

**LAW AS A FACTOR FOR REGIONAL INTEGRATION:
SADCC: PROBLEMS AND PROSPECTS**

by
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Introduction

The South African Development Co-ordination Conference was established by a Memorandum of Understanding signed by the leaders of Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe on 20th July, 1981 at Harare in the Republic of Zimbabwe.¹ The formation of the organisation was a result of the Declaration known as South Africa: Towards Economic Liberation signed in Lusaka on 1st April, 1981 wherein the following development objectives were enunciated:

- Reduction of economic dependence, particularly, but not only, on the Republic of South Africa;
- The forging of links to create a genuine and equitable regional integration;
- The mobilization of resource to promote the implementation of national, interstate and regional policies;
- concerted action to secure international cooperation within the framework of a strategy for economic liberation.²

These are the objects of SADCC. In a nutshell the aim of SADCC is to reduce dependence on South Africa, increase regional integration and foster regional development.³

These aims are to be achieved by "Development Coordination" - a step by step process of rehabilitating existing infrastructure and building new facilities in a balanced way so that development is spread evenly and not concentrated in one country. The late President of the Republic of Botswana, Sir Seretse Khama, declared in Lusaka on 1st April, 1980:

"Our goal is to achieve economic liberation and to reduce our economic dependence on the Republic of South Africa. We seek to overcome the fragmentation of our economies and, by coordinating our national development efforts, to strengthen them. The basis of our cooperation, built on concrete projects and specific programmes rather than grandiose schemes and massive bureaucratic institutions must be assured mutual advantage of all participating states."⁴

Historical Perspective

As Joseph Hanlon has rightly pointed out the most extraordinary aspect about SADCC is that neither a supra-national body nor foreign donors set its strategy. It is the brainchild of the member countries. It has been submitted that the idea of forming this organization took shape on the independence of Zimbabwe in 1980.⁵ However, the seed for the formation of this organization was sown by President Kaunda when on 7th July, 1974 in Dar es Salaam he prophesied of a "transcontinental belt of independent and economically powerful nations, from Dar es Salaam and Maputo on the Indian Ocean to Luanda on the Atlantic". This has led other academics to submit that President Kaunda initiated the SADCC as a direct response to the idea of constellation of states which was being floated by South Africa.⁶

It has also been submitted by yet other academics that the process of the foundation of SADCC started at a meeting in Gaborone in May, 1979 of the

Foreign Ministers of the five front line states. These academics further submit that SADCC is the brainchild of Sir Seretse Khama, the late President of Botswana, who wished to maintain the valuable liaison established between the five over the Rhodesia question and, by promoting constructive joint action, to prevent their political energies from seeping away into sterile confrontation with South Africa.⁷

These submissions have not gone unanswered. President Kaunda on 1st April, 1980 in Lusaka declared that:

“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. The economic success of the countries represented will have an epoch making impact within South Africa and will certainly deal a mortal blow to the policy of apartheid. Our success is important to the people of South Africa and therefore, the liberation of the entire Continent”.⁸

On 20th July, 1981 in Harare the then President of Tanzania, Julius Nyerere took President Kaunda’s theme further when he declared:

“Our purposes are not simply independence from South Africa. If South Africa’s apartheid rule ended tomorrow, there would still be need for the states of Southern Africa to cooperate, to coordinate their transport systems, to fight foot and

mouth disease together, to rationalise their industrial development ...”⁹

Implicit from the speeches of the Founding Fathers is the fact that SADCC is inward looking. It is an organisation which is designed to enhance and facilitate the economic well-being of the member states and eventually its citizens.

All power remain with individual countries. When these countries meet together they agree on policy, and remain responsible for carrying it out. The donors cannot impose their regional vision on the organisation.

