

UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



Distr.
LIMITED



E / CN.14 / CA / ECOP / 12
10 November 1969

Original: ENGLISH

ECONOMIC COMMISSION FOR AFRICA

Sub-regional Meeting on
Economic Co-operation
in Central Africa

Kinshasa, 17-22 November 1969

INSTITUTIONAL ARRANGEMENTS FOR MULTINATIONAL DECISION MAKING IN THE CENTRAL AFRICAN SUB-REGION

M69-2819

(Rev. of M69-2522)

Introduction

In preparing this paper on institutional arrangements for multinational decision making, consideration has been given to some of these arrangements as relate to some multinational organizations and their background in so far as they concern economic integration. The position as indicated in the UDEAC and UEAC Treaties^{1/} is discussed in some detail; some views as to possible economic co-operation among all the member States of the two groupings is also discussed.

The economic implications of the economic co-operation proposed are of course, outside the ambit of this paper and are therefore treated in passing only.

General

In determining institutional arrangements for multinational decision making, a great deal would depend on the intention of the member States which is normally reflected in the scope of jurisdiction conferred on the multinational body that is created. Such jurisdiction ranges from mere consultative functions to the making of binding and enforceable decisions. On this point three factors emerge.

Usually, the wider and more vague the jurisdiction conferred upon the multinational body, the narrower the powers given to its institutions and, conversely, the narrower and more clearly defined the scope of its jurisdiction, the greater the powers conferred upon the multinational body. Where the ambit of the jurisdiction of the multinational body lies farther away from the center of the interests of member States, the greater the powers that States are willing to confer on the multinational body; on the other hand, the nearer the jurisdiction of the multinational body lies to the central interests of the member States, the greater the sacrifice

^{1/} UDEAC is a Customs Union, formed between Cameroon, CAR, Gabon, Congo Republic. UEAC is a Customs Union formed between Congo Democratic Republic and Chad. Both Chad and CAR, had been members of UDEAC on its establishment in December 1964. In April 1968, Chad and CAR left UDEAC and together with Congo Democratic Republic formed UEAC. CAR left UEAC in December 1968 and re-joined UDEAC.

that the States are called upon to make, if they will make it.

Secondly, the effective control that member States acquire in the governing organs of a multinational body is also of importance. Where member States have equal representation with a power of veto, they tend to be more generous in granting powers to a multinational body. Although an apprehensive State may reduce the multinational body to a state of incapacity by a constant use of its veto powers, the indignation of international public opinion restrains the hands of such a State.

Lastly, the greater the degree of intended integration, the greater the modifying effect on the factors discussed in the previous two paragraphs. The supranational institutions of the East African Community are an illustration of the ratio that the degree of desired integration bears to the powers conferred upon the organs of the multinational body involved.^{1/}

In the case of UDEAC, these three factors in varying degrees and in an interplay upon one another, have resulted in the grant of comparatively extensive powers to UDEAC, its Council of Heads of State, Directing Committee and Secretariat General in the specialized field of activities encompassed within the Treaty establishing UDEAC. As regards UEAC, the same considerations have resulted in fairly powerful Conference of Heads of States and a rather weak Council of Ministers, composed of Foreign Ministers and not Ministers responsible for trade or economic affairs, with little or no executive powers; no real responsibilities are imposed on its Executive Secretariat. The fact that UEAC is concerned not only, with economic integration but also, with co-operation in security matters, may well have influenced the decision making arrangements of UEAC.

^{1/} The East African Legislative Assembly legislates with full competency on a wide range of subjects for the East African countries. The East African Customs and Excise Department and the East African Income Tax Department which are autonomous departments of the East African Community and are staffed by servants of the East African Community, are free from national directions or interference; they implement East African Community Laws which have the force of law in each East African country. These East African Community Laws also confer on these departments discretionary powers and, modify in certain cases, the jurisdiction of the courts of the East African countries.

Decision making arrangements in multinational bodies exist in a variety of forms and make generalization difficult. However, some common features are to be found in most of the existing multinational institutions.

