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ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

Regionalism as development: The Lomé Conventions I and II (1975–1985)

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Abstract

Lomé Conventions I (1975) and II (1979) were the first regional trade agreements (RTAs) between the European Community (EC) and the group of postcolonial countries in Africa, the Caribbean, and Pacific (ACP). Specialized scholarship offers rich analyses of those Conventions; however, little is known about the role of law and lawyers in their making, and their relevance for present-day debates about RTAs.

This article advances existing knowledge in two ways. First, it historicizes the more visible role of law in constituting Lomé as a legal regime for governing EC-ACP regionalism. It then argues that the Conventions were distinct from *existing* RTAs due to their unique centrality on social and economic development; and from *present-day* RTAs, because they were conceived not simply as *instrumental* to but also as *constitutive* of development.

Second, by historicizing the less visible role of law and lawyers in the Lomé regime, the article identifies that a specialist conception of South-North RTAs was refined to govern which ideas, projects, norms, and institutions were applicable to Lomé. This distinct conception – called the *development framework* – was critical in creating the conditions of possibility for decision-makers negotiate, interpret, and manage the Conventions.

Those findings challenge conventional wisdom on two grounds. They suggest that Lomé was unique not for embodying a new model but for consolidating the development framework's dominance. They contest present-day understanding of RTAs as textual manifestations of a universal concept by demonstrating the existence of competing conceptions, which express distinct notions of RTAs' purpose, content, and form.

Keywords: EU-ACP regionalism; EU trade and development policy; GATT/WTO, UNCTAD; international law and governance; Lomé Conventions

1. Introduction

It was 28 February 1975, a celebration day in Lomé, the capital of Togo. After 20 months of countless meetings and excruciating negotiations, the European Community (EC) and the ACP (the 'African, Caribbean and Pacific' group of 46 diverse developing countries) signed the largest and most comprehensive trade and development agreement to date.

At the press conference, the chairman of the ACP Council of Ministers, Babacar Bâ, declared that:

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> [W]e have just set up a new type of relationship between underdeveloped and developed countries. I regard this as very important. In my view, the co-operation we are about to establish with Europe has a certain revolutionary character, in the sense that between ourselves and the developed continent of Europe, all our relationships will be falling into a new pattern.[1]

The EC Commission's president, Francois-Xavier Ortoli, reaffirmed that 'the event in which we are taking part today constitutes a major turning point in the history of international economic relations in the second half of the 20th century – in fact, in history itself'.[2]

The Lomé Convention's signing poses a critical question: how was trade and development between former European empires and their former ACP colonies legally constructed and governed after decolonization? More specifically, how were law and lawyers implicated in constituting the conditions for negotiations and innovations that paved the way to bring into existence the Lomé Conventions – the most sophisticated legal regime of inter-regional trade and development ever established?

Specialized literature has addressed the proposed question only partially and generally by examining the Lomé Conventions through the conceptual lens of regional trade agreements (RTAs). Economics scholarship mainly investigates whether EC-ACP RTAs promoted or hindered trade and welfare.[3] Studies in political science and post-colonialism primarily explore whether these RTAs fostered EC-ACP interdependence or perpetuated the European dominance over ACP countries.[4] European integration scholarship chiefly investigates the significance of these RTAs in the evolution of the EC's trade and development policy.[5] Finally, international law literature focuses mostly on consistency issues that these RTAs had with the General Agreement on Tariffs and Trade (GATT).[6]

Taken together, that wide-ranging scholarship shows that EC-ACP regionalism is a multidimensional phenomenon, the history of which proves critical in understanding present-day and future RTAs between the European Union and the ACP. However, they also share shortcomings that have constrained their response to the critical question. They largely embrace a conceptual view of EC-ACP RTAs as legal instruments created by sovereign states for governing their market integration. The preoccupation of that literature lies neither in the background work of policymakers and experts nor in the projects, rules, and institutions underlying the construction and management of those RTAs as socio-legal regimes. Rather, it is concerned with the economic, political, and legal effects those RTAs entailed. Putting it differently, it investigates how Lomé reflected, diverged from, and reshaped (the economic, political, or legal dimensions of) EC-ACP regionalism and the broader pattern of South-North relations in a context of decolonization and fragmentation of the international economic order.

Recent studies offer distinct ways of understanding the Lomé Conventions. Economics literature unveils that RTAs have been approached rather simplistically as a binary variable, largely

[1]Unspecified, *Lomé Dossier*. Reprinted from *The Courier* 31, Special Issue, March 1975, at 7.

[2]Ibid., at 19–20.

[3]See A. Milward, *Politics and Economics in the History of the European Union* (2005), 90; Sissoko et al., 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade', (1998) 1 AEBR 6.

[4]See I. Montana, 'The Lomé Convention from Inception to the Dynamics of the Post-Cold War, 1957–1990s', (2003) 2 AAS 63; M. Lister, *The European Union and the South Relations with Developing Countries* (1997); J. Ravenhill, *Collective Clientelism: The Lomé Conventions and North–South Relations* (1985); W. Zartman, 'The EEC's New Deal with Africa: What the Africans Wanted, What the Europeans Offered, the Meaning of the New Yaoundé Convention', (1970) 15 AR 28.

[5]See M. Lister, *The European Economic Community and the Developing World: The Role of the Lomé Convention* (1988); L. Bartels, 'The Trade and Development Policy of the European Union', (2007) 18 EJIL 715; M. Holland, *The European Union and the Third World* (2002); M. Doidge and M. Holland, 'A Chronology of European Union Development Policy: Theory and Change', (2014) 17 KRIS 59.

[6]See D. Carreau et al., *Droit International Économique* (1980); Q. D. Nguyen et al., *Direito Internacional Público* (1999); M. Desta, 'EC-ACP Economic Partnership Agreements and WTO Compatibility: An Experiment in North-South Inter-Regional Agreements?', (2006) 43 CMLR 1343.

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disregarding the relevance of their content and form and their effects upon trade.[7] Political economy scholarship highlights how political and intellectual attitudes, professional socialization, specialist knowledge, and expert managerialism shape RTAs by determining the conceptions, policies, and institutions that can, or rather should, be utilized to describe, negotiate, and operate them.[8] Legal literature shows that the relative influence of law over RTAs results from formalization and enforcement, *alongside* the legal profession's position within global governance.[9]

I seek to apply those new insights to overcome the limitations of mainstream literature and suggest that historicizing law and lawyers in the making and governance of the Lomé Conventions I (1975) and II (1979) can advance our knowledge of their role in shaping what RTAs were and should be. The analysis unfolds in two complementary moves. Section 1 examines the prominent part the Lomé Conventions played in the effort to (re)construct and govern EC-ACP regionalism. They were distinct from *existing* South-North RTAs due to the way their legal regime was centred on formal and material equality, identity differentiation, non-reciprocal preferential trade, and social and economic development. They were also distinct from *present-day* RTAs because Lomé was not simply conceived as being instrumental to, but also constitutive of, development.

Section 2 analyses the less visible work of law and lawyers in the Lomé regime. My primary purpose is not to historically trace a single line of causation from a universal(izing) concept of RTAs to its effective formalization as the Lomé Conventions.[10] My aim is to historicize the hidden disputes and compromises by which a specialist conception of South-North RTAs was reworked by contextualized lawyers to govern which projects, norms, and ideas could be validly and legitimately applicable to Lomé. The argument I seek to make is that such a distinct legal conception – which I have called the *development framework*[11] – was critical in creating the conditions of possibility for decision-makers to negotiate, interpret, and manage the Conventions.

Those findings – I conclude – challenge conventional wisdom on two grounds. First, they suggest that the Lomé Conventions were unique, not for embodying a new conceptual model but for consolidating the development framework's dominance within and over EC-ACP regionalism. Second, they reveal that present-day understanding of RTAs as being textual and formal manifestations of a universal concept is inadequate.[12] The common practice of conceiving RTAs as variations of a single concept overly restricts current debates to the *degree* of market integration and issue coverage they foster. The (re)discovery of the development framework reminds us of past (and potential present) competing conceptions of RTAs, creating, in turn, the opportunity to re-appreciate RTAs' ideational *purpose* and the *conditions* for their institutional and jurisprudential innovation.

[7]See S. L. Baier et al., 'Economic Integration Agreements and the Margins of International Trade', (2014) 93 JIE 339.

[8]See F. Söderbaum, *The Political Economy of Regionalism: The Case of Southern Africa* (2004); W. Brown, *European Union and Africa: The Restructuring of North-South Relations* (2002).

[9]See A. Lang and J. Scott, 'The Hidden World of WTO Governance', (2009) 20 EJIL 575; D. Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (2016); R. Sakr, 'International Trade Law', in K. De Feyter, G. E. Türkelli and S. de Moerloose (eds.), *Encyclopedia of Law and Development* (2021), 158; T. Maluwa, 'Reassessing Aspects of the Contribution of African States to the Development of International Law Through African Regional Multilateral Treaties', (2020) 41 *Michigan Journal of International Law* 327; J. Gathii, 'The Promise of International Law: A Third World View', (2021) 36 *American University International Law Review* 377.

[10]M. Koskenniemi, 'Histories of International Law: Significance and Problems for A Critical View', (2013) 27 *Temple International and Comparative Law Journal* 215; R. Sakr, 'Beyond History and Boundaries: Rethinking the Past in the Present of International Economic Law', (2019) 22 JIEL 57, at 85–8.

[11]R. Sakr, 'From Colonialism to Regionalism: The Yaoundé Conventions (1963–1974)', (2021) 70 ICLQ 449.

[12]For instances of today's dominant conception see World Trade Organization, *World Trade Report 2011: The WTO and Preferential Trade Agreements* (2011), 109–14; M. Trebilcock et al., *The Regulation of International Trade* (2012), 83–4; R. F. Oppong, *Legal Aspects of Economic Integration in Africa* (2011), 6–14; see Desta, *supra* note 6, at 1343–9. For its critique see J. Gathii, 'The Neoliberal Turn in Regional Trade Agreements', (2011) 86 *Washington Law Review* 421; R. Sakr, *Law and Lawyers in the Making of Regional Trade Regimes: The Rise and Fall of Legal Doctrines on the International Trade Law and Governance of South-North Regionalism* (PhD thesis, the London School of Economics and Political Science, 2018), 49–90.

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2. Reconstructing EC-ACP regionalism: The Lomé regime as development

My starting point lies in the watershed events preceding the establishment of the Lomé regime. From the late nineteenth century onwards, trade between European empires and their African, Caribbean, and Pacific colonies was characterized by imperial rule and constituted through international law.[13] After the Second World War, colonial regimes were gradually phased out due to Europe's decline and growing pressure from the anti-colonial United States and the anti-imperialist Soviet Union.

Particularly important, negotiations for the postwar trading system reveal a fundamental disagreement between the United States' free trade multilateralism and western Europe's preferential imperialism.[14] The GATT was concluded in 1947 to liberalize and regulate trade on a reciprocal and non-discriminatory basis. These principles were inconsistent with imperial trading systems, notably the British Commonwealth and the French Union. Article I:2 resolved this incompatibility by adopting an exception.

Nevertheless, two parallel processes – decolonization led by the United Nations (UN) and European integration – profoundly impacted imperial systems from the 1950s onwards. During negotiations for the Treaty of Rome, France persuaded its prospective partners to establish an imperial system under the European Economic Community.[15] Part IV of the Treaty of Rome constituted the 'Association' as a permanent regime for promoting economic and social development of the EC and the 18 'associate' colonies. Formally, it was a 'free trade area' modelled on the EC itself and, arguably, consistent with GATT law.[16] Substantially, it (re)created a (French-style) imperial system combining exclusive membership, preferential market access, financial aid and investment protection. Ideationally, 'associationism' would sustain the EC's commitment to imperialism even after decolonization as part of its 'trade and development' policy.[17]

2.1 The Yaoundé Conventions (1964–1974)

UN-led decolonization (1960–1973) sparked demands for a redefinition of the EC's trade and development policy.[18] Newly independent countries rejected the Association for reproducing European colonialism, and organized themselves around the Association of African and Malagasy States (AAMS) to demand a novel arrangement.[19] A hostile environment surrounded negotiations leading up to the Yaoundé Convention between the EC and AAMS (Yaoundé I), which replaced the Association in 1964.

