crying needs of the states of Southern Africa".²⁷

Recently, Daimler-Benz AC, West Germany's biggest industrial group, has rejected demands from small shareholders to disinvest from South Africa, saying boycotts would harm rather than help South African blacks.²⁸ Daimler-Benz AG also operates in some SADCC member states.

From the above, one could clearly see that private investors (TNCs) in the sub-region and those in South Africa are not happy with the creation of SADCC and as a result have wholeheartedly accepted South Africa's policy of "total strategy" against SADCC. Notwithstanding the above proposals and views by anti-SADCC advocates, the founding fathers of SADCC have refused to accept South Africa, because of her apartheid policy. This was well put by President Nyerere when he said:

"Although we fully recognise the short term economic advantages which could be gained by co-operating with it, apartheid South Africa has been deliberately excluded from SADCC". 29

Some leaders have gone to the extent of staging that, investors have to recognize and subscribe to the political content of SADCC, as Basil Mramba stated when he said:

"It is thus of utmost importance for potential investors to recognize political content of SADCC in order to avoid future mistakes and disappointments". 30

In another development, Mozambique's Foreign Minister, Joaquim Chissano recognized the fact that, SADCC states have accepted that Western governments

were wnot willing to support either sanctions or disinvestments. As a result he said that SADCC states were now asking two things and these were:

- "1. that new investment be made in SADCC states and not in South Africa; and
2. that industrial and commercial investments into SADCC cannot be allowed to enter through the back door of the Republic of South Africa".³¹

He also said that, SADCC wanted industries, but no branches or subsidiaries of South African firms. ³²

Notwithstanding the above recognition of the problem of foreign private investment by SADCC member states, especially the problem of TNCs based in South Africa as well as Western Countries and the U.S.A.'s support for South Africa's threat against SADCC, these countries had not until 1983 decided to deal directly with TNCs, let alone formulating a common approach towards them. This could be derived from the words of SADCC's late Executive Secretary Arthur Blumeris when he said:

"..... But I should mention; with regard to industry and I have talked to several of the donors on this - what we haven't discussed yet. We didn't invite private banks and industrialists from the private

sector abroad. So foreign private investment was not represented to the extent which the requirements in the industrial sector demand. They should have been present. But it has underlined the necessity, and hopefully it will be possible for us to organize a meeting with foreign private investors in 1983, to look a little closer at other aspects of the industrial development of the region".³³

Unfortunately, the above promise or suggestion by the late Arthur Blumeris never materialised until early 1984. It became clear to all SADCC members that the private sector would have to be involved. Their main argument was that, it was after all, TNCs that were actually carrying out the various SADCC projects and at the same time doing consultancy studies. They further agreed that, it was TNCs that would provide industrial, energy and telecommunications technology and that TNCs are a source of foreign exchange, both through investment and suppliers' credits.

Their recognition of the role of TNCs in SADCC, culminated in a special meeting in Harare in January 1984 aimed mainly at the private investors. In another development, Lebang Mpotokwane, Chairman of the SADCC Standing Committee of Officials, admitted

in London in July 1984 the role played by the private sector in SADCC when he said:

".... We and private sector enterprise with whom we have common interests in specific sectors and clearly still feeling our way, but we are getting to know each other and having more regular contacts".³⁴

This recognition of the role of the TNCs by SADCC member states is worth noting, especially that all the nine members face almost the same TNCs, for example, Anglo-American, Lonrho, Standard Bank, Barclays Bank, Rio Tinto Zinc, Tate and Lyle, BATA, AMAX, SHELL, B.P to mention but a few. Recently at the Seventh Annual Summit Conference in 1985, it was revealed that the funding of SADCC projects would probably be opened to TNCs. SADCC hopes to handle the private sector in the same way. That is co-ordinating at the central level but retaining local control. Now the question is, is it possible? One admits that, the ability of SADCC states to control manipulation, emanating from governmental aid has been reasonably good to date, however as the network becomes more complex and comprehensive with private investment, the prospects of control are reduced.

