REGIONAL DEVELOPMENTS

Africa*

Despite the rather daunting catastrophes that continue to bedevil southern Africa, the peoples of the region have nonetheless risen to the numerous challenges of development that face sub-Saharan Africa. In this regard southern Africa has made serious endeavors to ameliorate its economic problems through the formation of development and trade organizations for the promotion of intraregional cooperation and trade.

These modest efforts demonstrate to the world that southern Africans are not sitting idly, bemoaning their fate and dwelling on the countless tragedies that have impeded development in the region. These efforts also serve to answer critics in developed countries who speak of black Africa as a hopeless case. Indeed, southern Africa's efforts totally negate the criticism of cynics that Africans expend their energies almost exclusively on political issues at the expense of economic development.

This article discusses three southern African regional organizations that deal with economic cooperation and integration. The organizations discussed are the Southern African Development and Coordination Conference, the Southern African Customs Union, and the Preferential Trade Area for Eastern and Southern African States. The article briefly describes each organization's history, objectives, membership, strengths, and weaknesses. The article also postulates how these organizations may cooperate and coalesce resources with a post-apartheid South Africa. Furthermore, it juxtaposes how these organizations could deal with the challenges posed by the demise of the Cold War and the vast economic problems for developing countries occasioned by the new international economic environment. The article discusses the impact of a post-apartheid South Africa

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on regional developments and trends in southern Africa. In addition, it sketches possible scenarios for cooperation and possible merger of these three regional organizations in the aftermath of apartheid. The article also addresses impediments that could imperil the formation of one supranational organization for southern Africa.

In the conclusion the article advocates the formation of one super regional organization for the subcontinent. At the same time, however, it cautions against the initial adoption of an overly ambitious economic cooperation program that could result in a fiasco. To the contrary, it urges cooperation on a step-by-step basis; it counsels southern African nations to proceed circumspectly with the execution of so herculean a task.

I. Regional Organizations

A. The Southern African Development and Coordination Conference (SADCC)[1]

SADCC grew out of a response to South Africa's proposal for the formation of a Constellation of Southern African States (CONSAS). In 1979, South Africa proposed the formation of CONSAS as an economic forum for spearheading development in southern Africa. CONSAS was intended to function basically as a coordinating bureaucracy for the streamlining, harmonization, and rationalization of business policy and industry in the southern African region. However, because of South Africa's repugnant apartheid system, that country's neighbors viewed the proposed formation of CONSAS with suspicion. Given the heightened political tensions between South Africa and its black-ruled neighbors, the outcome was that South Africa's black neighbors firmly rejected the proposal, despite its attractive economic underpinnings. Thus, SADCC was a political snub of South Africa and a simultaneous attempt to eradicate colonially fostered infrastructural imbalances. It was also an attempt and political ploy to lure the smaller southern African countries away from the political clutches of South Africa and its brainchild, CONSAS.

SADCC originated as a means to break South Africa's economic domination of its neighbors and to create conditions for sustainable economic development within southern Africa. The formation of SADCC received further impetus from the movement toward Zimbabwe's independence, which by 1979 seemed inevitable. Indeed, Zimbabwe was central to the entire concept, since it was the only country (besides South Africa) in the region with a diversified economy and a developed infrastructure imperative for the realization of SADCC's aims. Therefore, the main thrust of SADCC was to decrease its members' economic dependence on South Africa and to break that country's economic hegemony in the region.

1. The following countries are members of SADCC: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia, and Zimbabwe.

Against this backdrop SADCC came into being on April 1, 1980, following the signing of the Lusaka Declaration on Economic Liberation. This was a sequel to the first SADCC Summit in Arusha, Tanzania, at which member states had adopted a draft declaration embodying four principal development objectives:

> the gradual reduction of economic dependence particularly, but not only, on the Republic of South Africa; the forging of links to create a genuine and equitable regional integration; the mobilization of resources to promote the implementation of national interstate and regional policies; and concerted action to secure international cooperation within the framework of their strategy for economic liberation.[2]

The raison d'être and immediate objective of SADCC was to help its members reorient transportation and communication routes such that they would bypass South Africa. SADCC's reorientation efforts are, perhaps, best exemplified by the rehabilitation of the railway line from Zimbabwe and Beira in Mozambique and the upgrading of that line and port for handling and ferrying cargo and merchandise between Zimbabwe (principally) and Malawi. The organization's success has come mainly in the areas of transportation and telecommunications. Indeed, SADCC now boasts of air and satellite links independent of South African control—an achievement that was unthinkable a decade or so ago.