(a) Nearly all multinational bodies possess an organ on which all member States are represented and which in its decision making processes, functions broadly as a legislative body. Some of these organs perform legislative functions in the sense that they promulgate new rules of conduct among its member States which are binding on them as direct treaty obligations.^{1/} Some also by contrast, have legislative powers with respect to objects of international law such as individuals or corporations under the national jurisdiction of member States. The Council of the EEC can through binding directives, legislate for its member States with respect to tariffs, the activities of corporations and right of movement and establishment of persons under the national jurisdiction of its member States. The Directing Committee have similar legislative powers in respect of inter alia, customs and a basic Investment Code. It may also impose new Treaty rules by establishing a list of goods which shall be subject to a single tax upon transfer within UDEAC. The East African Central Assembly legislates for the East African countries on a much wider variety of subjects. This Assembly, unlike the other multinational legislative organs, has equal multiple representation, each representative having one vote, from the partner States and follows a system of parliamentary procedure not unlike the British parliamentary system. It is, however, without the backing of a political federation and is only a convenient and effective legislative body and a forum for public debate; it cannot through a motion of censure cause the resignation of the Authority of the East African Community, a power which the purely deliberative Assembly of the EEC possess in relation to the Commission of the EEC.

^{1/} For instance Article 4(5), Article 5(7), Article 7(3) and Article 13 (3) of the EFTA Convention.

(b) In most cases, the legislative organ of a multinational body is accompanied by a body functioning broadly as an executive.^{1/}

(c) Next, is the subordinate organ which is concerned with the administration and execution of the decisions of the multinational body and is usually known as the Secretariat and headed by a Secretary General. This new breed of international civil servants who staff such Secretariats are not infrequently given direct decision making powers.^{2/} In any case, views expressed by them may go a long way in influencing the decisions taken by the political executive organs of multinational bodies.^{3/}

^{1/} The Authority of the East African Community which is responsible for the direction and control of the executive functions of the East African Community, is composed of the three East African Heads of State. The Authority is assisted by Ministerial Councils and three East African Ministers. Each of these executive organs on which each East African country is equally represented, is far smaller in composition than the Assembly of the East African Community. The same does not apply in EFTA, UDEAC or UEAC where, generally speaking, the composition of their legislative organs remain unchanged for the purposes of decision making relating to executive functions. UDEAC and UEAC both have political executive organs subordinate to their supreme executive organs.

^{2/} The Commissioners-General of the East African Customs and Excise and Income Tax Departments of the East African Community have discretion in the waiver of levies imposed by the laws they apply and in the institution of criminal proceedings in relation to offences against such laws.

^{3/} For example, by virtue of Article 3 of the UDEAC Treaty, the Council of Heads of State may when taking executive decision, be assisted by experts. Article 12 of the same Treaty permits qualified persons who may be members of the Secretariat-General, to attend the decision making meetings of the Directing Committee in an advisory capacity. The Conference of Heads of State of UEAC are also assisted at their meetings by Ministers or Experts. See Article 4 of the UEAC Treaty.

(d) Often, advisory, specialized or study groups are created to assist in decision making.^{1/}

Decision Making Instruments in UDEAC and UEAC

Although supranational institutions have been erected for the Customs Unions of the EEC and the East African Community because of the political union bias motivating the establishment of the former and the long historically strong integration preceeding the establishment of the latter, in fact, the only organizational arrangements that need exist in a Customs Union relate to decision making (legislative and executive) and low administrative level in respect of uniform customs administration and the apportionment of customs revenue between the member States of the Customs Union.

However, in exploring the possible institutional structures that may be suitable for economic co-operation between UDEAC and UEAC, the attitude of the one group vis a vis the other must be taken into account. Another relevant fact is the tell-tale arrangements that exist in each group both of which, aim at the establishment of Customs Unions.

Legislative

In the legislative field, UDEAC establishes two organs. The Council of Heads of State and the Directing Committee. The presidency of each of these organs rotate among the member States including joining new member States. Article 9 of the UDEAC Treaty empowers the Council of Heads of

^{1/} Article 32(2) of the EFTA Convention empowers its Council to establish subordinate auxiliary organs to assist it in decision making. The Council has established a number of such auxiliary organs. The East African Tax Board established by Article 88 of the Treaty for East African Co-operation which is an advisory board, assist the East African countries in the correlation of taxes managed and collected by the individual countries and those managed and collected by the East African Community: the Tax Board also renders assistance to the East African countries in the field of fiscal planning. Technical groups or bodies may also be appointed by the UDEAC Directing Committee. UEAC relies heavily on technical committees; see Article 33 of the UEAC Treaty.

State or representatives vested with appropriate powers, to take unanimous decisions in matters relating to economic, customs and fiscal legislation. Such decisions which shall be taken on the authority of the Legislative Assemblies of the member States, shall according to Article 10 of the UDEAC Treaty, have the force of law in the member States a day after their publication in the official journal of UdeAC.