Some of the potential problems are that there is no uniform investment code, no common policy on TNCs, no common marketing policy, etc., each country has its own policy and its own law. The solution to these problems forms the theme of this thesis, whose main aim is to suggest some common strategy options for SADCC in dealing with TNCs.

2.4 SADCC - An Assessment

Let us briefly examine SADCC's objectives. The first objective emphasises the need by SADCC states to achieve economic independence. It is interesting to note that, it puts more emphasis on reducing dependence on South Africa, instead of putting emphasis on international monopoly capital. What if South Africa becomes independent and therefore part of SADCC? This objective is aimed at shifting dependence from South Africa to other sources.

It is argued that to achieve economic independence, SADCC needs to fight international monopoly capital of which South Africa is a part, and not necessarily the South African economy.

The second objective on equitable regional intergration is a good idea. However, one would have expected that an objective that looks at equality has to emphasise the need of equitable distribution of wealth so produced within the sub-region as a whole.

Coming to the third objective it would appear it simply emphasises the extension of interests from narrow nationalism to regionalism if the co-operation is to bring desired economic benefits.

The last objective demonstrates the need for SADCC (states) to get foreign assistance. This is one of the aspects which provoked the author into writing this thesis. Because, the basic problem is, notwithstanding their various and ideological convictions, SADCC states tend to cooperate with opposing foreign powers as well as foreign financial institutions, especially the TNCs. Some see the role of TNCs as positive some do not. For example the BLS states encourage co-operation with South Africa as well as other foreign private investors, whereas Tanzania, until recently was largely opposed to foreign private investment.

It is also true to say that in most SADCC states there are businessmen and bureaucrats who are happy to deal with South Africa and even encourage such links. It would appear a joint action against TNCs, which is inevitable if SADCC is to succeed may face some reservations on the part of some SADCC members as well as potential foreign private investors.

One hopes that, SADCC member states realize that SADCC is seen as a threat by South Africa and her Western Allies. This is manifested in South Africa's continuing pressure on SADCC. This is seen in the backing of rebel movements such as UNITA in the Peoples Republic of Angola, MNR in Mozambique, Super-ZAPU in Zimbabwe, remnants of the late South African trained rebel Adamson Mushala in Zambia and LLA in the then Lesotho of Jonathan. In so doing South Africa has succeeded in signing non-aggression pacts with some SADCC states, such as Mozambique, Swaziland, Lesotho and recently an informal accord with Botswana was made. In addition South Africa continues to use military, economic and trade power as her weapon. For example

her ownership and/or control of retail chains, mines, shipping and forwarding agencies and manufacturing firms consistently battle against SADCC's objectives. The economic blockade of Lesotho followed by the coup and the recent selective sanctions against Botswana ³⁵ Zimbabwe and Zambia are vivid examples of trade used as a weapon by South Africa against her neighbours to make SADCC unworkable. ³⁶

The support of her Western Allies, especially U.K., FR.G. and U.S.A. is manifested in the fact that these countries do not invest heavily in SADCC and that their aid to SADCC is in most cases bilateral. It is interesting to note that, the most positive response to SADCC's objectives has come from states with fewer investment in South Africa. These are the Nordic countries, India, Italy and France. In other words, less investment has come from U.K. FRG. and the U.S.A. which have most investment in South Africa. Why? The answer is self-evident, as we have already seen in this thesis that the dominant economic position that South Africa occupies in the sub-region have been an historical strategy by these countries - through

their TNCs to maximize profit making in the sub-region. South Africa is therefore a strategic outpost of international monopoly capital and SADCC's objectives are against this and as such a threat to the imperialist interests in the sub-region.

This being the position therefore, SADCC minus a common policy on foreign private investment code, would be looked at by many SADCC sympathizers as a "Management Committee" of the TNCs. This is mainly so, because SADCC states do not own and control the major means of production, such that real economic power rests outside the sub-region. It is beyond doubt that some SADCC member states are indirectly supporting or financing South Africa. For example, the BIS states through the Southern African Customs Union give South African firms improved access to the EEC, since the Lome Convention gives preferential access to EEC markets for products such as beef and sugar. What we are saying is that membership of SADCC states in different organisations - affect in particular their external relations especially with the donors and other

foreign investors. For example before Mozambique and the Peoples Republic of Angola became members of the Lome Convention, there were problems of SADCC project funding from the EEC. It is also true to say that BIS countries especially Lesotho and Swaziland are members of the South African dominated Rand Monetary Area. It is also beyond doubt that, these countries perceived economic benefits in these links and are unlikely to 'disengage' without, compensatory arrangements. However, SADCC should seriously consider the improvement of the unique and precarious position occupied by the BIS countries in the sub-region as being strategic to its success in the long run.