Axiomatic from the composition of SADCC is that SADCC comprises countries with different economic orientations and political ideologies. Suffice it to say that following the demise of the Cold War, these ideological differences have paled to insignificance. Countries such as Angola and Mozambique that had overtly flirted with socialism, now have changed course and wholly embrace the free market system. This change of ideology augurs extremely well for regional integration efforts based on the free enterprise system.

SADCC countries contain a population of 100 million with a total GDP of $100 billion and exports of $25 billion. Moreover, SADCC states are rich in mineral, energy, and agricultural resources. Nevertheless, due to lack of technology coupled with undercapitalization in the region, these resources are largely untapped. Many SADCC countries are largely dependent on foreign trade. Their chief imports consist of food, oil, and manufactured goods. Given this background, western investment and technology in the region is definitely needed. To facilitate these processes many SADCC countries have dramatically overhauled the regulatory regimes concerning the protection of foreign investments.

Individual domestic markets in each of these countries are too small for viable industries; consequently, intra-SADCC trade currently accounts for approximately 4 percent of their total trade. Not surprisingly, therefore, most SADCC states have stronger economic ties with South Africa than with each other. Nonetheless, SADCC countries as a group have the necessary resource potential to sustain much higher levels of development. Thus, regional integration will

2. OLAYIWOLA ABEGUNRIN, ECONOMIC DEPENDENCE AND REGIONAL COOPERATION IN SOUTHERN AFRICA 19 (1990).

engender a major reorientation of economic activities and the establishment of institutions to promote regional trade and investment.

To date, SADCC has managed to avoid the dangers generally associated with a bloated and self-perpetuating bureaucracy. SADCC operates through a lean secretariat headquartered in Botswana, with smaller offices dispersed throughout the region. As a result of this decentralized structure, members have been assigned different responsibilities: Mozambique, transport and communications; Angola, energy; Zimbabwe, agriculture and food security; and Swaziland, personnel development, and the like. This distribution of responsibilities ensures that SADCC is not dominated by only a few of its members. This management structure effectively reduces resentment and envy to the bare minimum.

Nevertheless, the seemingly organizational strength of SADCC is also its major structural weakness. For SADCC not to outlive its usefulness in the twenty-first century, it will have to extend its functions beyond coordination. Furthermore, SADCC will have to develop a strategy and a capacity for the mobilization and deployment of development resources internally.

Thus far, SADCC's success has been largely confined to raising foreign aid for its development projects; indeed, SADCC has been very effective in acting as a funnel for foreign assistance and, to a lesser extent, a conduit for investments in the region. That was an easy task as long as South Africa remained the world's whipping boy. Now, however, the demise of apartheid has dramatically altered the political landscape, making it exceedingly difficult for SADCC to evoke the sympathy and support of Western donors. SADCC will be hard put to justify its existence as presently constituted. Consequently, SADCC will have to devise innovative and resourceful strategies if it is to continue playing a meaningful role in the post-apartheid era.

The major structural weakness of SADCC (in contrast with SACU and the PTA) is that it is a loose association. If SADCC is to remain a viable and potent force in post-apartheid South Africa, it will need major restructuring.

B. The Southern African Customs Union (SACU)

SACU[3] is arguably the oldest economic arrangement of its kind in sub-Saharan Africa. SACU was preceded by and is a progeny of earlier customs union arrangements that date back to the nineteenth century.[4]

The formation of the Union of South Africa in 1910 precipitated and engendered SACU.[5] SACU gave birth to a customs union between South Africa and

3. Members of SACU include: Botswana, Lesotho, Namibia, South Africa, and Swaziland. Namibia began as a de facto in 1921, when that territory fell under South African administration pursuant to the Treaty of Versailles, and became a de jure member when it attained independence in 1990.

4. For a discussion of these earlier arrangements, see C.L. McCarthy, The Southern African Customs Union 29 *et seq.* (1986).