Problems

Within the Southern African Development Co-ordination Conference there is great opportunity for trade amongst the Member States. Zimbabwe has a developed Industrial Sector and infrastructure second to none. It has a well developed transport network, sophisticated finance houses and banks, a largely prosperous commercial farming sector and a well established mining sector.¹⁰ Everything being equal, it is a well known fact that Malawi is an exporter of food. Countertrading is the theme in trade between the various SADCC members, and its aim is to build up trade between partners equally so as to avoid the regional domination of the strongest. However, there are many legal problems which slow down the expansion of trade within the organisation:

Documents

The “nervous system” of international trade are the documents which accompany the goods. Such documents could still be bills of lading, certificates of insurance, certificates of origin, fumigation certificates, etc. Each country within the SADCC region has its own documentation and

procedure. This means that within the region there are various documents and different procedures. The differences can be explained as follows:

- The organisations or states involved in foreign trade though acting on the same commodities have different objectives. They have designed different and numerous documents and procedures to meet their individual limited requirements without considering the needs of other parties. Consequently, they are of different sizes and formats. On top of this there is the constant transfer or repetitive information on other documents which is generally a major source of errors.
- There are instances where documents which were introduced to rectify a specific problem have continued to be used even after the fault had been rectified and the documents themselves are no longer valid possibly had been replaced by new ones.
- Whenever a new commodity has been introduced, additional control requirement has to be introduced also. There is also demand for information which involves the introduction of new documents and procedure.
- Where foreign trade is concerned, different governments demand detailed information relating to the transaction. For this requirement to be met many separate forms have to be filled and various procedures followed.

The other point which is clear about these documents is that most of them are prepared in varying number of copies - usually more copies are prepared than the required number. Most of these documents are presented in sequence. At each stage they are checked more than two times. Conse-

quently, delays and errors in one automatically affects the smooth flow of trade.

Trade Barriers

The countries in the SADCC region have protectionist tendencies. They impose duties on all imports. In some respects the duties imposed are so astronomical that they tend to discourage the importing business men. They, therefore, tend to act as barriers to free trade between the countries of the region. In some SADCC countries such as Zimbabwe it is very difficult to import Curios from countries such as Malawi.¹¹ This is a manifestation of the protectionist tendencies on the part of Zimbabwe. It is this type of attitude on the part of Zimbabwe which led the PTA/International Trade Centre and Unctad to organise a six-day buyer-seller meeting in Harare. The main objective of the meeting was "to promote exports into Zimbabwe from the PTA region, with the ultimate aim of correcting the trade imbalance between Zimbabwe and other PTA member states".¹²

In Malawi, imports from independent countries of the Commonwealth, the European Economic Community, the African, Caribbean and Pacific (ACP) group of states as specified in the Lome Convention, Contracting States to the General Agreement on Tariff and Trade (GATT) Angola and Mozambique bear the Most Favoured Nation rate of duty. What this means, therefore, is that all the countries within the SADCC region enjoy the Most Favoured Nation treatment in Malawi. Hence, even though protectionism can be identified in the legislation yet to some extent it has been mitigated.

However, Import and Export licenses are forms of protectionism. All the SADCC countries require these licenses.

Visas

Angola and Mozambique were under Portuguese Colonial rule while the other seven members of SADCC were under British Colonial rule. Those countries which were under British rule enjoy the states of being members of the Commonwealth. Hence, a Malawian Transporter does not require a visa to enter Zambia, Zimbabwe, Tanzania or Botswana. But the same transporter cannot enter Mozambique without the requisite permission to do so - visa. The same applies to Angola. In converse, Angolans and Mozambicans require visas to enter the territories of other SADCC countries. It is obvious, therefore, that the visa requirement does not facilitate easy communication between the SADCC countries. In fact it is a hindrance to regional integration.

Legal Regimes

The member states of SADCC are subjected to different legal regimes such as: Common Law, Roman Dutch Law and Civil Law. So, there are bound to be differences in the way legal terms are appreciated or interpreted by the citizens of these countries. For example, a contractual term may not necessarily mean the same thing to a Malawian and a Mozambican because of their differing legal regimes background. This too is a problem which has to be sorted out.

Prospects

Having identified the problems, it is submitted that SADCC should take a deliberate step to eliminate them. In this respect the organisation is lucky in that in the region there is the UNDP/UNCTAD Transit Transport Project (RAF/77/017). Its aim is to assist in Transit Transport of the Landlocked Southern Africa region. The project commenced its operations in May,

1979 as UNCTAD PROJECT SATELLITE 'A' and at that time it covered Tanzania and Zambia and concentrated its activities in providing general assistance to Zambia in the movement of her import/export traffic on the Dar es Salaam/Lusaka corridor. However, in August 1980 Botswana, Lesotho, Malawi, Mozambique, Swaziland and Zimbabwe joined the project while Angola joined in December, 1982. When you look at the composition of the members of the project you discover that they are all members of SADCC.