The structural imbalances which evolve partly from different natural endowments and partly because of particular colonial policies, is also one of the major impediments to SADCC's success. A case in point is Zimbabwe - like Kenya in the EAC's case, is likely to become the hub of commerce and industry for much of the SADCC sub-region. Such a situation should be strictly avoided. This could be done through the balancing of the concern for inter

and intra-distribution of economic activity against the need for rapid overall industrialization.

While one accepts and recognises the vulnerable and precarious position occupied by some SADCC states, especially the BIS states, it would appear some countries such as Malawi, Swaziland and Mozambique are less willing to delink with South Africa. In the case of Malawi, it continues to have diplomatic relations with South Africa even after the formation of SADCC. Swaziland on the other hand is extending its railway system to South African parts against SATCC objectives. Swaziland's move has culminated in the opening of a Joint Swaziland-South African 120 km. rail link on the 15th February 1986 by ministers from both countries.³⁷ Almost all of Swaziland's imports and exports according to a joint ministerial statement, from now onwards must travel through South Africa. In addition South African Foreign Minister Roelof 'Pik' Botha in 1986 inaugurated South African trade mission in Mbabane, Swaziland;³⁸ Furthermore in a joint statement issued after the talks between Maputo and Pretoria, the two countries reaffirmed their desire to maintain the Nkomati Accord

'regional development must be designed and implemented by Southern Africans', EEC assistance has not always escaped and structures of critics quick to detect neo-colonialism in any collaborative endeavours between Europe and Africa.⁴¹ Even less ideologically motivated observers have sometimes viewed the EEC's intimate involvement in SADCC affairs with considerable mystification and some suspicion. It is less clear why the EEC most - deeply involved economically in South Africa is so anxious to promote economic liberation of neighbouring black states.

Surprisingly enough, whatever doubts there may be concerning EEC and other Western countries, and U.S.A.'s motives, they do not appear to be shared by SADCC governments. This manifests itself in that, far from seeking to challenge the heavy dependence on EEC assistance - and other Western governments, including the U.S.A., all are eager to attract even larger flows of aid investment funds.⁴² Even the Peoples Republic of Angola and Mozambique, which initially backed at accepting the 'Berlin Clause' have become full time members of the Lome Convention.⁴³

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In the alternative and without prejudice to the above analysis, one would argue on the other hand that, SADCC's objectives are not only aimed at shifting dependence from South Africa to other sources as argued earlier on in this thesis. This could be derived from SADCC's first objective which emphasised the reduction of economic dependence, particularly but not only on the Republic of South Africa. The same argument could also be derived from the words of President Nyerere when he said:

".... our purposes are not simply greater independence from South Africa. If South Africa's apartheid rule ended tomorrow, there would still be need for the states of Southern Africa to co-operate, to co-ordinate their transport systems, to fight foot and mouth disease together, to rationalize their industrial development....." 44

President Kaunda on the other hand expressed similar sentiments when he said:

"Some people have tended to think that we are forming this economic grouping purely to face South Africa. In our view this regional grouping is being established despite and not merely because of South Africa and her concept of a regional constellation of states... Our task is to link up our economies in order to strengthen ourselves. Of course, this is important in the strategy

for self-defence against possible attempts by South Africa to undermine the independence of various countries in the region".⁴⁵

He continued:

"The economic success of the countries represented will have an epoch making impact within South Africa and will certainly deal mortal blow to the policy of apartheid. Our success is important to the people of South Africa and, therefore, to the liberation of the entire continent".