The Directing Committee which is composed of the Ministers of Finance and Economic Development or their representatives from each member State and which acts by way of delegated authority from the Council of Heads of State, is empowered to take decisions which must here again, be unanimous on a variety of technical matters i.e., a Customs Code, an Investment Code and Customs Laws and Regulations. Article 17 of the UDEAC Treaty provides an exhaustive list of such delegated matters. Like the decisions of the Council of Heads of State, any decision made by the Directing Committee is, the day after its publication in the official journal of UDEAC, to have the force of law in the member States.

Although Article 29 of the UDEAC Treaty provide that each member State shall separately adopt and maintain a common customs code, tariff and other related laws, the apparent contradiction that arises out of the power of the Directing Committee to make decisions which have the force of law in the member States on fiscal duties and customs code etc. merely implies a supplementary power on the part of the Directing Committee which after all, is the body most fitted for it, after a unanimous decision, to cause the amendment of existing relevant laws of the member States where this has been found to be necessary. These observations apply, mutatis mutandis to the legislative decisions of the Council of Heads of State.

On an examination of the matters on which decisions which have the force of law in the member States may be made, the following points emerge. Some of these matters are proper subject matters for legislation such as, a Customs Code, Customs laws and regulations and an investment code, whilst others like the harmonization of industrial plans or development and transport policies and a single tax are matters properly within executive decision making. Inasmuch as decisions on the latter group of subject

matters shall also have the force of law in the member States, they can be regarded as the results of the exercise of legislative power. However, in this paper such decisions whether they fall within the provisions of Articles 9 or 17 of the UDEAC Treaty are, so long as they properly relate to the exercise of executive functions, treated under the next heading Executive.

Applying this principle to the UEAC, its Conference of Heads of State has no direct legislative power though its decisions on the executive matters set out in Article 10.5 of the UEAC Treaty are to be enforceable within its member States.^{1/}

The Council of Ministers can, however, take enforceable decisions on such legislative matters as a Customs Code^{2/} and an Investment Code and, inasmuch as the Conference of Heads of State have supervisory control over the Council of Ministers, it may fairly be said that in this way, the Conference of Heads of State indirectly, have legislative power.

In both UDEAC and UEAC, transitional provisions exist which provide for legislative action in the sense that they lead to the promulgation of new rules of conduct for the member States as treaty obligations. For instance, under Articles 33 and 34 of the UEAC Treaty, proposals shall be made by specialized committees to the Conference of Heads of State on such matters as customs legislation, standardization of internal taxation, procedure on distribution of industries, establishment of an equalization and investment fund etc. These proposals, if accepted by the Conference of Heads of State, shall form an integral part of the UEAC Treaty. Article 32 of the UDEAC Treaty empowers the Directing Committee to settle the list of goods which shall be subject to the single tax; Article 33 empowers the Directing Committee to determine the method of payment of duties and charges to a consuming member State and Article 45 provides that the Directing

^{1/} UEAC Treaty Article 11.

^{2/} UEAC Treaty Article 19.

Committee shall prepare a draft Investment Basic Code for priority or special enterprises and that National Codes shall be amended to correspond with the draft Investment Basic Code.^{1/}

The Council of Ministers, except for the subjects of educational and cultural exchange, defence and security, have legislative powers on the same subjects as the Directing Committee. Like the Directing Committee, the Council of Ministers may invite experts to attend their meetings in an advisory capacity.^{2/}

In the legislative field therefore, the organs established by UDEAC and UEAC are neither dissimilar at their representational levels nor their competency in the field of economic integration. The unanimity rule that prevails over the decision making processes of the legislative organs, and for that matter, of the executive organs of UDEAC and UEAC, gives some protection to an apprehensive member State.

Executive

The Council of Heads of State is the supreme executive organ of UDEAC charged with the wide responsibility of attaining the objectives of UDEAC, and the direction and co-ordination of the economic and customs policies of the UDEAC member States. Its executive decision making powers are spelt out in Article 9 of the UDEAC Treaty. This Council shall, inter alia, decide on the headquarters of UDEAC, appoint its Secretary General, have authority over the Directing Committee, adopt the budget of UDEAC, decide on tariff negotiations with third countries and shall have final powers of decision in matters concerning which the Directing Committee has failed to reach a unanimous decision. The legal capacity of UDEAC to enter into contracts, acquire property, sue and be sued and borrow money etc., is exercised by the Council of Heads of State. This Council also decides, upon the recommendation of the Directing Committee, the payments that shall be made into the Joint Solidarity Fund and refunds therefrom to

^{1/}An Investment Basic Code has been established but not all National Codes have been amended to correspond with it.