Yaoundé I was the first international economic treaty between formally equal states of Europe and Africa.[20] It took the form not of a single and permanent 'convention' but rather a network of five-year treaties between the EC and individual AAMS members. It also served to formally recognize the AAMS as a group and its partners as sovereign states by the EC members, and recast the colonial-associative legacy as a 'special relationship' of two regional blocs representing the First-developed and Third-developing worlds.

Concerning trade and development, Yaoundé I embraced the reciprocity principle and restated the Association's core policies and norms. It continued to grant duty-free access for AAMS

[13]M. Craven, 'Colonialism and Domination', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), 862, at 880–7.

[14]See Trebilcock et al., *supra* note 12, at 55–6.

[15]See Ravenhill, *supra* note 4, at 47–53.

[16]See Montana, *supra* note 4, at 73.

[17]See Doidge and Holland, *supra* note 5, at 60–5; M. Broberg, 'From Colonial Power to Human Rights Promoter: On the Legal Regulation of the European Union's Relations with the Developing Countries', (2013) 26 CRIA 675, at 676–7.

[18]See Montana, *supra* note 4, at 74–5; Lister, *supra* note 4, at 8–9, 34–8.

[19]J. Moss, *The Yaoundé Convention, 1964–1975* (1978) (PhD thesis on file at the New School for Social Research), 41–3.

[20]See Montana, *supra* note 4, at 75–7.

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exports, except for products protected by the Common Agricultural Policy (CAP).[21] In exchange, the AAMS committed to gradually reducing tariff and non-tariff restrictions for EC exports within four years. The access to the European Development Fund (EDF), an Association mechanism for providing financial aid, was also preserved.

The Yaoundé Convention was extended in 1969 for an additional five-year term (Yaoundé II) with only marginal modifications favouring the EC interests. It was praised for the stabilizing effect it had upon South-North affairs, which were undergoing profound distress caused by the rising 'Third World' and its efforts to defy its dependency on the 'First' or 'Second' Worlds.[22] The AAMS joined the Third-World movement towards a 'New International Economic Order' (NIEO) while rejecting East-West confrontation. Indeed, Yaoundé-II negotiations witnessed an increasing AAMS's assertiveness for a more formal and material equality to be partially achieved through a declaration that the Yaoundé regime was not a system of (neo-)imperial domination but a free trade area among sovereign states.

However, the AAMS's demand for greater equality was only symbolically attained through a declaration expressing that Yaoundé was not a (neo-)imperialist system but a free trade area among sovereign states. In reality, the EC disregarded these demands and adopted an expansionist policy, which combined trade liberalization with new preferential arrangements with other Third-World countries.[23] This strategy increased the complexity of EC-AAMS regionalism, while reducing the EC's priority to Yaoundé.[24]

The Yaoundé regime's shortcomings became more evident throughout the second term. Not only did the market share of EC-AAMS trade suffer significant decline, but also the AAMS's economic growth failed to materialize.[25] Consequently, the regime faced increasing criticism.[26] Some condemned it for fostering dependency rather than emancipation by sustaining neo-imperialism and divisiveness within AAMS, whilst others argued that it failed to promote economic development.

Three external factors also affected the Yaoundé regime.[27] The UK's accession to the EC in 1973 brought the 27 developing-country associates of the British Commonwealth under the EC's trade and development policy. The AAMS's support to the Third-World movement placed increased pressure upon the EC-AAMS's special relationship. The growing US antagonism to Yaoundé was a reaction to what was perceived as an EC attempt to consolidate its influence over postcolonial Africa.

The Yaoundé Conventions were landmark events for South-North relations.[28] They symbolized the post-colonized peoples' hope for replacing the imperial trading system with a trade and development regime. Yaoundé constituted a regime grounded in 'special relationship' principles of political equality, regional needs and identities, reciprocal trade preferences, and development aid. Despite high hopes, it reproduced problematic features underlying EC-AAMS regionalism.[29] Instead of promoting economic and social development among equals, its sophisticated design disguised the extremely unequal dynamics between the two blocs. Yaoundé's unique characteristics – I argue – contributed to the emergence of a distinct conception of South-North RTAs as an expression of development itself.[30]

[21]Yaoundé I, Arts. 2(1), 5(1).

[22]See Montana, *supra* note 4, at 76–7.

[23]See Zartman, *supra* note 4, at 28–9.

[24]See Ravenhill, *supra* note 4, at 56.

[25]Despite the Yaoundé regime, the AAMS's share of the EC market steadily declined over the 1964–1974 period. While the AAMS provided 13.4% of the Third World's exports to, and received 11.6% of exports from, the EC in 1958, these declined to 7.4% and 8.4%, respectively, by 1974 (see Ravenhill, *supra* note 4, at 59–61).

[26]See Montana, *supra* note 4, at 80–3.

[27]Ibid.; see Milward, *supra* note 3, at 86–90.

[28]C. Cosgrove, 'The EEC and Its Yaoundé Associates: A Model for Development!', (1972) 4 IR 142, at 152–5.

[29]See Brown, *supra* note 8, at 40–3.

[30]See Sakr, *supra* note 11, at 451–2.

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2.2 The Lomé Conventions I and II (1975–1985)

After a decade of disillusionment, the Yaoundé regime was to be phased out, vindicating its critics. The Yaoundé Convention's termination and the Lomé Convention's conclusion in 1975 were not the natural or logical outcomes of economic necessity or political inevitability. Often overlooked in specialist literature, the launch of negotiations in 1973 was a decision reached between the EC and the (newly formed) ACP that took place only after two critical issues had been solved.

The first issue related to the choice between the three models of EC-ACP regionalism proposed by the EC.[31] The first (and EC's preferred) option was to continue the association model of trade and development. The second was the model of bilateral trade underlying the EC's RTAs with Morocco (1969) and Tunisia (1969). The third was the model of (non-)preferential trade facilitation as used for the EC's RTAs with Israel (1964) and Lebanon (1965). Though a fourth model had been developed with Greece (1961) and Turkey (1963) for economic integration, this was not offered to the ACP. These conceptual models were by-products of intellectual projects and legal conditions as well as institutional practices and political compromises.

The second issue concerned membership.[32] The EC was only willing to offer those three options to AAMS members and a sub-group of 'associable' members of the British Commonwealth. This sub-group excluded other Commonwealth members, such as Canada, Australia, New Zealand and Asian countries, because they were considered either too large, developed, or generally different from AAMS countries.

Those initial EC positions resulted in audacious responses from developing-country partners. From the outset, the three models were resisted by the Commonwealth associates, who resented the EC's attempts to set out preconditions for forthcoming negotiations and re-impose the (by then controversial) Yaoundé Convention.[33] Following this, the EC reviewed its position by clarifying its 'preference' for the association model.[34] Eventually, all of the options were rejected, and – as explained below – a revised model of trade and development was ultimately adopted.

Although the membership limitation was not contested, the formation of the ACP surprised the EC who had expected that the cultural and historical diversity of, and economic and political disagreements between, the ACP countries would have caused them to be divided into regional groupings.[35] Instead, their united front strengthened the ACP's position and ensured that its first 'real' negotiations with the EC took place.[36] As a consequence, the EC gradually replaced its narrow membership attitude towards 'exclusive' associates with a broader membership view towards 'comparable' developing countries.

Once those issues had been settled, both sides entered into negotiations holding some general positions; yet, most of their concrete proposals were only formulated throughout the bargaining process. Their main controversy concerned how the Yaoundé-based model should be reformed to accommodate both sides' preferences.[37] The EC's position favoured an ameliorated model of 'association' centred on selective membership, non-reciprocity, improved access to EC markets, export earnings stabilization, and an institutional overhaul. Inspired by the Third-World movement, the

[31]Protocol 22 annexed to the UK's Treaty of Accession to the EC, Art. 1, OJ L 73 (1972), at 177.

[32]See Brown, *supra* note 8, at 45.

[33]D. Jones, *Europe's Chosen Few: Policy and Practice of the EEC Aid Programme* (1973), 2–3.

[34]See Lister, *supra* note 5, at 69; EC, Memorandum of the Commission to the Council on the Future Relations of the Community, the Present AASM States and the Countries in Africa, the Caribbean, the Indian and Pacific Oceans referred to in Protocol No. 22 to the Act of Accession, COM 73/500 (1973), at 6.

[35]The 1975 Georgetown Agreement established the ACP, a bloc initially composed of 46 developing countries (18 AAMS and Mauritius, six other African states, and 21 British Commonwealth associates) (K. Hall and B. Blake, 'The Emergence of the African, Caribbean, and Pacific Group of States: An Aspect of African and Caribbean International Cooperation', (1979) 22 ASR 111).

[36]See EC, *supra* note 34, at 6; Lister, *supra* note 5, at 75.

[37]See Brown, *supra* note 8, at 52–6.

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ACP proposed a new model of 'partnership' centred on Southern membership, non-reciprocity, full access to EC markets, export earnings stabilization, and separation between trade and aid.

Furthermore, negotiations were affected by the global turbulence of the early 1970s. Between the First World's economic downturn and the Cold War, this period was marked by the Third World's efforts to reverse its dependency through the campaign for a 'New International Economic Order'.[38] These attempts were promoted at the United Nations Conference on Trade and Development (UNCTAD), debated at the UN, and opposed at the GATT. They were epitomized by the approvals of UNCTAD's Generalised System of Preferences (GSP) in 1968 and its 'reception' by the GATT in 1971, and of the NIEO Declaration and Charter under the UN General Assembly in 1973–1974. Those efforts were particularly dramatized by the use of commodities and cartelization as economic weapons. Non-reciprocity, export earnings protection, and development assistance figured among their core demands. Although very little was ultimately achieved, the Third-World movement fuelled imaginations of those seeking to bring about the end of the First World's neo-imperialist dominance and economic superiority, consequently triggering a run for securing commodity supplies.

Against this backdrop, a good deal of hard bargaining occurred throughout 1974 when the EC enjoyed a less dominant position, making it more amenable to meeting the ACP's requests. The Lomé Convention was signed in 1975 (Lomé I) to enter into force for a five-year period. It symbolized the joint effort to create a novel model grounded in a two-level compromise: between the ACP's demands for economic equality and solidarity and the EC's trade and development policy at the regional level; and between the Third World's contestation and the First World's resistance at the global level.

Lomé's most distinctive feature was its commitment to replacing the (neo-imperialist) 'special relationship' with a (postcolonial) 'special partnership' 'on the basis of complete equality between partners, close and continuing co-operation in a spirit of international solidarity'.[39] The partners pledged to 'seek a more just and more balanced economic order'. The preamble's declarations were responses to the Yaoundé Conventions' criticism and the Third Word's demands for a NIEO.[40] They expressed what became known as the 'spirit of Lomé' – a shared aspiration for solidarity and partnership underlying the new (and hopefully fairer) model of EC-ACP regionalism.

The Convention brought the new model into being as a legal regime. Institutionally, it merged the Yaoundé architecture with the commitment to equal partnership resulting in a council of ministers, a committee of ambassadors, and a joint consultative assembly.[41] Substantially, its policies prioritized four areas: trade, agricultural and industrial development, financial aid, and technical assistance.