5. This happened when the Boer Republics of the Orange River Colony, the Transvaal, and the British Colonies of the Cape of Good Hope and Natal amalgamated.

the then-High Commission Territories (HCT) of Basutoland (Lesotho), Bechuanaland (Botswana), and Swaziland. That arrangement provided for a customs tariff imposed by South Africa; the HCT received a fixed share totaling 1.3 percent of the pool of customs and excise taxes. SACU further provided for a free flow of goods within the customs area. The only exception was the treatment of excise duties.[6]

Undeniably, this lopsided arrangement worked overwhelmingly to South Africa's advantage, fomenting dissatisfaction among the junior partners. However, given that the Union legislation envisaged in due course the eventual political incorporation of these territories into South Africa, the colonial authorities had no qualms about incorporating these territories into a customs union with the newly formed Union of South Africa while determination of their political future was pending. Nevertheless, incorporation was to be consensual. Outraged by South Africa's racist policies, the HCT countries refused the political humiliation of incorporation and opted, instead, for full-fledged statehood.[7]

Dissatisfied with the 1910 regimen, upon attaining independence, Botswana, Lesotho, and Swaziland (the BLS states or countries) sought to ameliorate the iniquities of that customs union. They agitated for the renegotiation of that agreement essentially to force South Africa to take account of these countries' changed political circumstances and economic aspirations. Pursuant to these negotiations a substantially new agreement[8] was signed on April 1, 1969, and entered into force on March 1, 1970.

During negotiations, these less economically developed members of SACU expressed dissatisfaction about their economic neglect during the colonial era; they advocated far-reaching changes in the customs arrangement. Their concerns found accommodation in the new agreement.[9]

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6. *See* STEPHEN R. LEWIS, ECONOMIC REALITIES IN SOUTHERN AFRICA 20 *et seq.* (Institute of Development Studies, Discussion Paper (U.K.) No. 232:1–60, June 1987).

7. 1966 for Botswana and Lesotho; 1968 for Swaziland.

8. See Legal Notice No. 71 of 1969, The Customs Proclamation (Cap. 200), Dec. 11, 1969, containing the Customs Union Agreement between Botswana, Lesotho, Swaziland, and South Africa.

9. Article 6 provides:

> *Imposition of Additional Duties for Protective Purposes by Botswana, Lesotho or Swaziland*
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> (1) The Government of Botswana, Lesotho or Swaziland may levy additional duties on goods imported into its area to enable new industries in its area to meet competition from other producers or manufacturers in the common customs area, provided that such duties are levied equally on goods grown, produced or manufactured in other parts of the common customs area and like products imported from outside that area, irrespective of whether the latter goods are imported directly or from the area of any other party to this Agreement and subject to payment of the customs duties applicable to such goods on importation into the common customs area.
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> (2) Before any such duties are imposed or amended the Government concerned shall consult the other contracting parties in terms of Article 20, and such parties may make recommendations thereon. If the recommendations of any such parties are not acted upon, the Government concerned shall inform the other contracting parties of the reason for its decision.
>
> (3) Protection which is afforded to a new industry in terms of this Article shall not be given for a period exceeding eight years without the prior consent of the contracting parties.
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> (4) In this Article, "new industry" in relation to any contracting party means an industry which has been established in the area of that party for not more than eight years.

Id. art. 6.

The cardinal objectives of the new agreement are set out in the preamble:

> The Governments of the Kingdom of Swaziland, the Republic of Botswana, the Kingdom of Lesotho and the Republic of South Africa. Being desirous of maintaining the free interchange of goods between their countries and of applying the same tariffs and trade regulations to goods imported from outside the common customs area as hereinafter defined; Recognising that the Customs Agreement concluded on 29th June, 1910, as amended from time to time, requires modification to provide for the continuance of the customs union arrangements in the changed circumstances on a basis designed to ensure the continued economic development of the customs union area as a whole, *and to ensure in particular that these arrangements encourage the development of the less advanced members of the customs union and the diversification of their economies, and afford to all parties equitable benefits arising from trade among themselves and with other countries. . . .*[10]