^{2/} UEAC Treaty Article 13.

member States.^{1/} These important policy and final decision making powers in the context of UDEAC, are rightly vested where they are. Though these decisions are by Article 10 of the UDEAC Treaty clothed with the force of law in UDEAC member States, they are nonetheless, the results of executive decisions. The more detailed and technical matters concerning the common market arrangements are left to the more business-like Directing Committee. This Committee's executive decision making powers are firstly, contained in Articles 17 and 18 of the UDEAC Treaty whereby its decisions on a single tax, import tariff, fiscal duties and charges, tariff and statistical nomenclature, harmonization of internal fiscal system, industrial projects and development plans and projections etc., have the force of law in the member States. The Committee may also make recommendations and express views on these matters. Secondly, the Directing Committee's executive powers also range over the entire scope of UDEAC and appear here and there in the various other parts of the UDEAC Treaty.

The Directing Committee may be consulted as to changes in the rate of a complimentary import tax.^{2/} The Directing Committee shall draw up the list of goods which shall be subject to a single tax.^{3/} For the purpose of the efficient attribution of export duties on goods collected by the customs to the credit of the exporting member State, the Directing Committee shall determine the form of a certificate of origin and the manner in which it is to be used.^{4/} This Committee shall also establish the procedure for auditing the accounts of the joint customs offices of the member States and for the transfer from one member State to another of amounts collected by the customs.^{5/} To compensate for the errors in customs

^{1/} UDEAC Treaty Article 38.

^{2/} " " " 31.

^{3/} " " " 32.

^{4/} Ibid " " 35.

^{5/} " " " 36. Article 35 provides, inter alia, that the proceeds of duties etc., collected by the customs on imports into a member State shall be paid into the budget of the member State where such imports are declared to be destined for consumption. For this purpose member States are required to standardize relevant declaration forms.

declaration and advantages of the transit trade to coastal member States only, a Joint Solidarity Fund is established into which a percentage of import duties collected by the joint customs offices of the member States is to be paid and out of which Fund, refunds to member States are to be made. How much is to be paid into this Fund and how much is to be taken out of it and to which member State, is a decision of the Council of Heads of State but this Council must act upon the recommendations of the Directing Committee.^{1/} Finally, the Council is charged with the responsibility of deciding when the arrangements for the distribution of customs duties and charges on imports referred to in this paragraph shall enter into force.

Articles 40 and 41 of the UDEAC Treaty which provide for safeguards relating to the need to protect developing industries in a member State or to rectify adverse economic impact to a member State as a result of the operation of the Customs Union, permit the Directing Committee to authorize the imposition of quantitative restrictions by a member State or itself take or authorize a member State to take corrective measures.

For the purposes of harmonizing the domestic tax systems other than those levied by the customs authorities of the member States, the Directing Committee shall within three months after the coming into force of the UDEAC Treaty, examine the relevant tax systems and submit proposals to the Council of Heads of State who, in turn, shall issue binding directives for bringing the relevant laws and regulation into harmony.^{2/} The Directing Committee in examining the tax systems, shall have regard to the encouragement of the establishment and operation of similar fiscal conditions in the member States in particular, those relating to tax on industrial and commercial profits, domestic turnover tax and tax on income from transferable securities.^{3/}

^{1/} UDEAC Treaty Article 38. It does not appear that there is to be any fiscal compensation for the differences in the wider benefits which may be derived from the Customs Union by the various member States.

^{2/} UDEAC Treaty Article 42.

^{3/} " " " 43.

The provisions of Articles 47 to 58 of the UDEAC Treaty are of great significance inasmuch as they lay down the framework for harmonizing development plans and transport policy and for co-ordinating the distribution of industry. Member States are to make detail information on these matters available to the Secretariat General who shall cause a study of them to be made and which shall include anomalies observed and proposals for correcting them for transmission to the Directing Committee and the Council of Heads of State. The Directing Committee shall give its opinion on the study to the Council which will decide on what action should be taken.

Industrial projects are divided into five categories:

- (a) export industries;
- (b) industries serving the market of only one member State and for which no economic privileges are sought in other member States;
- (c) industrial projects serving only one market but which will affect the interest of an established or contemplated industry in another member State;
- (d) industrial projects for which the market is limited to two member States and for which bilateral arrangements are sought; and
- (e) industrial projects concerning more than two member States and for which harmonization at UDEAC level is sought.