To avoid Yaoundé's shortcomings, Lomé's trade mandate was based on two pillars: the ACP was neither required to offer preferential access to the EC (non-reciprocity) nor prohibited from trading with other countries (non-discrimination).[42] In exchange for the highest level of privileged access to EC markets, the ACP accorded EC imports most-favoured-nation treatment and investment rights. Equally important, its development mandate aimed to foster ACP countries' economic growth and regional integration, prohibit conditionalities on their domestic policy, and provide them with aid.

The first five-year term was generally regarded as successful; however, there was a gap between expectations and reality.[43] Despite the aspiration for (radical) change, Lomé I perpetuated in many respects its predecessor. The most notable criticism was its marginal impact on trade and

[38]Ibid., at 46–52.

[39]Lomé-I Preamble.

[40]See Holland, *supra* note 5, at 34–5.

[41]Ibid., at 36.

[42]Ibid., at 39–40. Note, however, that Lomé's trade policy was essentially discriminatory against other non-ACP developing countries (C. Gammage, *North-South Regional Trade Agreements as Legal Regimes: A Critical Assessment of the EU-SADC Economic Partnership Agreement* (2017), 142–3).

[43]See Lister, *supra* note 5, at 58–61.

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development.[44] Trade flows changed very little, reproducing the colonial-Yaoundé pattern. The often-advertised 99.5 per cent customs-free access for ACP exports was misleading since the EC excluded CAP-covered agricultural products and increasingly adopted quantitative restrictions on sensitive industrialized goods. Consequently, the ACP's dependency on the export of commodities in exchange for importing EC's industrialized goods deepened. The system for export earnings stabilization (Stabex) was also criticized for rewarding failure rather than success.

Moreover, Lomé became the target of both blocs' frustration with their poor economic outcomes – even if their major cause was a global recession.[45] Internationally, the NIEO campaign had achieved very little, whereas the First World realized that the Third-World challenge based on commodity power was manageable, and the priority lay in dealing with the global recession through domestic measures and North-North co-operation. Regionally, the ACP accused the EC of betraying the 'spirit of Lomé' for using the Convention to sustain an unequal de facto partnership, conceal its adoption of protectionist measures, and perpetuate its control over financial and technical aid.[46] Although the EC was moderately satisfied with Lomé, some internal groups blamed developing countries' manufactured imports for contributing to Europe's economic slowdown, while others criticized granting financial aid to ACP countries that violated human rights.

Against this background, bitter negotiations for Lomé's successor occurred.[47] While the ACP sought substantial advances (similarly attained in Lomé I from Yaoundé II), the EC envisioned only a few, if any, changes. The EC rejected all significant ACP reforms, whereas the ACP rebuffed the EC's demands for human rights conditionalities. Weakened by the recession, the ACP was under pressure to avoid a breakdown and accept any agreement securing existing preferences and some additional aid. Witnessing its legitimacy evaporate, the EC managed to make just enough concessions to secure agreement.

Signed in 1979 for five years, Lomé II was not satisfactory to either side.[48] It introduced only two relevant developments: special treatment for the least developed countries (LDC), and the system for mineral production stabilization (Sysmin). Its terms were largely perceived as EC impositions, rather than a compromise among equals. It was experienced as reproducing the vices and flaws, rather than the virtues and inventiveness, of its predecessor. If Lomé I was part of the Third-World pathway towards a NIEO, Lomé II was its end.

The Lomé regime should not be confused with closer political ties or economic betterment for either bloc. Politically, the two blocs' enlargement and their (re)organization as (trans)continental groupings diluted (post)colonial ties and contributed to strengthening regional-continental identities.[49] Economically, Lomé failed to redirect the pattern of EC-ACP trade, which remained mostly unchanged from 1945 to 1985, and also transform ACP countries into newly industrialized economies.[50] Consequently, Lomé was increasingly perceived as a regime enabling the EC's grants of economic privileges to, in exchange for political influence over, the ACP.

In the mid-1980s, the world was undergoing profound changes when negotiations for Lomé III were launched.[51] Regionally, the EC was expanding its membership, and its members' economies,

[44]See Milward, *supra* note 3, at 91–3; K. Focke, *From Lomé 1 Towards Lomé 2* (1980), 11–14.

[45]See Milward, ibid.; R. Green, 'The Child of Lomé: Messiah, Monster or Mouse?', in F. Long (ed.), *The Political Economy of EEC Relations with African, Caribbean and Pacific States: Contributions to the Understanding of the Lomé Convention on North–South Relations* (1980), 3, at 12–16.

[46]See Green, *supra* note 45, at 16–19; Focke, *supra* note 44, at 14–16.

[47]See Brown, *supra* note 8, at 65–7.

[48]Ibid.

[49]W. Zartman, 'Europe and Africa: Decolonization or Dependency', (1976) 54 *Foreign Affairs* 333.

[50]From 1975 to 1985, ACP exports to the EC grew more slowly than from other countries, particularly developing ones. Consequently, the ACP suffered a loss, as its share of total exports to the EC decreased from 3.63% (1975) to 3.49% (1985). In particular, the AAMS's share of developing world's exports rose from 5.70% to 12.20% whereas ACP exports marginally increased from 16.09% to 16.16% over the same period (see Sissoko et al., *supra* note 3, at 12–19).

[51]See Brown, *supra* note 8, at 67–72; Gammage, *supra* note 42, at 144–8.

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recovering. By contrast, the ACP's economic decline was deepening under the impact of recessions and famines. Globally, the Third-World movement and its NIEO agenda were mostly abandoned due to developing countries' debt crises. The International Monetary Fund and the World Bank gradually stepped in to provide financial aid in exchange for 'structural adjustment' plans. The EC's trade and development policy changed due to the emerging neoliberal programme underlying the Washington Consensus and the Pisani Memorandum.[52] In this context, Lomé III was signed in 1984. Although the name was maintained to evoke the 'spirit of Lomé', its text and operation reflected a shift towards a new model of EC-ACP regionalism.

The Lomé Conventions I and II are commonly regarded by specialist literature as landmark treaties in South-North (generally) and EC-ACP relationships (in particular), despite their failure to deliver the aspired outcomes. Less well known, they make three key contributions to our understanding of the role of law in making and governing South-North regionalism.

Firstly, they institutionalized the first efforts to significantly renegotiate the terms of the EC-ACP relationship from a (neo-imperialist) association to a (postcolonial) partnership. Secondly, they reconstructed the legal regime from Yaoundé (centred on formal equality, postcolonial identity differentiation, reciprocal trade preferences, and development aid) to Lomé (centred on formal and material equality, trans-continental identity differentiation, non-reciprocal trade preferences, and development aid). Thirdly, they reflected both continuity and discontinuity with policies, norms, and practices born in the EC's policies and the Third-World movement.

These findings suggest that Lomé was increasingly understood not only as an *instrument* for development but also as a development *objective*. Lomé – viewed as the legal regime of EC-ACP regionalism – came to symbolize, in a sense, development itself. The disenchantment with Lomé resulted significantly from the realization that economic and social betterment did not follow directly from its implementation.

3. The making and governance of the Lomé regime: The dominance of the development framework

My starting point is understanding the Lomé Conventions as socio-legal constructions reflecting inter-state affairs *and* expert knowledge. While Section 1 examines Lomé as a legal regime of EC-ACP regionalism, this section analyses it as a contested outcome of lawyers and other experts' political and intellectual struggles in different localities and settings. In their pursuit of authority, these specialists produced and deployed competing forms of expert knowledge and specialized modes of governance to shape EC-ACP regionalism.[53] The legal field – understood as an expert community of diplomats, officials, practitioners and intellectuals – held significant authority over Lomé due to the central role that law played regarding their negotiations, interpretation, and management. If expertise structures lawyers' work (which, in turn, influences decision-making), then an in-depth understanding of the critical link between production of legal expertise and how its authority is exerted over the Lomé regime is essential.

In this respect, lawyers' legitimate and persuasive influence is grounded in, and often dependent on, the authority of knowledge practices identified with *regional trade agreements*. Particularly important, the *concept* of RTAs was one of the constitutive ideas of the postwar international trading system. However, the concept lacked at that time a consensual meaning. Competing conceptions were authoritatively crafted and deployed to identify or ascribe RTAs' constitutive features. Yet, disagreements surrounding their 'nature', 'functions', and 'governance' were largely experienced as uncompromisable.[54] This suggests that the concept of RTA was a disputed idea, serving as a battleground for rival conceptions.

[52]See Lister, *supra* note 5, at 159.

[53]See notes 9–10, and accompanying text, *supra*.

[54]See Sections 2.2–2.3, *infra*.

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Whereas lawyers' more visible work is to influence decision-making by advising state and non-state actors on issues framed as matters of international law, their less visible work involves the production of knowledge practices in the form of theories, methods and conceptions.[55] Crafting a 'specialist conception' required forming a compromise on the description of the Lomé Conventions as EC-ACP RTAs and also on how international law did (or should) relate to them. Part of the challenge (or struggle) was to choose from the broad repertoire of valid ideas, projects, norms, and institutions, the ones to produce a (sufficiently) coherent and stable framework that was fit for answering a series of 'core questions' (*see* below). The other part was concerned with securing its legitimacy and persuasiveness by building a consensus on the framework's constitutive features. My analysis will show that a specialist conception emerged from continuous processes of differentiation, domination, and disruption among and between lawyers located in EC and ACP countries.

To be clear, my aim is not to provide an account of the EC-ACP co-operation or (inter)dependence in 'trade and development' or a critique of the EC's (mis)use of RTAs to (re)reconstruct its (neo-)imperialist dominance over the (postcolonial) ACP. These are well-known in specialized scholarship.[56] The distinct claim this section seeks to make is that we do not yet have a satisfactory analysis of how legal expertise influenced decision-making in and over EC-ACP RTAs (and *vice versa*). My core concern is to explain through the analysis of legal conceptions how the Lomé regime is a part of broader patterns of EC-ACP regionalism and legal expertise. Indeed, I examine lawyers' continuous rework of a specialist conception of RTAs, and how it shaped, at some fundamental level, how the Lomé Conventions were understood, produced and managed in and through international law.

The remainder historicizes and assesses how a specialist conception – which I have called the *development framework* – was produced and applied to EC-ACP RTAs between 1975 and 1985.[57] It identifies the range of possibilities provided by the development framework and compares it to the decisions made and justifications presented in the course of construction and interpretation of the Lomé Conventions. By doing so, I seek to make two claims. First, contrary to prevailing understandings in the legal field today, the concept of RTAs is not timeless and universal.[58] Competing conceptions were produced in the postwar period to identify or ascribe RTAs' core features. This shows that RTAs were once a conceptual domain that enabled legal experimentation.

Second, the Lomé Conventions were pioneering for embedding the development framework's constitutive features. Their analysis can be heuristically organized into three dimensions: ideational, institutional, and jurisprudential. The development framework is, in this sense, examined through three core questions: what were (or should be) the primary goals of Lomé I and II? How were legal ideas and techniques chosen and employed to produce and operate those RTAs? Which rules and institutions of international law applied to them?

3.1 Ideational dimension: Development as the project for EC-ACP regionalism

The (re)constructions of regional trade agreements as legal conceptions rest partially, yet fundamentally, on *ideational programmes* for governing trade relations towards a purpose. Mainstream literature tells us that the postwar trading system reflected British-American proposals.[59] The GATT became the (de facto) system's guardian after failing to bring the International Trade Organization (ITO) into existence. Less well-known is the fact that those proposals embodied the 'liberal-welfarist' programme.[60] Equally relevant, though often neglected, is that the ITO

[55]A. Riles, 'Models and Documents: Artifacts of International Legal Knowledge', (1999) 48 ICLQ 805, at 805–11.
[56]See notes 4–10, and accompanying text, *supra*.
[57]See Sakr, *supra* note 11, at 458–89.
[58]See note 12, *supra*.
[59]See Trebilcock et al., *supra* note 12, at 24–5.
[60]E. Jouannet, *The Liberal-welfarist Law of Nations: A History of International Law* (2012), 249–53.