In essence the agreement provides for a sharing of revenue from the common customs pool in accordance with a formula that makes revenue to BLS states dependent on the level of imports into each BLS country from all sources, South Africa or outside the Customs Union.[11] The agreement also provides a means for a BLS country to protect an infant industry in its country by imposing an additional duty against imports from other Customs Union partners.[12] However, in practice the BLS states have used this provision sparingly. The BLS countries can also propose to South Africa industries they wish to establish for the entire Common Customs Area, but which would require protective tariffs to thrive.[13] Additionally, the agreement provides for the free movement of goods, nondiscrimination in freight rates, nondiscriminatory pricing, and quotas in agricultural marketing and consulting on various matters such as veterinary or plant disease problems. The agreement also grandfathered earlier trade agreements,[14] notably one reached between the colonial governments in Southern Rhodesia (Zimbabwe) and Bechuanaland (Botswana) for a virtual free trade area between those territories.

The BLS countries have often come under fire from radicals for being the economic appendages of South Africa. Nevertheless, for people familiar with the economies of southern Africa, this criticism is uninformed. Realistically speaking, the BLS countries have never had much choice in the matter. Despite finding apartheid detestable and an affront to human dignity, these countries realize that the consequences of severing links with South Africa would be too harsh, even incalculable. Indeed, such an act would be tantamount to national genocide.

The agreement[15] provides for a dispute resolution mechanism through institutionalized or ad hoc meetings called by an aggrieved member. Nevertheless,

10. *Id.* preamble (emphasis added).
11. *Id.* art. 14.
12. Arts. 9-10.
13. *Id.* arts. 7, 8.
14. *Id.* art. 19.
15. *Id.* art. 20.

the marriage between South Africa and the BLS states is not without its problems. For example, the BLS states feel that the new arrangement (despite its qualitative advantages) is overbearing on them, and they feel overreached by the disadvantages attendant on it. In a similar vein South Africa, too, is not sanguine about this dispensation; it feels that the financial costs of SACU to itself are too high. Suffice it so say that SACU has withstood the test of time; despite its shortcomings, it is trudging along. At the same time, SACU (the product of a different era) does not envision progressive development into an economic community.

SACU has thus far provided the region with about the oldest institutionalized customs union arrangement which, despite its weaknesses, works. Furthermore, it contains a mechanism for the resolution of differences and disputes. Nevertheless, SACU does not envision intratrade relationships for the region that are more dynamic than a customs union. For other southern African countries to join, the objectives of SACU would obviously have to be broadened such that they culminate in a structure much stronger than a mere customs union. Moreover, for other southern African states to join SACU, they will have to be allayed of their fears about being economically swamped by South Africa. Thus, SACU would have to be revamped in order to accommodate the economic interests of the smaller southern African states.

C. Preferential Trade Area for Eastern and Southern African States (PTA)

The PTA Treaty was signed on December 21, 1981, and entered into force on September 30, 1982.[16] Briefly, the PTA came into existence as a result of relentless prodding by the U.N. Economic Commission for Africa. Recommendations of the Economic Commission for Africa were adopted and endorsed by the Organization of African Unity (OAU) in the Lagos Plan of Action of 1980.[17] Indeed, the PTA can fairly be characterized as the most ambitious and comprehensive regional economic arrangement on the African continent.

The PTA includes an area comprised of at least twenty southern and eastern African countries with a population of 190 million. Collectively, these countries

16. *Reprinted in* 21 I.L.M. 479 (1982) [hereinafter PTA Treaty]. The PTA consists of member states from south, central and east Africa, including: Angola, Botswana, Burundi, Comoros, Djibouti, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, Seychelles, Somalia, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

17. The OAU, in the Lagos Plan of Action, enjoins African nations to form regional economic groups in order to further the continent's economic development and to promote intra-African trade. *Lagos Plan of Action for the Economic Development of Africa 1980-2000, in* Geneva International Institute for Labour Studies (1981).

are well endowed with the human and natural resources essential for economic development.

The legal framework of the PTA is contained in fifty-one articles. Additionally, fourteen protocols are annexed to the Treaty. These protocols form an integral part of the Treaty.[18] The annexes deal with and extrapolate on the following subjects: the gradual reduction and eventual elimination of customs duties; rules of origin; clearing and payments arrangements; transport and communication; industrial and agricultural development; conditions for reexportation of products within the PTA; facilitation of transit trade; simplification and harmonization of trade documents and procedures; standardization and quality control of goods produced within the PTA; cooperation on customs matters; and facilitation of the movement of people within the PTA by the gradual relaxation and eventual elimination of visa requirements.