Industries within categories (e) and (b) may be established within a member State without reference to UDEAC, but industries within category (b) may not market their products in other member States without the permission of the Directing Committee. Member States shall send to the Secretariat General an inventory and related information of their industries that fall within categories (a) and (b). The Directing Committee may cause an exchange of views on the position revealed.^{1/} In the case of industrial projects which have not been harmonized, other member States which consider their interests impaired may subject to the approval of the Directing Committee, either prohibit the importation of the products concerned or impose a fiscal charge.^{2/} In respect of industrial projects falling within category (d), the participating member States shall submit a joint report to the other member States through

^{1/} UDEAC Treaty Article 52.

^{2/} " " " 58.

the Secretariat General and in respect of industrial projects falling within categories (c) and (e), the member State concerned shall report thereon to the other member States through the Secretariat General. In each case, the Secretariat General may be requested by a member State to cause a study to be made of the project bearing in mind the harmonization objectives set out in Article 47 of the UDEAC Treaty. The study shall be undertaken by experts or bodies approved by the Directing Committee and shall be transmitted to all member States.^{1/} A member State may register its disapproval to the project concerned thereupon, it shall be referred to the Directing Committee which shall decide what single tax rate if any, should be applied to the project and if the project falls within category (e), what Investment Code régime should be applied. In respect of industrial projects falling within category (e), the Directing Committee has a further significant responsibility when making its decision. Article 56 of the UDEAC Treaty provides that its decision must be based on (i) the localization of raw materials; (ii) the volume of investment already realized in the various member States and the advantages which each member State offers by this fact to the other member States; and (iii) the desirability of compensating the position of the less economically developed member States. Though it is not quite clear how this is to be done, it is nonetheless an important and interesting responsibility vested in the Directing Committee. Under Article 57 of the UDEAC Treaty, the Secretariat General shall after consultation with the Ministers responsible for planning in the member States, prepare a plan for industrialization within UDEAC of industrial projects within category (e). This plan is to be approved by the Council of Heads of State on the advice of the Directing Committee. This is to be accomplished within a year after the entry of force of the UDEAC Treaty. Lastly, in relation to industrial projects falling within category (e), a single tax is to be established by the Directing Committee on the products of such industrial projects. The revenue from this tax is to be distributed according to the member State in which the products are consumed.

^{1/} UDEAC Treaty Article 53.

The foregoing clearly illustrates the important role played by the Directing Committee in the affairs of UDEAC in relation to the distribution of import and export duties, the operation of safeguard clauses, the harmonization of domestic tax systems, the co-ordination of development and industrial plans and the imposition of the single tax system. All these are subjects which vitally affect the effective operation of the Customs Union and have been well placed in the hands of the ubiquitous Directing Committee.

The Secretariat General is not merely an administrative organ of UDEAC, there are instances where it is itself involved in decision making processes or influences the decision making processes of the Directing Committee. It has already been indicated how it is the responsibility of the Secretariat General, to make an overall study of the development plans of the member States bringing out departures from the principles of harmonization stated in Article 47 of the UDEAC Treaty and to suggest proposals for their correction,^{1/} to prepare an industrialization plan for UDEAC in conformity with the principles of Articles 47 aforesaid,^{2/} and when so requested by a member State, for the Secretary General to cause to be made a study of industrial projects within categories (c), (d) and (e) in the light of the harmonization objectives set forth in Article 47 of the UDEAC Treaty.^{3/}

In the discharge of its responsibilities, the Secretariat General shall be assisted by experts or research bodies approved by the Directing Committee.^{4/} Such experts or bodies may also assist the Council of Heads of State or the Directing Committee.^{5/}

Like the Council of Heads of State, the Conference of Heads of State is the supreme organ for the achievement of the objectives including the economic integration objectives, laid down in the UEAC Treaty. The Conference of Heads of State shall guide and co-ordinate the general economic, trade, customs transport and telecommunications policies of the UEAC member States. It shall, like the Council of Heads of State, have decision making powers over the work of the Council of Ministers, the location of the

<u>1/</u>	UDEAC	Treaty Article 49.
<u>2/</u>	"	" " 57.
<u>3/</u>	"	" " 53.
<u>4/</u>	"	" Articles 49 and 53.
<u>5/</u>	"	" " 3 and 12.

headquarters of UEAC, the appointment of the Secretary General and his deputy, the budget of UEAC, tariff negotiations with third countries, unresolved questions before the Council of Ministers and disputes between the UEAC member States etc. These strictly speaking executive decisions are to have the force of law in the UEAC member States. These provisions of the UEAC Treaty relating to economic integration, are really no different from the corresponding provisions of the UDEAC Treaty.