All the above mentioned sentiments expressed by the founding fathers of SADCC put it clearly that, SADCC has both short and long term objectives. SADCC is on the whole therefore against all forms of exploitation and dependence especially those caused by world imperialism. It would appear SADCC as an economic entity in its own way, will not end with the independence and dismantling of apartheid in South Africa as stated in the preceding discussion or as some scholars on SADCC might think. Late President Samora Machel has put it succinctly when he said:

"..... We must be humble in our immediate objectives and ambitious in our long-term objectives"⁴⁶

The reduction of dependence on South Africa should therefore be considered as a short term objective and not an end in itself.

We contend that, the reason SADCC has not as yet addressed itself seriously on the problem of TNCs is not that it is not within its competence, but rather a question of priority sector responsibility approach adopted by SADCC. However as we shall see later, it is submitted that it is high time that SADCC member states consider a common approach in the control protection and encouragement of TNCs as one of their priority sectors especially that all SADCC member states face almost the same TNCs. This is with a view to avoid a 'war of incentives', or competition for aid among the SADCC member states. These two aspects if left unabated, will continue to assist the operation of the classical TNCs policy of divide and rule among the SADCC member states. One is therefore of the view that legal planning might assist to pull together a minimal uniform policy on this to avoid reliance on the almost miraculous tendency of SADCC member states to work together and avoid competition for aid and foreign private investment.

TABLE ONE: Transnational Corporate Domination of commanding heights of South Africa's neighbours in 1974 (prior to the liberation of Portuguese colonies). The table excludes Tanzania because it does not share borders with South Africa.

Commanding Heights	Namibia	Botswana	Lesotho	Swaziland	Zimbabwe
Banks	Barclays Standard French Bank	Barclays Standard	Barclays Standard	Barclays Standard	Barclays, Standard National Grindlays Nelsual (70%)
Basic Industries Major mines	Uranium Rio Tinto Zinc Copper Anglo-American AMAX, New Monti, Falconbridge	Diamonds De Beers Copper-nickel Anglo-American AMAX (government 15% share)	Iron and Anglo American Asbestos Turner, Babrock, Newell.	Iron and Anglo American Asbestos Turner, Babrock, Newell.	Iron and Steel: British Steel (53%) Coal, Copper, Nickel, Iron: Anglo-American Chrome: Union Carbide, Rio Tinto Zinc Phosphate: AICI
Major Estates/ Anglo-Industry	(Primarily settler farms)			Lonrho, Tate and Lyle Del Monte Nestles	Lonrho: BATA; Tate and Lyle; Anglo-American; Brooke Bond- Lalbig.
Foreign and Inter- national Wholesale Trade	All imports and exports handled by South African and Transnational firms within the South African Customs Union				All imports/ exports go through South Africa, Mozambique.

Malawi	Zambia	Angola	Mozambique
Barclays and Standard own 49% and manage Commercial bank; government owns 51%	Barclays, Standard, National Grindlays conduct 80-90% of bank business	Barclays, Standard and Anglo-American held shares in Banco Standard Totta. Alliance (a Portuguese bank)	Standard and Anglo-American held shares in Banco Standard Totta Mozambique (a Portuguese bank)
None	Copper: <u>Anglo-American</u> , AMAX (In partnership with government, 51%)	Oil: <u>Gulf Oil</u> , <u>Texaco</u> Diamonds: <u>De Beers</u> and Portuguese. Iron Ore: <u>Krupf</u>	None
Lonrho	Pate and Lyle (in partnership with government)		Anglo-American
36% of imports from South Africa, unknown % from Zimbabwe	CBC (UK 49%; Zambia government 51%; ZOK (formerly South African taken by government 100%)	Portuguese interests handled imports; transnational mines agricultural business handled much of exports	Portuguese interests handled trade, with growing South African and transnational involvement

Source: Seidman, Towards Intergrated Regional pp. 7-8. 'Development in Southern Africa' 733/80/AS/cc. See also reference 1.

TABLE TWO

Capacity for Refining Petroleum Products in Southern Africa, 1976.