The short-term goal of the PTA is economic integration and currency harmonization among its member states.[19] The PTA was established for the purpose of creating a common market of eastern and southern African states.[20] The PTA has undertaken the ambitious program of establishing a free trade area by the end of the century.[21] The ultimate goal is the creation of an economic community.[22] Thus, the PTA's name is somewhat misleading because its goals extend well beyond the promotion of intraregional trade.

Articles 3, 4, and 29 of the Treaty in conjunction with article 7 of annex I to the Treaty demonstrate that member states envisaged accomplishing the arduous task of economic integration piecemeal: first, by the establishment of a customs union;[23] second, by the establishment of a common market;[24] and third, by the establishment of an economic community for eastern and southern African states.[25]

The key vehicles for the realization of the goals of the PTA are trade promotion mechanisms. Article 2 of annex I to the Treaty provides for the reduction and progressive elimination of customs duties and nontariff barriers to trade among member states. These apply only to commodities on the so-called Common List.[26] The Common List was established pursuant to the provisions of article 3(1) of annex I. Article 7 of annex I to the PTA Treaty makes provision for the addition of commodities to the list every two years.

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18. PTA Treaty, *supra* note 16, art. 49.

19. *See* Bax Nomvete, FINANCIAL TIMES, Nov. 23, 1990, at 6.

20. PTA Treaty, *supra* note 16, art. 2(1).

21. *See Preferential Trade Area for Eastern and Southern States: The Objectives, Structure and Development Programmes* (n.d.) [hereinafter PTA Document].

22. *Id.* art. 29.

23. *Id.* art. 72.

24. *Id.* arts. 13, 29.

25. *Id.* art. 2(1).

26. Originally comprised of 200 items, the Common List now consists of at least 700 commodities.

Other key provisions include: the gradual reduction of customs duties and nontariff barriers between members;[27] the gradual evolution of a common external tariff with a view to the eventual establishment of a common market;[28] a clearinghouse[29] allowing short-term payments in national currencies; and a PTA Trade and Development Bank (Bank).[30] The Bank began issuing PTA traveler's checks in 1989. Further, the PTA established a Multiple Clearing Facility (Facility)[31] to offset the problems engendered by exchange controls and import licensing.

According to the original timetable, trade barriers were scheduled for elimination within the first ten years of the PTA, that is, by 1992. However, this time frame has been extended to the end of the century to combat some teething problems.

The PTA aims at reducing trade barriers and tariffs among member countries in accordance with a schedule.[32] More significantly, the Treaty also contains a variety of provisions on the rules of origin. In order to stimulate industrialization within member states, a rule addresses the ownership of business enterprises and requires that local ownership must exceed 50 percent before commodities in question are eligible for reduction in tariffs.[33]

Rules of origin initially required that products should come from companies under PTA management and equity control. Specifically, import content from outside the PTA should not exceed 60 percent, and local value added should be a minimum of 45 percent. These rules have been relaxed to cater for the peculiar situation that the PTA consists of countries at different levels of development.

The rules of origin adversely affected many manufactured exports of Kenya and Zimbabwe. These rules have proved burdensome for countries such as Kenya and Zimbabwe because foreign corporations are heavily involved in manufacturing in both countries. Thus, the PTA had to create a separate dispensation for Kenya and Zimbabwe as well as the four SACU members.

Plainly, the PTA will require substantial revisions to meet the new needs of the region as well as the new international economic environment. It will have to devise an ingenious game plan geared towards the inclusion of South Africa. To do so, clearly, it will have to overhaul beyond recognition some (if not all) of the protocols that hamper foreign investment. Because the PTA was to some degree a product of the Cold War and of southern Africa's polarization following the demise of that war and apartheid, the PTA will have to shift gears accordingly.

27. PTA Treaty, *supra* note 16, art. 13.

28. *Id.* art. 14.

29. *Id.* art. 22.

30. *Id.* art. 32.

31. The Facility is administered by the Reserve Bank of Zimbabwe. It provides for clearing arrangements and settlement of outstanding balances in U.S. dollars, every two months.