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failure marked a moment of ideational dissensus, leading up to the emergence of two rival programmes – socialism and developmentalism, and the survival of neo-imperialism.

While the socialist bloc established the Council for Mutual Economic Assistance (COMECON) in 1949, the Third-World movement championed the creation of the UNCTAD in 1964.[61] Their goals were to constitute alternative trade regimes. Although globally contested, neo-imperialism was rebranded as 'special relationship' and embodied by European countries into their association and commonwealth arrangements.[62]

Contrary to mainstream literature, the postwar period can be best understood as a period of the ideational fragmentation of global governance into three multilateral trading systems and a constellation of RTAs.[63] Those programmes shaped, with varying degrees of influence, each regime by setting up the parameters for determining the South-North RTAs' purpose. At stake was the range of ideas and practices available for the Lomé Conventions. As will become clear, the development framework's ideational dimension (unequally) reflected liberal-welfarism and developmentalism.

3.1.1 The liberal-welfarist programme for South-North regionalism

Liberal-welfarism emerged from western developed countries as a programme that envisaged *inter alia* a world trade regime grounded in a compromise between the liberal ideal of free trade and the welfarist aspiration for securing domestic economic and social progress.[64] International law would serve as the instrument to balance the pursuit of those programmatic goals.

Regionalism did not easily fit under liberal-welfarism because of its use as protectionist or imperialist strategies in the 1930s trade wars.[65] For most supporters, global free trade was the fairest and most efficient instrument of economic prosperity, hence their belief that RTAs should be prohibited. Others believed that regionalism was not inherently inconsistent with liberal-welfarism, and so RTAs could be used to augment global trade, provided they complied with the GATT rules mandating them to promote economic integration.

Within the controversy, there was a debate about whether *development* is, or should be, at the core of South-North RTAs' mandate. A specific project – called *modernization* – proposed strategies to reconcile trade with development.[66] Emerged from US policies, modernization became the postwar orthodoxy in western developed countries. It addressed 'decolonization' and 'underdevelopment' challenges by reworking both Keynesian-inspired economics and liberal law and institutions. It was devised to help 'underdeveloped' countries overcome rural underemployment and late industrialization by reproducing the historical route taken by western countries to become modern-industrial economies.

Modernization assigned (postcolonial) states a pivotal role in managing the transition of their economies from traditional to modern-industrial.[67] Domestically, states should ensure societal order and direct economic growth. Internationally, they should balance between the national needs and the liberal-welfarist package of economic opportunities and assistance offered by benign western patrons. Regionally, they should use South-North RTAs for managing trade and assistance. In particular, the EC regarded them as associations regimes under its 'trade

[61]C. Lafer, *A OMC e a Regulação do Comércio Internacional: Uma Visão Brasileira* (1998), 20–2.

[62]See Brown, *supra* note 8.

[63]See Lafer, *supra* note 61, at 20–2.

[64]See Jouannet, *supra* note 60; J. Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism and the Post-war Economic Order', 36 (1982) IO 379; J. Gathii, 'Re-Characterizing the Social in the Constitutionalization of the WTO: A Preliminary Analysis', (2001) 7 *Widener Law Symposium Journal* 137.

[65]A. Yusuf, *Legal Aspects of Trade-Preferences for Developing States: A Study in the Influence of Development Needs on the Evolution of International Law* (1982), 3–10, 47–50.

[66]J. Hodge, 'Writing the History of Development (Part 1: The First Wave)', (2015) 6 *Humanity* 429.

[67]See Doidge and Holland, *supra* note 5, at 60–5; Hodge, *supra* note 66, at 433–4.

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and development policy'.[68] Whereas the liberal-welfarist tendency was to negatively link EC-ACP regionalism to protectionism, European modernization favourably connected it to economic interdependence and development.

3.1.2 The developmentalist programme for South-North regionalism

Emerged diffusively as a contestation to liberal-welfarism, developmentalism aspired for a new international trade regime founded on a compromise between the hope for a fairer, yet (inter-)dependent, world economy, and the desire for economic emancipation and wellbeing.[69] Although international law was perceived as a First-World mechanism for economic exploitation, it could (arguably) be reclaimed to achieve those programmatic goals.

Reimaging regionalism was at the heart of developmentalism.[70] The goal was to challenge the existing practice of employing South-North RTAs as (neo-)imperialist trading systems. A specific project – called *structuralism* – reconceived regionalism as strategic mechanisms for trade and development. Born in Latin America, structuralism sought to explain that the causes for underdevelopment and global inequality lie in protectionism and misconceptions.[71] While developed countries' products were freely traded under the GATT, developing countries' exports faced barriers in First-World markets. Moreover, free trade was challenged by the thesis on the declining returns of commodities exports – that is, the specialization in these goods failed to entail diversification, industrialization, and development, as presumed by modernization.

Structuralism challenged the notion of 'underdevelopment' as a stage of the development path on which countries were held back by colonization or civilizational backwardness.[72] Rather, underdevelopment was the consequence of global capitalism, a system constructed to exploit 'peripheral' commodities-based economies through their subjugation to 'core' industrial economies. Differences in terms of trade were evidence of that capitalist bias, which sustained economic progress at the core at the expense of perpetuating underdevelopment at the periphery. The modernization policy of reproducing the western-style development in the Third World was thus unattainable.

The structuralist solution was to convert the (postcolonial) state into a developmental engine.[73] Domestically, states should adopt import-substitution industrialization (ISI) and export-led growth policies. Internationally, they should protect their economic sovereignty and self-reliance by decoupling from global capitalism or resisting exploitation through the Third-World movement and its UNCTAD and NIEO agendas.[74] Regionally, states should remake South-North RTAs into trade regimes for development.[75] These RTAs should provide the conditions conducive to a rapid increase in the export earnings of developing partners and, more broadly, the expansion and diversification of trade between all countries. This would require the adoption of 'special and

[68]See Zartman, *supra* note 49, at 326–33; G. Feuer, 'Le Droit International Du Développement: Une Création De La Pensée Francophone', in C. Choquet et al. (eds.), *Etat des Savoirs sur le Développement: Trois Décennies de Sciences Sociales en Langue Française* (1993), 88.

[69]S. El-Naggar, 'The United Nations Conference on Trade and Development: Background, Aims and Policies', (1969) 128 *Recueil de Cours* 241; M. Bedjaoui, *Towards a New International Economic Order* (1979); T. O. Elias, *New Horizons in International Law* (1992); G. Abi-Saab, Progressive Development of the Principles and Norms of International Law Relating to the New International Economic Order, UNGA, Report of the Secretary-Geneva, UN Doc. A/39/504/Add.1 (1984).

[70]See El-Naggar, ibid., at 286–8.

[71]J. Cypher and J. Dietz, *The Process of Economic Development* (2009), 168–80.

[72]Ibid.

[73]Ibid.

[74]The UNCTAD and NIEO agendas complimentarily provided a wide repertoire of structuralist-inspired policies for developing countries to correct the unfair and unequal distributive consequences of global trade. These policies would involve measures for fostering (i) better and more stable commodity prices; (ii) preferential and non-reciprocal access to developed economies; and (iii) greater economic and technical aid with no conditions (Proceedings of the UNCTAD (Proceedings 1964-I), Doc. E/CONF.46/141, Vol. I (1964), at 3–16; see Doidge and Holland, *supra* note 5, at 60–5).

[75]See Yusuf, *supra* note 65, at 18–21; Doidge and Holland, *supra* note 5, at 60–5.

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differential treatment' provisions, by which non-reciprocal preferences would be accorded by developed to developing partners and extended on a non-discriminatory basis to third-party developing countries.

3.1.3 The EC-ACP project for regional development

Founded in the postwar period to preside over all domains of international affairs, the United Nations served as the forum from where liberal-welfarism and developmentalism came to shape EC-ACP regionalism.[76] The General Assembly was the universal setting where global economic disputes, notably between the GATT and UNCTAD, were mediated. It was also where EC-ACP regionalism was deliberated as a global matter.

The GATT constituted a multilateral forum with a mandate over trade matters but not development. EC members were GATT contracting-parties, whereas ACP countries were encouraged to join it after decolonization. This recruitment was initially unsuccessful since most ACP exports (agriculture and textiles) fell outside its mandate. Yet, GATT rules on RTAs would still apply to EC-ACP regionalism. Formally, Article XXIV regulated the formation and operation of free trade areas (FTAs) and customs unions (CUs). Ideationally, its legal requirements functioned to embed liberal-welfarism into these two types of RTAs. Thus, the GATT affected EC-ACP regionalism through debates on the Lomé Conventions' compliance with Article XXIV.

Distinctively, the UNCTAD formed a multilateral forum with a mandate over trade and development matters. EC and ACP countries were members, although only the latter were meaningfully committed to its developmentalist programme. The UNCTAD influenced EC-ACP regionalism through negotiations for the Generalised System of Preferences (GSP) and the NIEO campaign.[77] The GSP was an alternative regime for discriminatory and non-reciprocal trade, by which developed countries unilaterally accorded market access to developing countries. Hence, the UNCTAD shaped EC-ACP regionalism through GSP and NIEO deliberations.

Those sites created and limited opportunities for liberal-welfarism and developmentalism shape EC-ACP regionalism. Yet, it was EC-ACP negotiations that formed the decisive setting where a compromise on the programmatic directions and general aims for their relationship was reached. Out of divergences and concessions between negotiators' proposals, an ideational project for regional development was progressively built on four fundamental premises.[78]

The first premise was that the world of empires and colonies was displaced by a world of (inter) dependent countries. Postcolonial states were reconceived as 'underdeveloped' or 'developing' economies, constrained by internal 'traditional-backward' practices or external 'neo-imperialist' or 'capitalist' exploitation. Post-imperialist states were reconceptualized as developed stewards for a prosperous world economy. Second, developing countries were assumed to pursue self-sustaining economic growth by either 'naturally travelling' along or 'purposefully striving' for the western-style development trajectory. Third, states were reimagined as pivotal promoters of development. Fourth, 'development' itself was redefined as an economic problem manageable through expertise, policies, and rules.

EC-ACP negotiations produced a common ideal of regionalism as critical for development. ACP countries' development was, thus, achievable through economic co-operation with EC partners, and a commitment to solidarity and fairer partnership. This project embedded an asymmetrical amalgamation of liberal-welfarism and developmentalism, favouring the former. A central aspect of its success was its continuous refinement, allowing its dominance over competing models.[79]

[76]See Carreau et al., *supra* note 6, at 15–21; Elias, *supra* note 69, at 25–8.

[77]See Yusuf, *supra* note 65, at 21–3, 83–90.

[78]See Doidge and Holland, *supra* note 5, at 60–5; J. Hodge, 'Writing the History of Development (Part 2: Longer, Deeper, Wider)', (2016) 7 *Humanity* 125, at 130–2.

[79]See notes 31–6, and accompanying text, *supra*.

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3.1.4 The ideational dimension of the development framework

In their engagement with EC-ACP regionalism, lawyers contributed to and partially appropriated the project for regional development. As negotiations evolved across different settings, they were tasked to translate it into legal arguments and treaty provisions. Part of this involved choosing from legal expertise the norms and ideas applicable to RTAs. It also entailed rethinking the concept of RTAs in line with the project as its core features were continuously formalized into the Yaoundé and Lomé Conventions. Such enterprise opened up the concept's ideational dimension for debates, making possible to reimagine RTAs' primary purpose. These efforts ultimately contributed to creating a new specialist conception.