	Angolain thousand metric tons	Mozambique	Tanzania	Zambia	S. Africa
Liquidified Petroleum gas.	7	7	6	9	59
Moto Spirit	51	80	117	180	3,504
Kerosene	18	20	26	20	403
Met Fuel	56	7	44	40	283
Distillated fuel oils	190	100	193	350	4,326
Residual fuel oils	342	200	358	200	3,187
Bitumen	5	25	-	5	319
Paraffin wax	-	-	-	-	290
TOTAL	664	439	744	799	12,371
% of regional total	4.4%	2.0%	4.9%	5.3%	82.3%
Crude petroleum known reserves	179,000	none	none	none	none
production	4,494				

Source: United Nations Statistical Yearbook, 1979.

NOTES AND REFERENCE

1. A. Seidman, 'Towards Intergrated Regional Development in Southern Africa' 733/80/AS/cc. Paper presented at the SADCC Oriented Workshop on TNCs held at the University of Zimbabwe from 31 May - 9 June 1982, p.6
2. Seidman, 'Towards Intergrated Regional Development', p.6
3. Seidman, 'Towards Intergrated Regional Development', p.6.
4. Seidman, 'Towards Intergrated Regional Development', p.9.
5. See Table Two.
6. Seidman 'Towards Intergrated Regional Development', p. 11.
7. Namibia is not yet a member of SADCC, however, SWAPO of Namibia, has been accorded observer status at its deliberations. This means that, after independence Namibia will become a member.
8. Seidman, 'Towards Intergrated Development' p.13.
9. R. Silitshena, 'Mining and Development Strategy in Botswana'. In A. Seidman (ed). Natural Resources and National Welfare: The Case of Copper (New York: Praeger, 1976) pp. 290-291.
10. This is against UN Council for Namibia Decree No. 1 of 1977.
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25. Hanlon, 'SADCC', p. 94.

26. Wilfred Turner said this at the Seminar on SADCC held by the Commonwealth Institute in London in July 1984.
27. Hanlon, 'SADCC', p. 94.
28. Editorial, Zambia Daily Mail, 4 July 1986.
29. Hanlon, 'SADCC', p. 94 President Julius Kambarage Nyerere said these words at the SADCC Summit, Gaborone on July 6, 1984.
30. Hanlon, 'SADCC', p. 95, Tanzania's Minister of Industry and Commerce said these words in London in July 1984.
31. Hanlon, 'SADCC', p. 95.

32. Hanlon, 'SADCC', p. 95.
33. R. De Baxter; 'SADCC Must Become a Regional Growth Area.' Interview with SADCC. Executive Secretary Arthur Blimeris: The Courier (Brussels) No. 79 May - June 1983, pp. 44-52.
34. Hanlon, 'SADCC', p. 11.
35. Editorial, Zambia Daily Mail, 5 4 July 1986.
36. South Africa's use of military power to neutralise SADCC member states is manifested in the occupation of Southern Angola - and the unprovoked military attacks against the FLS. The simultaneous attacks of Lusaka, Gaborone and Harare on June 19 this year are vivid examples of South Africa's policy of destabilization in the sub-region.
37. Editorial, Sunday Times, 16 February, 1986.
38. Editorial, Times of Zambia, 'n.d' 1986
39. Editorial, Times of Zambia, 'n.d' 1986.
40. SADCC: Southern Africa: Toward Economic Liberation, 1st April 1980, pp. 3, 8.

Records of the SADCC Summit, Harare, 20th July 1981 p. 44. The phrase "any single state or group of states" was in addition to Arusha Declaration inserted in Lusaka, April 1980.

41. A certain amount of gently jurisdictional rivalry appears to have developed between the EEC and ECA over the Southern African Sphere of Influence. In early 1979, an EEC official suggested to the ECA that it should sponsor SADCC, then only a vague, proposal was made. ECA declined as it was prompting up PTA. Since then EEC representatives have reported urged (unsuccessfully) ECA's exclusion from governmental meetings, notably the 1980 SADCC Lusaka Summit.
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43. Editorial, Financial Times, London 25 November 1980.
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45. SADCC: A Handbook, p.9, H.E. President Kaunda, Lusaka, 1 April, 1980.
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