32. *See* PTA Document, *supra* note 21.

33. *Id.* at 7 *et seq.*

Failure to take these momentous changes into account could further hamper economic development in the region, as would failure to develop a legislative regimen that would ease foreign investment. With no Cold War, rivalries to exploit Africans now compete even more fiercely for western capital and technology. The PTA will have to reckon with this reality. Therefore, the PTA, if it is to be a vanguard of development in the region, will have to formulate strategies that give the region some comparative advantages over others.

II. Summary of Observations

The following observations summarize the foregoing regional organizations:

(1) SADCC, in contradistinction with SACU and the PTA, aims solely at coordinating production and improving infrastructure;
(2) SADCC, unlike the PTA and SACU, is not regulated by treaty;
(3) SACU seemingly is focused on harmonizing intra-SACU trade;
(4) SACU does not envision the formation of a common market, much less an economic community;
(5) SADCC, SACU, and the PTA have overlapping memberships and goals; SADCC and SACU membership is confined to the southern African region, whereas PTA membership includes some east and central African states in addition to the southern African region;
(6) The PTA envisions creation of an economic community, beginning progressively with a free trade zone;
(7) The inherent flaw in the PTA lies in the restrictions it imposes on foreign capital, whereas both SADCC and SACU have no such strictures; and
(8) because of the greater diversity of PTA membership, it has had to create a special dispensation for SACU members such as Zimbabwe and Kenya.

Given these underlying differences and similarities, none of these organizations, per se, provides the foundational framework necessary for a single regional organization. The welding of their positive elements, however, could result in a qualitatively superior regional integration. These considerations lead to the weighing of prospects for the formation of such a mammoth regional organization.

III. Future Scenarios

The following discussion is an attempt to posit some scenarios that could lead to the formation of a bigger and better regional organization in southern Africa. Such an organization would have to include South Africa; no southern African country can deny South Africa's participation on the pretext of apartheid since South Africa has virtually ceased being a pariah state in the eyes of the international community. Considering developments against this background, pundits correctly think that the end of apartheid will herald a new economic partnership in southern Africa. Apocalyptically, the world will probably witness the emergence of two major regional developments.

First, a two-bloc economic subgrouping in the region, one centered around SACU and the other around PTA or SADCC, may emerge. If this scenario were to materialize, the PTA or SADCC would shrivel. They would have to be content with permanently losing the BLS countries, Namibia, and possibly other members to SACU. Such an eventuality would significantly weaken intraregional trade and frustrate broader regional integration efforts. Either SADCC or PTA, stripped of SACU members, would be a mere shell. Consequently, they would in the long run have to dissolve and seek new partnerships. This threat that hovers over SADCC or PTA, or both, does not portend well for the exploration and enhancement of intraregional cooperation in southern Africa. Indeed, it behooves the leadership of the region to look for partnerships in which regional trade issues and tensions could be diffused. This scenario presupposes that the misconceived fear of South Africa's economic prowess by its neighbors will persist into the future.

Second, the farsighted leadership in southern Africa would naturally like to see the emergence of a totally new supranational organization following the demise of apartheid. Such an organization would have to be a hybrid creature—incorporating elements of SACU, SADCC, and the PTA. However, given the disparities in development among countries of the region, it would make much sense to start with a free trade zone with potential for development into a common market over time.

Many southern African states may be reluctant to enter into this kind of arrangement for fear of being dominated by South Africa. That kind of domination, however, is farfetched given South Africa's huge domestic problems.[34] Moreover, cooperation in the region in the sharing and exploitation of natural resources is already widespread. This development augurs well for future cooperation because it evinces greater interdependence in the region than some countries would care to admit. This extensive cooperation leads this author to conclude that there would be numerous benefits and synergies for all the participants that would flow from the amalgamation of existing regional organizations.

IV. Concluding Remarks

The forces of economic liberalization and the democratization of the political processes that are blowing through southern Africa, coupled with international trends that are geared toward the formation of regional trading blocks, strongly militate in favor of the formation of a single regional organization to spur economic growth in southern Africa. Much, though, depends on the vision of the

34. These include income disparities between racial groups, housing, education, capital flight, and brain drain.