The project's ideational hybridity persistently challenged the development framework's construction and authority. Some features of liberal-welfarism and developmentalism shared similarities, while others were hardly reconcilable. Economists and other experts offered theories and policies to (exclusively) support each programme. Conversely, lawyers' work was to reappraise norms and ideas to integrate or refuse their features. This involved accommodating chosen features through formalization and argumentation. Consequently, EC-ACP regionalism shaped, in turn, legal expertise.

Between 1964 and 1985, the influences of liberal-welfarism and developmentalism over EC-ACP regionalism varied. Despite its disappointing outcomes, the Yaoundé regime indicated a programmatic shift towards a profound reconsideration of the Association's legacy.[80] Ascending to dominance in the Yaoundé years, the project expressed a new (reasonable yet unbalanced) ideational compromise: liberal-welfarism became the prevailing force, whereas developmentalism gained acceptance, and neo-imperialism was eschewed (but not eradicated).[81] It laid down the ideational foundation on which lawyers constructed the Yaoundé Conventions while rethinking their underlying conceptual framework.

Through the transforming 1970s, the Lomé regime inherited the project's ideational hybridity. Regionally, the Conventions embraced free trade (modernization), albeit moderated by non-reciprocal and preferential market access, and supported by the Stabex and Sysmin (structuralism). This suggests that the project espoused neither programme in full, creating space for Lomé to depart from market-access reciprocity (against modernization), and from general non-discrimination for all developing countries (against structuralism). Thus, rather than subjecting to (modernization) or withdrawing from (structuralism) an EC-ACP regionalism centred on unequal trade and structural dependency, Lomé's ideal was to restructure it to create a more just and equitable distribution of wealth and development.

Domestically, the Lomé regime envisaged postcolonial states as being responsible for implementing socio-economic measures (modernization) and ISI and export-led growth policies (structuralism). This accommodated a wide variety of forms by which states could organize their economies. Such state interventionism was conceived to be supported by financial and technical assistance (modernization) with no 'political' conditionalities (structuralism).

Over three decades, the regional development project emerged to dominance in EC-ACP regionalism. The processes of (re)construction and management of the Yaoundé and Lomé Conventions required lawyers to embed the project's ideational features into formal provisions and institutional practices. The combination of the project's ideational hybridity with the need for diplomatic compromises created the opportunity for lawyers to reengage with the concept of RTAs. This involved reconsidering what was (then) accepted in legal expertise as the RTAs' core purpose. Such effort contributed to forming a conception that replaced free trade with economic development as the Lomé Conventions' primary goal.

[80]See Sakr, *supra* note 11, at 462–71.

[81]The EC's 'Memorandum on a Community Policy for Development Cooperation' of 1971 (SEC (71) 2700 final, EC Bulletin 5/71 (1971), at 8, 18) employed modernization and structuralism vocabularies, suggesting the development co-operation project had become preeminent.

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3.2 Institutional dimension: The governance of EC-ACP regionalism

In the postwar period, four institutional visions of South-North regionalism emerged within the most influential regimes with mandates over trade from the clashes between liberal-welfarism and developmentalism. They provided alternative 'models' for South-North regimes, whose relative weight depended on how, where, and by whom they were crafted as arguments about the Lomé Conventions.

3.2.1 The institutional visions of South-North regionalism

3.2.1.1 The liberal-welfarist model for South-North regimes: The GATT .... The 'GATT vision' emerged from a liberal-welfarist reading of the past. Its teachings stressed the tension between multilateralism and regionalism embodied in GATT Articles I:1–2 and XXIV.[82] Not only did it oppose imperial systems but also regarded RTAs as threats to the GATT system. Yet, EC-ACP RTAs could be politically accommodated if strictly constructed as 'special and differential' FTAs or CUs under Article XXIV and Part IV. Therefore, the Lomé Conventions should be modelled on the GATT itself to ensure formal and functional consistency.

3.2.1.2 The postcolonial model for South-North regimes: The EC .... The 'European vision' reflected the compromise between (vanishing) neo-imperialist, (prevailing) liberal-welfarist, and (marginalized) developmentalist understandings of Europe's past and future. Its teachings placed European integration projects at the centre stage and then focused on their relationships with third countries.[83] The EC's arrangements with postcolonial states were multi-dimensional phenomena, expressing historical-cultural links, economic preferences, and aid commitments. EC-ACP RTAs were regarded not solely as FTAs subject to the GATT but primarily as 'association' regimes for integration and development. For this reason, the 'trade and development' policy was envisaged as instrumental and complementary to the EC integration. Hence, the Lomé Conventions should be modelled on the EC itself and adapted as necessary to account for the partners' unequal development stage.

The GATT and European visions shared major lessons from the past: rejecting protectionist and discriminatory policies associated with the 1930s trade wars, emphasizing the need for a (postwar) world trading system, and recognizing the strategic role of law in trade governance. However, they diverged on the (suitable) design and (legitimate) function of South-North RTAs. The GATT vision championed the primacy of multilateralism, which accommodated a (very narrow) FTA/CU model, while the European vision defended regionalism and an EC-association model.

3.2.1.3 The developmentalist models for South-North regimes: The UN and UNCTAD .... Born in the UN and UNCTAD, two other visions provided alternative models grounded in developmentalism. Much like the GATT and European visions, they acknowledged the significance of the past; yet the teachings they drew from it were distinct. The liberal trading system (which inspired the GATT) was interpreted as the mechanism through which colonialism became possible, hence its repudiation as a model. Instead, the lessons taken to (re)invent EC-ACP regionalism concerned formal decolonization, political sovereignty, economic (inter)dependence, and cultural and developmental inequality.[84]

[82]See Carreau et al., *supra* note 6, at 79–81, 256–61; Report of the Working Party on the ACP-EEC Convention of Lomé (Lomé-I Report), GATT Doc. L/4369 (1976), at 8; ACP-EEC Convention of Lomé. Questions and Replies, GATT Doc. L/4325 (1976), at 2–4.

[83]F. Luchaire, 'Les Associations à la Communauté Économique Européenne', (1975) 144 *Recueil de Cours* 241, at 247–51; D. Vignes, 'Communautés Européennes et Pays en Voie de Développement', (1988) 210 *Recueil de Cours* 229, at 237–324.

[84]A. Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (2019), 142–75.

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The 'UN vision' resulted from stories and teachings emphasizing socio-economic changes conducive to decolonization and (re)integration of Third-World countries.[85] South-North RTAs were conceptualized as legal regimes between developed and developing (sovereign) countries, which often shared cultural and historical bonds. EC-ACP RTAs should operate as the next step in the decolonization process, moving from political-formal independence to (neo-imperialist) associations and then to (developmentalist) regimes. Their goal should be to foster economic sovereignty and development co-operation by promoting economic (inter)dependence, reclaiming ACP countries' participation in world trade, securing assistance, and dissipating images of ACP's primitiveness. Thus, the Lomé Conventions should be modelled on the United Nations, which had entailed ACP countries exercising formal decision-making power to reassert their political, economic, and cultural equality to western-developed countries.

Similarly, the 'UNCTAD vision' emerged from understanding decolonization as 'the' watershed event; however, the teachings it reposed were, nonetheless, distinct.[86] Decolonization was regarded as a moment of betrayal rather than victory, having essentially replaced the visible international system of exploitation that reproduced postcolonial states' underdevelopment with an invisible one. South-North FTAs/CUs were regionalized instances of that system, aiming to foster preferential reciprocity between developed and developing partners, while perpetuating discrimination and protectionism in the Third World. Their function was hence inconsistent with UNCTAD's General Principle Eight, which required the Lomé Conventions be modelled on the GSP as a non-discriminatory and non-reciprocal regime for redistributing the gains of trade towards all developing countries.

Those four visions were accepted as legitimate and valid elements of the development framework. This suggests that, whilst this conception was sufficiently broad and resilient to accommodate diversity, it was less coherent, and hence vulnerable to internal contradictions and external critiques. Moreover, whilst all four visions were accepted, they were not placed on equal footing. Their relative authority was contingent on setting – that is, lawyers could rely on any model to make credible claims about the Lomé Conventions, but their persuasiveness varied across fora.

3.2.2 The Lomé regime of EC-ACP regionalism

The Lomé Conventions were the most sophisticated economic treaties between a bloc of developed countries (the EC) and a bloc of developing countries (the ACP). They represented the pinnacle of the development framework's influence in EC-ACP regionalism. The four visions were used to design and manage the Lomé regime, being, in turn, (re)shaped through its governance practices.

Seven unique features characterized Lomé. First, the 'spirit of Lomé' symbolized the effort to reconstruct EC-ACP relations by reimagining South-North regionalism. Lomé I's preamble codified this joint endeavour 'to establish a new model for relations between developed and developing States, compatible with the aspirations of the international community towards a more just and more balanced economic order'. This commitment suggested that under Lomé EC-ACP regionalism would be neither of a (colonial) association nor a (neo-imperialist) special relationship. Rather, it would be of a 'special partnership' based on 'complete equality' and 'international solidarity'. This also acknowledged developing countries' agency in determining among

[85]See Elias, *supra* note 69; T. O. Elias, 'The Association Agreement Between the European Economic Community and the Federal Republic of Nigeria', (1968) 2 JWT 189; ECOSOC, Revised Framework of Principles for the Implementation of the New International Economic Africa 1976-1981-1986, UN Doc. E/CN.14/ECO/90/Rev.3 (1976), at 13–15.

[86]M. Bennouna, *Droit International du Développement: Tiers Monde et Interpellation du Droit International* (1983), 8–19, 159–79, 212–29; M. Dolan, 'The Lomé Convention and Europe's Relationship with the Third World: A Critical Analysis', (1978) 1 JEI 369, 386–91; Proceedings of the UNCTAD (Proceedings 1964-II), Doc. E/CONF.46/141, Vol. II (1964), at 1–64.

alternatives their preferable development pathway. Thus, the preamble expressed a more balanced (but not equal) influence between the four visions compared to Yaoundé.

Second, Lomé introduced an original notion of membership devised to widen the eligibility criteria beyond Europe's former African colonies. Three factors sharply increased the number of developing partners: the extension of 'association status' to some British Commonwealth members; the intra-EC pressure for ending the Yaoundé's neo-imperialist character; and UNCTAD's demand for a GSP.[87] The result was an open regime, whereby any developing country (former European colony or not that met the criteria under Part IV of the Treaty of Rome) could apply for membership.[88]

The practical effects were evident. Geographically, membership expanded from Europe and Africa to the Caribbean and Pacific. While the first enlargement increased the number of EC partners from six to nine, the number of developing countries skyrocketed from the original 18 AAMS to 46 (1975), and then 53 (1979) ACP partners. The number of 'least development countries' rose steadily from 24 (1975) to 35 (1979), increasing the importance of policies designed to provide them assistance.[89] Hence, Lomé became the first trans-continental regime between two blocs rigidly organized according to development stage.

Third, Lomé expressed a new institutional design born from an unequal merger between three models. The European vision provided the association model of a collection of fixed-term agreements managed by a common institutional apparatus. It assumed (along with the UN vision) that Lomé was a transitory regime for promoting ACP countries' development. Consequently, Lomé was constructed as a bundled-up arrangement of temporary agreements between each ACP country and the EC. The GATT and UNCTAD visions had great ascendency over Lomé's form and substance. While trade, service, and investment provisions were largely modelled on FTAs or constrained by GATT law, development provisions were primarily based on the GSP or enabled by UNCTAD law.