The objectives of the project is to enhance the economic and social development of the landlocked countries of the Southern African region through the alleviation of their transit transport problems, the improvements of the performance and utilisation of the existing transit facilities, and the lowering of transit transport costs. In other words the project aims at facilitating a smooth flow of trade within the SADCC countries. To achieve this the project negotiated a ninety (90) days multiple entry visas for Malawian transporters who use Blantyre/Tete/Harare Corridor. Prior to that the visas were single entries and difficult to obtain as they were obtainable from Maputo. However, they can now be obtained at the Mozambican embassies in Harare and Lilongwe.

The other thing that the project has done to facilitate smooth flow of trade between Malawi, Mozambique and Zimbabwe is the introduction of a coupon system whereby the return transit trip now costs 35 US dollars and is paid in Malawi and in Malawian Currency. This was necessary as there were problems in controlling transit payment and times of payment. The transporters did not have clear ideas of currency and the amount of payment for transit expenses. Hence going through Mozambique was a daunting task which was an impediment to smooth trade. Supporting payment documents were rarely available and consequently, transporters could not plan their transit costs and some of them had to carry excess cash

which was quite risky. Having partially solved these problems the project has smoothed transportation between Malawi, Mozambique, Zimbabwe and beyond. Even though these are partial solutions to the problems affecting the member states of SADCC, it is submitted that the final solutions rest on the individual member states. They have to enact legislation which should aim at abolishing the requirement for a license for either imports or exports to a member state. They should also enact legislation abolishing the visa requirements for citizens of the member states. These measures would enhance integration of the region.

The other possible solution relates to documentation. There is great need within the region to harmonize the documents and hence facilitate the integration of the region. In this area the Transit Transport Project for the Southern African region could also be of assistance.

Finally, solutions have to be found to the diverse legal regimes which are prevalent in the region. There is only one possible solution to this problem, which is to adopt the United Nations Convention relating to International trade. Unctad has produced the Multimodal Convention to which Malawi is already a party. If trade is to develop harmoniously within SADCC, it is necessary, albeit, imperative that each member state should become a party to this Convention.

United Nations Commission on International Trade Law (UNCITRAL) has also produced a number of important conventions relating to international trade.

- United Nations Convention on Contracts for the international sale of Goods;
- Hamburg Rules;

- Draft Convention on Bills of Exchange and Promissing notes.
- Uncitral Conciliating Rules
- Draft Model Rules on the Electronics Funds Transfers.

Each member state of SADCC should take a deliberate step to accede to the conventions which have already been passed by the United Nations. The reason why the member states should adopt these texts is that in their dealings they would be bound by uniform laws and thereby eliminate any uncertainties and ambiguities which now exist.

Conclusion

The paper has endeavoured to analyse the purpose of SADCC. It has looked at the historical aspects as well as the problems that confront the organization. Amongst other problems that exist, the paper has shown that the organization faces legal problems. There are problems with regard to existing import/export rules, the visa requirements and the legal regimes. Possible solutions have been advanced. The range from the abolition of the requirements of licences for imports and exports for SADCC trade as well as for the abolition of the visa requirement for the citizenery of the region; to the replacement of the legal regimes by the United Nations texts involving international trade. This would remove any uncertainties or ambiguities which are bound to arise where trade is conducted in an atmosphere of varying legal regimes. This would bring the organization more closer and help to fulfill one of the wishes of the Founding Fathers which is “the forging of links to create a genuine and equitable regional integration”.¹³

References

- 1 *Southern Africa Towards Economic Liberation Handbook* p.14.
- 2 Preamble of the Memorandum of Understanding.
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- 6 Stephen chain - *Issues in international Relations: A view from Africa*.
- 7 Christopher Hill - 'Regional Cooperation in South Africa', - *African Affairs*, Vol. 82, No. 327, 1983 p. 215.
- 8 SADCC Handbook - page 9.
- 9 SADCC Handbook - page 9.
- 10 *The Economist Intelligence Unit*, No. 4, 1984 pp. 29-30.
- 11 This came to light during a seminar on PTA organised by the Malawi Export Promotion Council in Blantyre.
- 12 Reported in the Daily Times of Malawi on 23rd March , 1988.
- 13 Development objective (b) of the Memorandum of Understanding.

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