Fourth, Lomé (re)constituted a regional trading system that embedded core features of GATT, European, and UNCTAD visions. Domestically, it provided partners with a wide space for social and economic policymaking. Regionally, it combined an FTA-style mechanism of market access with GSP-inspired institutions of special and differential treatment (SDT) and EC's common external tariff. The result was an asymmetrical system where EC partners granted trade advantages to ACP partners in the form of higher tariffs on third-party suppliers, full duty-free and quota-free access, except for 'sensitive' (agricultural and textile) products. Conversely, ACP partners were not obliged to reciprocate market access to EC partners unless to comply with most-favoured-nation treatment.[90] These obligations were subject to safeguard provisions, authorizing EC partners to take measures if ACP products threatened to cause serious economic disturbances.[91]

Fifth, Lomé (re)created a more robust development system embedding legacy and novel features of European, UN, and UNCTAD visions. The aim was to support ACP countries' development through protective integration into EC markets, non-reciprocal preferential trade, and financial and technical assistance. Yet, development mechanisms remained largely subject to conditionalities, exceptions, and the EC's discretion.

Those new development mechanisms transformed the EC-ACP trading system. Alongside the GSP-based rules, Lomé provided UNCTAD-inspired protocols securing special access for certain ACP commodities (e.g., bananas, sugar, and rum) classified as 'sensitive' under the CAP.

The development finance policy was also strengthened. The EDF, an Association-legacy financial mechanism, was renewed, whilst innovative UNCTAD-style schemes for compensatory

[87]See notes 32, 38–40, and accompanying text, *supra*.
[88]1975 ACP-EEC Convention of Lomé (Lomé Conventions I), Arts. 88–90.
[89]See Holland, *supra* note 5, at 37–8.
[90]Lomé Conventions I, Art. 7.
[91]Ibid., Art. 10.

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financing were introduced. The Stabex was one of such schemes for stabilizing ACP countries' export earnings from commodities. It was designed to remedy the harmful effects of production shortfalls or price fluctuations of certain commodities on which ACP countries were heavily dependent. It thereby aimed to enable them to achieve stability, profitability, and sustained economic growth.

In practice, the Stabex did not operate as envisaged. The global recession and the long-term decline in commodity prices prevented borrowing countries from repaying the loans taken to cover short-term falls in earnings.[92] Consequently, the request for compensation exceeded the allocated budget. Furthermore, the resources, managed by the EC through continuous decision-making, were not equally distributed among ACP partners. Despite criticisms, the Stabex was renewed by Lomé II and also served as the template for the Sysmin, a special scheme for protecting ACP partners heavily dependent on mining exports to EC markets.

Sixth, Lomé's form and substance blended legacy and original traits. Formally, it was organized into six core titles, each one combining provisions designed as rules or standards.[93] Substantially, its policy mandate expanded to accommodate the developmentalist visions' increasing weight. Not only did it cover trade, services, investments, and financial and technical assistance (as Yaoundé did) but also non-reciprocal market access, export earnings protection and industrial promotion.

Like Yaoundé, Lomé's legal structure followed a specific pattern: trade, services, and investment norms were mainly constructed as rules, while welfare and development norms were mostly devised as standards. Surprisingly, even the new UNCTAD-inspired provisions reproduced the same pattern: the disciplines on the Stabex and industrial co-operation were predominantly standard-based, while trade provisions were primarily rule-based.[94]

Seventh, Lomé replicated Yaoundé's governance design except for the court of arbitration,[95] which had never been used.[96] This suggests two changes: a shift in emphasis from adjudicatory to diplomatic modes of decision-making;[97] and also an increasing preference for a GATT-UNCTAD style of techno-diplomatic, rather than a European-UN style of diplomatic-juridical, governance.

The Lomé regime was managed by complex bureaucratic machinery composed of three main governance bodies. The 'council of ministers', assisted by the 'committee of ambassadors' and the 'consultative assembly'. The Council was mandated to meet annually to make binding decisions based on mutual agreement. The Committee was entrusted with executive and supervisory powers, while the Assembly merely served an advisory function.

Despite the non-binding character of its decisions, the Assembly soon became the most energetic and active setting.[98] The ACP used it to vocalize its criticisms of Lomé: while trade and investment provisions were largely self-executing rules, development provisions were mostly standards dependent on case-by-case deliberation. These decisions fell, however, outside the mandate of those bodies, the EC having sole discretion over them. The Assembly constituted the political space for debating these procedures and decisions, contributing to promoting reforms.

[92]See Lister, *supra* note 5, at 118–31.

[93]Norms may be formally constructed as rules or standards. Rules are designed to be rigid and objective, purporting to increase certainty. Standards are devised to be flexible and subjective, aiming to realise substantive goals. Whereas rules are criticized for sustaining mechanical decision-making that leads to over- or under-inclusiveness, standards are attacked for legitimizing biased decision-making that is subject to discretion (D. Kennedy, 'Form and Substance in Private Law Adjudication', (1976) 89 HLR 1685, 1687–8, 1695–6).

[94]Compare Arts. 2–3, 7 (on trade) with Arts. 26–39 (on industrial co-operation).

[95]Compare 'Title VI' Lomé-I with 'Title IV' Yaoundé-I.

[96]See Holland, *supra* note 5, at 35.

[97]Diplomatic modes of governance are centred on negotiations, mediation, and conciliation, whereas adjudicatory modes are centred on trials and arbitration (W. Sandholtz and A. Stone Sweet, 'Law, Politics, and International Governance', in C. Reus-Smit (ed.), *The Politics of International Law* (2004), 238 at 245–7.

[98]See Holland, *supra* note 5, at 35.

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3.2.3 The institutional dimension of the development framework

At its signing, Lomé I was experienced as introducing a brand-new (even revolutionary) model. While it combined innovative with legacy features, whether the output it produced amounted to a new 'model' is less evident. With the benefit of hindsight, the Lomé regime – I argue – should be more accurately understood as a development of, rather than a rupture with, Yaoundé.[99]

The analysis suggests that the four visions, despite their differences, converged in acknowledging the emergence of a 'new model'. However, they diverged in conceptualizing the Lomé regime itself.[100] From a European viewpoint, it essentially embodied the renewed trade and development policy, reflecting the EC's integration project and internal compromise on its relationship with former colonies. From a GATT perspective, it was the first 'special and differential' FTA constituted under GATT law and thus authorized to grant non-reciprocal preferences to developing countries.

The developmentalist visions aspired that Lomé would embody the NIEO campaign. From a UN standpoint, the shift from reciprocity to non-reciprocity reflected the new understanding of Lomé as a mechanism for economic development and (inter-)dependence. Distinctively, the UNCTAD vision regarded Lomé as remaining largely a neo-imperialist instrument for exploitation. It masked the EC's strategy of subjecting its former colonies to its interests by deepening their dependency and weakening their bargaining power through the separation of the ACP from the Third-World movement.

Closer examination reveals that the Lomé regime could be (re)described accordingly as either: a system of economic co-operation and aid for development (European vision), a system of trade preference for development (GATT vision), a system of economic (inter-)dependence for development (UN vision), or a system of neo-imperialist exploitation for development (UNCTAD vision). The challenge of subscribing to any of those definitions arises from the two traits of Lomé.

First, the Conventions were new and sophisticated RTAs; yet conceived, negotiated, and operated based significantly on their predecessors' normative and institutional architecture. While embracing the project for regional development (as Yaoundé did), they expressed a more balanced compromise between the four visions. They were primarily designed on, and operated according to, the GATT's FTA and EC's association yet meaningfully reshaped by the developmentalist models. This evidences that, despite the Third World's rise, the EC held enough bargaining power to secure the prevalence of liberal-welfarism (generally) and its trade and development policy (in particular). ACP diplomacy used developmentalism to secure critical transformations, notably open membership, non-reciprocal preferences, and export earnings stabilization. The Lomé regime was, therefore, not born out of a single new model as claimed by the four visions (and today's mainstream literature). Instead, it was continuously (re)conceived, (re)reconstructed, and governed through four competing models under the same ideational project.

Second, despite the profound changes, the development framework remained largely dominant. Whilst the 1970s political and material conditions opened the possibility for reconstructing EC-ACP regionalism, this conception created the capacity and opportunity to innovate it institutionally. The continuous rework of the legal vernacular to organize and translate the wide repertoire of stories, lessons, norms, and ideas provided by the four visions enabled lawyers to expand the range of institutional options for Lomé negotiations and governance. It was, in this sense, through the framework that legal arguments and treaty provisions were crafted to propose and justify imaginative institutions. Therefore, the Lomé regime did not embed a 'new model' – I argue. What distinguished it from Yaoundé was its higher degree of normative hybridity and institutional experimentation.

[99]Contrast also with present-day understandings of Lomé as a new model (K. Arts, 'Lomé/Cotonou Conventions', in R. Wolfrum et al. (eds.), *Max Planck Encyclopedia of Public International Law* (2013), para. 18).

[100]See notes 79–83, and accompanying text, *supra*.

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3.3 Jurisprudential dimension: The law of EC-ACP regionalism

From the ruins of the Second World War, the field of international law experienced a quick ascendency. Most lawyers saw themselves as members of a transnational community that shared a set of historical facts, professional ethos, technical vocabulary, and differentiated styles of thinking and reasoning.[101] Legal expertise was understood as authoritative knowledge that enabled them to engage in (re)constructing the international economic order.[102]

Below the surface, the field was undergoing profound transformations.[103] These processes were driven endogenously by cultural change and inventive attitude towards international law; and exogenously by the call to use international law to manage the increasing inter-states' ideational, political, and economic disagreements. Consequently, these double-edge commitments[104] towards reworking legal expertise and international law encountered several challenges.

In the context of EC-ACP regionalism, lawyers' work of embedding any ideational programme or institutional vision faced two obstacles: each programme/vision was matched by at least one credible contender; and they also had to expel remaining features of classical liberalism and (neo-)imperialism. Moreover, they had to deal with the legacy of declining jurisprudential projects, whilst nurturing the new generation.[105] The field was, however, facing the progressive fragmentation of authority. European institutions created to manage the production and validation of norms and knowledge were gradually contested by their non-European counterparts.

Those processes were neither gradual nor frictionless and imposed long-lasting, structural changes on international law. The background politics of reception/rejection of norms and knowledge constituted, therefore, the conditions of jurisprudential possibility for making and governing the Lomé Conventions through international law.

3.3.1 The jurisprudential approaches to South-North regionalism

As reputable experts, French[106] and African[107] lawyers were intertwined in the (re)construction of EC-ACP regionalism. Their schools of international law were central in creating the space for the production and validation of knowledge and norms applicable to South-North RTAs. They commonly accepted some ideas and events as foundations of the postwar international economic order.[108] Conceptually, international law's core function was to constrain state discretion to use protectionist-discriminatory measures and engage in predatory behaviour. Historically, international law had failed to play a decisive role in preventing the liberal trading system's breakdown and the Second World War's outbreak. The UN and its specialized agencies expressed the postwar consensus on the global economy's progressive institutionalization and national economies'

[101]O. Schachter, 'The Invisible College of International Lawyers', (1977) 72 *Northwestern University Law Review* 217; J. d'Aspremont et al., 'Introduction', in J. d'Aspremont et al. (eds.), *International Law as a Profession* (2017), 1, at 1–16; D. Kennedy, 'Three Globalizations of Law and Legal Thought 1850–2000', in A. Santos and D. Trubek (eds.), *The New Law and Economic Development: A Critical Appraisal* (2006), 19, at 22–3.

[102]See Carreau et al., *supra* note 6, at 24–93; Bedjaoui, *supra* note 69, at 97–115.

[103]See Kennedy, *supra* note 101, at 37–59; Kennedy, *supra* note 9, at 102–6.

[104]See Schachter, *supra* note 101, at 218–26.

[105]M. Koskenniemi, 'Chapter 2 – International Law in the World of Ideas', in J. Crawford and M. Koskenniemi (eds.), *The Cambridge Companion to International Law* (2012), 47, at 54–6; A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005), 196–244.

[106]The focus on 'French' rather than 'European' lawyers is justified on two grounds: France's (inter-)dependence on and deep commitment to its colonies; and French lawyers' engagement in France's trade policy, notably the Yaoundé and Lomé Conventions. For similar conclusions see J. Gautron, 'The French Contribution to the International Law of Development: A Study of Sources', in F. Snyder and P. Slinn (eds.), *International Law of Development: Comparative Perspectives* (1987), 153.

[107]Despite its challenges, the notion of 'regions' is useful, and sometimes indispensable, when employed in an appropriately qualified and contextualized manner to identify and analyse groups of lawyers' distinctive characteristics (A. Anghie, 'Identifying Regions in the History of International Law', in Fassbender and Peters, *supra* note 13, at 1059–60).

[108]See Carreau et al., *supra* note 6, at 78–83, 257–8; Nguyen et al., *supra* note 6, at 946–8; Bennouna, *supra* note 86, at 212–13; Elias, *supra* note 69, at 39–40.

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reconstructions. Hence, international treaties were regarded as the best solution to constitute and manage multilateral and regional trade regimes.

The similarities between French and African schools stopped at this point. It will be clear that their views regarding the role of international law in South-North regionalism diverged significantly. Neither of them offered 'grand' theories of South-North RTAs. Instead, their experimental and inconsistent approaches produced four projects that gained currency in the context of EC-ACP regionalism.

Concerned with reconstructions and East-West relations, French lawyers developed the voluntarist and sociologist projects.[109] They were committed to sustaining the world trading system through GATT law. Preoccupied with decolonization and South-North relations, African lawyers produced the contributionist and critical projects.[110] They purported to challenge and reform the world trading system through UNCTAD law. Out of this moment of 'creative (re)constructions', three approaches – reformist, apologetic, and utopian – emerged, each proposing a distinct conception of the relationship between international law and EC-ACP regionalism.[111]

3.3.1.1 The French schools of international law: Between reformist voluntarism and apologetic sociologism .... French voluntarism developed a reformist approach conceiving South-North regionalism as economic relations between capitalist countries in distinct development stages.[112] It regarded the two programmes as equally valued. Liberal-welfarism laid down the foundations of the (multilateral) GATT and (regional) North-North RTAs, whose goal was to foster economic integration. Developmentalism inspired the establishment of the (multilateral) UNCTAD and (regional) GSP schemes and South-North/South RTAs, whose goal was to support developing countries' 'catching-up' with developed economies.

The reformist approach regarded GATT Article XXIV as unsuitable for disciplining South-North RTAs, since its rigid and formalist rules were devised to regulate economic integration among (equal) developed countries (e.g., EC).[113] Contrariwise, GATT Part IV established flexible and purposeful standards for governing RTAs according to developing countries' interests and values. However, voluntarist assumptions (unintentionally) reaffirmed (neo-imperialist) ideals of temporality, speciality, and hierarchy in international law by conceiving South-North RTAs as 'provisional', 'differential', and 'non-universal'. Consequently, Lomé was conceived as a 'transitory' regime for assisting ACP countries in overcoming underdevelopment and constituted under Part IV's 'special' set of 'contingent' legal norms.

French sociologism produced an apologetic approach as part of its liberal-welfarist commitment. Accordingly, RTAs were indistinctively conceptualized as discriminatory instruments for reciprocally exchanging preferences between partners.[114] They were all regulated by Article XXIV rather than any other 'SDT' norm under GATT or UNCTAD law. Hence, the Lomé Conventions, as (political) exceptions to GATT law, were (or should be) rigorously disciplined by Article XXIV and ideally phased out.

3.3.1.2 The African schools of international law: Critical utopia .... The African critical school led the development of a utopian approach to South-North regionalism, whilst the contributionist

[109]E. Jouannet, 'A Century of French International Law Scholarship', (2009) *61 Maine Law Review* 83.

[110]J. Gathii, 'Africa', in Fassbender and Peters, *supra* note 13, 407.

[111]See Sakr, *supra* note 11, at 478–82.

[112]See Nguyen et al., *supra* note 6, at 895–914, 945–58; Feuer, *supra* note 68, at 88–9; G. Lacharrière, 'Aspects Récents du Classement d'un Pays Comme Moins Développé', (1967) 12 AFDI 703, at 704–6.

[113]See Nguyen et al., ibid., at 906–10, 950-8; Luchaire, *supra* note 83, at 295–9.

[114]See Carreau et al., *supra* note 6, at 84–5, 306–9, 343–7, 361–3, 621.

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school's inputs were limited.[115] Accordingly, the GATT and South-North RTAs were accused of reproducing the First World's exploitation of developing countries.[116] The UNCTAD and the NIEO campaign paved the way to reconceptualize South-North RTAs as regional regimes of preferential trade (in contrast to the GSP) for co-operative (inter)dependence and emancipatory development. Lomé should be (re)constructed to achieve two goals: its primary function should shift from a liberal-welfarist system of exploitation to a developmentalist system of development; and UNCTAD law rather than GATT law should govern it.

The above approaches were strategically employed in making the Lomé Conventions and arguing about what international law – GATT or UNCTAD law – was (or should be) applicable to them during and after negotiations. Yet, their authority varied depending on contextual factors.

3.3.2 International law of the Lomé Conventions

The Cold War and the Third World's rise were the main drivers of global change in the 1970s. Their effects on EC-ACP regionalism were significantly experienced through the GATT and UNCTAD. They constituted the multilateral forums where international law was construed through jurisprudential approaches to argue about the Lomé Conventions.

3.3.2.1 GATT law of the Lomé Conventions . . . . Since Yaoundé, EC-ACP RTAs became a core issue of GATT governance.[117] Contracting-parties – which were neither eligible nor willing to join them – defended their interests through diplomatic and legal reasoning. They were entitled, through *ad hoc* 'working parties', to evaluate compliance of notified FTAs and CUs with GATT law and then report to the GATT Council. The assessment focused mainly on the internal and external conditions, respectively: RTAs must eliminate trade barriers on 'substantially all the trade' between constituent partners (Article XXIV:8) and must not raise trade barriers with third countries (Article XXIV:5).

During the Yaoundé years, working parties were preeminent sites where the Conventions were defended by the EC-AAMS front and challenged by opposing contracting-parties.[118] The United States attacked them for reproducing preferential arrangements that distorted trade flows, whilst developing countries for unfair discrimination against their products on EC markets. For its critics, Yaoundé embodied the EC's greater commitment to preferential rather than free trade.

Distinctively, the Lomé Conventions were received with great enthusiasm for symbolizing a new beginning.[119] Most working parties' members welcomed their notifications and new provisions on trade and development. They were mostly praised for introducing a 'new model' to promote economic co-operation and contribute towards a new or more equitable international economic order. Yet, some contracting-parties raised significant objections.

Lomé's most celebrated innovation was the abandonment of reverse preference and the adoption of non-reciprocity as a principle.[120] In contrast to Yaoundé,[121] the EC and ACP argued that Part IV should be applied in conjunction with Article XXIV to exempt developing partners from

[115]Contributionism emphasized matters related to South-North RTAs' legitimacy and validity by examining whether they were treaties concluded through equal and fair negotiations between developed and developing countries (see Elias, *supra* note 85, at 203–7; Elias, *supra* note 69, at 25–8, 198–208).

[116]See Bedjaoui, *supra* note 69, at 82–115; Bennouna, *supra* note 86, at 8–19, 212–29; A. Mahiou, 'Les Implications du Nouvel Ordre Économique et Le Droit International', (1976) 12 *Revue Belge de Droit International* 421, 425–32.

[117]See Bartels, *supra* note 5, at 728–9.

[118]G. Lacharrière, *Commerce Extérieur et Sous-Développement* (1964), 160–73.

[119]See Lomé-I Report, *supra* note 82; Report of the Working Party on the Second ACP-EEC Convention of Lomé (Lomé-II Report), GATT Doc. L/5292 (1982).

[120]See Lomé-I Report, *supra* note 82, at 3–5, 13, 23–6; ibid., Lomé-II Report, at 4–6, 24.

[121]Report of the Working Party on EEC/Association of African and Malagasy States and of Non-European Territories, GATT Doc. L/2441 (1965); Report of the Working Party on Convention of Association between European Economic Community and the African and Malagasy States, GATT Doc. L/3465 (1970).

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the obligation of extending reciprocal concessions to developed partners (reformist approach, yet implied in the utopian approach). Consequently, only the EC was required to eliminate duties and other restrictions concerning substantially all the trade with the ACP. The majority of the working parties subscribed to this interpretation.

A second novelty was the change in attitudes of most contracting-parties towards the UNCTAD and NIEO. UNCTAD law had penetrated into GATT governance and began to substantiate legal arguments. Two consequences followed from this.

First, contracting-parties gradually expanded the GATT mandate by engaging with Lomé's trade and non-trade provisions.[122] The EC-ACP invited the working party to undertake a comprehensive and teleological analysis of the totality of Lomé's rules and objectives.[123] The EC argued that its goal was to contribute to 'the development of a more just and balanced international economic order' (reformist approach). The ACP claimed, distinctively, that its objective was to 'build stronger and more self-assured economies and step in the evolution towards a new international economic order' (utopian approach).[124] Others expressly supported Lomé's aspiration for a 'reformed' or 'novel' order.

Second, contracting-parties increased their use of UNCTAD law.[125] For instance, the EC asserted that Lomé was not its only form to co-operate with developing countries. It also implemented a 'GSP scheme', and participated in 'international commodity agreements' and other pro-development initiatives (reformist approach, yet implicit in the utopian approach). The ACP stated that Lomé covered various aspects of development, ranging from agricultural and industrial co-operation to technical and financial assistance (utopian approach). Others also used UNCTAD law to argue about trade and development, notably the Stabex and Sysmin.

Notwithstanding, Lomé was not free from objections (apologetic approach).[126] One contracting-party criticized it for fearing the increase in preferential treatment, which would, in turn, erode the GATT's core principles, preventing the progress of multilateral and non-discriminatory liberalization. Others challenged the majoritarian understanding of its consistency with GATT law.

However, the most significant opposition came in the form of those that raised concerns regarding Lomé's discriminatory impact over non-ACP developing countries.[127] Some contracting-parties argued that, to move towards 'a more just and balanced economic order', the Conventions should not harm other developing countries (utopian approach, yet implicit in the reformist approach). For instance, the Stabex and Sysmin could entail adverse effects on developing economies' exports. Others advocated that the EC's trade and development policy ought to replace its web of RTAs with the GSP to accord preferences to all developing countries on a non-reciprocal and non-discriminatory basis (utopian approach). The EC and ACP defended Lomé by providing evidence that it was not harming third-party developing countries.

As typical in the GATT, the legal questions about the Lomé Conventions' consistency were not resolved by working parties or the dispute settlement mechanism.[128] Rather, legal decisions were suspended by diplomatic compromises, which, in turn, redirected the questions to multilateral negotiations.

[122]See Lomé-I Report, *supra* note 82, at 3–6; see Lomé-II Report, *supra* note 119, at 4–6, 10.

[123]Despite advocating for a comprehensive and teleological approach, the EC-ACP moved strategically back to a narrow and formalist analysis of GATT law when contracting-parties challenged Lomé II's development measures (see Lomé-II Report, ibid., at 17–8, 22).

[124]Interestingly, the ACP's position shifted in Lomé II closer to the EC's reformist reasoning (see Lomé-II Report, ibid., at 6).

[125]See Lomé-I Report, *supra* note 82, at 3, 7, 15, 18–9; see Lomé-II Report, ibid., at 5–6, 12, 22.

[126]See Lomé-I Report, ibid., at 7; see Lomé-II Report, ibid., at 7, 9, 11.

[127]See Lomé-I Report, ibid., at 6, 14–5, 18–9, 25; see Lomé-II Report, ibid., at 6, 10–11, 15–20.

[128]See Lister, *supra* note 5, at 204–5.

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3.3.2.2 UNCTAD law of the Lomé Conventions . . . . By the 1970s, the UNCTAD had become the Third World's preferred forum for debating South-North regionalism.[129] The starting point was General Principle Eight, which provided that developed countries should grant to developing countries general concessions on a non-reciprocal and non-discriminatory basis.[130] This legal principle was embedded into Resolution 21(II), creating the GSP[131] and paving the way for the GATT's Part-IV Amendment.

From UNCTAD's second (1968) to third (1972) session, the Yaoundé Conventions were harshly accused of being the GSP's nemesis (utopian approach).[132] They were attacked for their membership rules differentiating between AAMS and other developing countries. They were also criticized for being constituted under GATT law rather than UNCTAD law, thereby legitimizing an FTA-model for reciprocal exchange of discriminatory preferences between developed and developing countries.

By contrast, Lomé was mostly welcomed within the UNCTAD. It was at the core of the fourth session's debates (1976), yet gradually losing centrality in the subsequent sessions. The proceedings reveal that UNCTAD's principles and policies were the main sources of law to construct legal arguments about Lomé. Conversely, despite its numerous citations, the GATT was mostly treated as a matter of fact and not law.

Lomé I was, for many UNCTAD members, a unique regime in recent history given that it brought into being the best model of South-North regionalism.[133] The EC and ACP advocated for this model to be globalized (reformist approach).[134] In contrast to UNCTAD's failures in realizing its aspirational policies and universal arrangements, Lomé was regarded as effective in implementing concrete solutions leading to co-operation on industrial and agricultural production, and financial and technical assistance. Subscribing to the EC-ACP understanding, some developing countries argued that Lomé should serve as a model grounded in UNCTAD law for (re)structuring economic affairs with other developed countries (reformist approach, yet implicit in the utopian approach).[135]

Other developing countries criticized Lomé, nevertheless. They claimed that, instead of creating a community of equal and interdependent states, it betrayed the Third World's legitimate aspirations (utopian approach).[136] For instance, it did not provide an effective mechanism to compensate the ACP for shortfalls in revenues from exports to EC markets in real terms, notwithstanding the Stabex. Indeed, the EC's unilateral reduction in the proposed prices led inevitably to a substantial decline in the export earnings. This ACP's dependence on commodity prices set up by the EC brought Lomé too close to (neo-)imperialism. Lomé's incentive for the ACP's overspecialization in commodities crowded out its industrialization and thus the possibility of reaping gains from the EC's preferential access.[137]

All in all, Lomé symbolized a new, fairer, and even perfectible regime of EC-ACP regionalism. Legal arguments about them were articulated through the three jurisprudential approaches and within the GATT and UNCTAD. Obviously, GATT Reports and UNCTAD Proceedings offer

[129]J. Steffek, *Embedded Liberalism and Its Critics: Justifying Global Governance in the American Century* (2006), 85–9.

[130]See Proceedings 1964-I, *supra* note 74, at 20.

[131]Proceedings of the UNCTAD, Doc. TD/97, Vol. I (1968), at 38, 137–8.

[132]Ibid., at 342–3; Proceedings of the UNCTAD, Doc. TD/97, Vol. V (1968), at 34, 39–44; Proceedings of the UNCTAD, Doc. TD/180, Vol. I.A (1972), at 109.

[133]Proceedings of the UNCTAD (Proceedings 1976-II), Doc. TD/218, Vol. II (1976), at 19–20 (Central African Republic), 37–8 (Fiji), 39 (France), 56 (Italy), 58 (Ivory Coast), 64 (Kenya), 70 (Luxembourg), 76 (Mauritius), 83 (Netherlands), 85 (Niger), 100–101 (Senegal), 152 (EC).

[134]Proceedings of the UNCTAD, Doc. TD/269, Vol. II (1979), at 90.

[135]See UNCTAD Proceedings 1976-II, *supra* note 133, at 48 (Haiti), 92 (Philippines).

[136]Ibid., at 45–6 (Guyana), 59 (Jamaica), 110 (Trinidad and Tobago).

[137]Proceedings of the UNCTAD, Doc. TD/269, Vol. III (1979), at 111–14.

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only partial evidence of their context-specific authority over the ways legal rules and institutions were deployed to argue about and provide solutions to the Lomé Conventions.

3.3.3 The jurisprudential dimension of the development framework

The development framework was pivotal in determining the jurisprudential frontiers of possibilities for international law. It worked (sometimes) as 'description' and (sometimes) as 'norm'. Descriptively, it defined the elements that RTAs must display to be acknowledged as FTAs or CUs under GATT law or as 'regional systems of preferences' under UNCTAD law. Normatively, it acknowledged which rules and institutions were applicable to RTAs. The critical challenge that lawyers continuously faced concerned the understanding and (re)framing of the relations between the descriptive and normative dimensions of the Lomé Conventions through international law and against a fragmented world trading system.

Most lawyers extracted from historical accounts descriptive teachings, which were then mobilized to differentiate Lomé from its illegitimate or illegal predecessors or rivals. However, their efforts encountered increasing difficulties when required to justify which facts and norms counted to make determinations of legitimacy and legality. The three jurisprudential approaches emerged partially as responses to these challenges.

The apologetic approach's authority was largely restricted to the GATT. Apologetic-inspired arguments often affirmed that Article XXIV was the primary test for establishing the legality and legitimacy of RTAs.[138] It was regarded as the GATT's main defence against the threat posed by the proliferation of preferential and imperial arrangements. The 1965 Amendment softened, however, this strict position by formally acknowledging the subsidiary (but not the lack of) application of Article XXIV vis-à-vis Part IV to South-North RTAs and, notably, the Lomé Conventions.

Conversely, the reformist and utopian approaches were authoritative in the GATT and UNCTAD. The reformist approach broadly recognized Article XXIV's critical importance yet highlighted its normative limits towards developing countries. It expressed the developed countries' consensus on the virtues of North-North integration.[139] Its disciplines were not necessarily fit for fostering development in postcolonial countries. Thus, its application ought to be combined with Part IV to regulate the Lomé Conventions under GATT law. Similarly, Lomé's universalization was defended as a 'more just and balanced' model for South-North RTAs, since it was grounded in, or at least consistent with, UNCTAD law.

The utopian-inspired arguments were more often conveyed in the GATT than the UNCTAD, despite being less persuasive in the former setting. They attacked Article XXIV's applicability to South-North RTAs, implying that its rules aimed to sustain developed countries' policies and interests, notably their systems of exploitation of the Third World.[140] GATT law should, accordingly, be replaced with UNCTAD law as the legal foundation of Lomé. Similarly, UNCTAD law was mobilized to challenge Lomé's common-accepted virtues and accuse it of tacitly embodying neo-imperialism. Some even contested the Conventions' legality and legitimacy by claiming the GSP as the only regime with authority over South-North regionalism.

Those divergent patterns of legal reasoning about Lomé suggest that the jurisprudential approaches exerted asymmetrical authority. Each approach claimed (internal) validity and legitimacy grounded in scientific analyses of facts and norms related to EC-ACP RTAs. Distinctively, its (external) validity and legitimacy were largely dependent on the development framework's authority as an expert mode[141] of governing decision-making over and within EC-ACP regionalism through international law.

[138]See Carreau et al., *supra* note 6, at 306–11, 343–7, 361–3.

[139]See Nguyen et al., *supra* note 6, at 906–11, 950–8.

[140]See Bennouna, *supra* note 86, at 212–29.

[141]See Sandholtz and Stone Sweet, *supra* note 97, at 245–7.

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The combination of (normative and factual) indeterminacy with the general authority often entrusted to the development framework empowered states to employ international law to reason their positions, reach agreements, or resolve controversies over the Lomé Conventions. This specialist conception – I argue – allowed officials, diplomats, and lawyers to debate South-North RTAs as matters of (inter-)regional development by translating them into ('apolitical' and 'objective') legal issues and providing solutions to deal with them through international law.

The decade following Lomé's signing was characterized as one of falling hopes. Not only did Lomé fail to deliver the expected development outcome, but it was also deeply affected by rapid global changes: the United States' protectionist turn and the EC's expansionary policy; economic slowdown and debt crises in the Third World; and the rise of neoliberalism (and managerialism) in global economic governance. These factors caused the development framework to experience a sharp decline in its authority. Consequently, when Lomé III entered into force in 1986, this conception had already lost its hegemonic position in EC-ACP regionalism and its global appeal.

4. Conclusion

The Lomé Conventions are landmarks in the present history of international law of regionalism. This article claims, alongside mainstream literature, they symbolize the replacement of a neo-imperialist association with (or at least aspired to) a legal regime of inter-regional trade and development between the First-World/developed EC and the Third-World/developing ACP. Against this scholarship, I argue that Lomé did not embody a new 'model' of South-North RTAs. Rather, its 'model' expressed an underlying conceptual framework that emerged during Yaoundé negotiations and reached the zenith of its authority with Lomé I.

Mainstream scholarship regards Lomé as an outcome of either GATT's institutional weaknesses, EC's external policies, or political and economic forces. Distinctively, this article unveils the significance of international law and lawyers to its making and governance. It demonstrates that Lomé substantially reflected the efforts to reconstruct EC-ACP regionalism by reimagining South-North RTAs as a development objective. It also shows that lawyers contribute to this endeavour by reworking the legal concept of regional trade agreements as a way to (re)direct RTAs' goal towards development, broaden the institutional opportunities for innovative norms and ideas, and (re)distribute political and economic power. In this sense, the Yaoundé (first) and Lomé (later) Conventions were – I argue – meaningfully negotiated, interpreted, and managed through this specialist conception, distinct from those applicable to other RTAs. More broadly, my argument is that my findings challenge present-day conceptualization of RTAs as textual manifestations of a single, neutral and universal concept in international law.

The novelty and significance of recognizing the development framework's existence and influence reside not 'just' in learning from history. These teachings are also important today in contributing to reframing contemporary debates about the future of the world trading system beyond the *degree* of its market integration and towards its ideational *purpose* and the range of *possibility* for its institutional and jurisprudential innovation. Specifically, they assist us in re-engaging with past and present RTAs by re-opening the critical debates about their constitutive features: what are (or should be) the primary goals of RTAs? What rules and institutions will govern RTAs? How are ideas and techniques chosen and employed to produce and manage those RTAs?

Those history lessons and critical questions call attention to the less well-known role of prevailing conceptions in making and interpreting RTAs. More broadly, they reveal the

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empowering and constraining effects of conceptual frameworks on the dominant (but also marginalized and forgotten) ways of thinking and practising the international law of regionalism.[142] This article engages with those and related questions by suggesting that present-day conception of RTAs is neither the only possibility nor the necessary result from an ideational, institutional and jurisprudential evolution towards conceptual perfection of regional trade agreements.

[142]Likewise, Gathii and Akinkugbe have examined the dominant conception of RTAs today and how it has deeply shaped the understanding and practice of RTAs by constituting the conditions of possibilities for projects of economic integration between African states (see Gathii, *supra* note 12; J. Gathii, *African Regional Trade Agreements as Legal Regimes* (2011); O. Akinkugbe, 'Theorizing Developmental Regionalism in Narratives of African Regional Trade Agreements', (2020) 1 *African Journal of International Economic Law* 297).

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