In UDEAC, the Directing Committee as has been already indicated, is the principal executive instrument for economic integration and is itself, also involved in a variety of important executive decisions. In the case of the Council of Ministers, such powers as are conferred are general wide powers in one Article^{1/} to make unanimous enforceable decisions or mere recommendations on the distribution of industries, a customs code, customs and fiscal tariff, harmonization of internal taxes, tax on union products and the harmonization of development and transport. Article 26 of the UEAC Treaty which deals with customs and economic co-operation, abolishes internal tariff within UEAC, proposes the standardization of domestic taxation, the adoption of a basic Investment Code bearing in mind the disadvantageous position of landlocked member States, the standardization of development plans bearing in mind the stage of development of member States, the harmonization of external customs tariff, the adoption of a common policy in the field of transport, the institution of taxation to encourage the consumption of goods produced in the member States, the adoption of procedures to facilitate trade between the member States and the establishment of an Investment Bank and an equalization and investment fund not unlike the solidarity fund of UDEAC. Article 26 declares these as the means whereby UEAC would achieve its objectives. All these objectives are by necessary inference to be achieved under the general powers of the Conference of Heads of State and those conferred upon the Council of Ministers. Article 33 also provides for the establishment of special technical committees to make proposals on customs and economic co-operation

^{1/} UEAC Treaty Article 18.

which when accepted by the Conference of Heads of State, shall form part of the Treaty. However, the general principles of economic integration, apart from the Investment Bank, indicated in the UEAC Treaty, are similar to those enunciated in the UDEAC Treaty except that in the latter, more detailed provisions as to how and by whom these principles are to be implemented and realized are provided for.

The Executive Secretariat of UEAC is established obviously to assist in the carrying out of the implementation measures of UEAC but their duties, apart from the receipt of documents from member States and their dissemination to member States,^{1/} are not spelt out as they have been in relation to the Secretariat General of UDEAC; it is thus, difficult to assess what decision making role it plays in the affairs of UEAC but, like most Secretariats of international organizations, it is bound to play some role, if only in the preparation of working papers, and in influencing the making of decisions by the Conference of Heads of State and the Council of Ministers.

The UEAC Treaty, however, relies heavily on ad hoc specialized agencies as a transition provision only, to submit for the consideration of the Conference of Heads of State proposals for customs legislation, distribution of customs revenue, standard internal taxation, distribution of industry, development and transport policies, an equalization and investment fund, infrastructural transport services and the free movement of labour, goods and capital.^{2/}

Administrative

The Secretariat General of UDEAC is provided by the Secretary General of UDEAC assisted by administrative staff. The Secretary General who shall be appointed by the Council of Heads of State, is under the direct authority of the President for the time being, of the Council of Heads of State. The Secretariat General comprises two divisions namely, one dealing with foreign trade, taxation, statistics and documentation and another dealing with development and industrialization. Other divisions may

^{1/} UEAC Treaty Article 32.

^{2/} " " " 33.

also be established as required by the Council of Heads of State.^{1/} The Council of Heads of State is thus enabled to start with a manageable Secretariat General and to expand it only as and when a real need arises. The administrative duties of the international staff of the Secretariat General are concerned with the receipt of laws, development and industrial plans of the member States, their study and transmission to member States, the compilation and study of economic and fiscal documents and statistics and other administrative duties that are implicit in the operations of such a body as UDEAC. The UDEAC Treaty as is to be expected, does not itself say much about the administrative duties of the Secretariat General; it does, however, stipulate that the staff of the Secretariat General shall not be influenced by any member State or other bodies and shall refrain from any attitude which might reflect on their independent position as international officials. The Executive Secretariat of UEAC has an Executive Secretary and a deputy. No departments are established though the Conference of Heads of State may by virtue of Article 10 (5), establish joint bodies and services. It is only in the transitional provisions that any responsibility is vested in the Executive Secretary and that is to act as a post box for the dissemination of customs and economic documents received from a member State to the other member States. There is merit in not establishing at the onset of a multinational body an elaborate administrative service with a heavy work load, but the absence of an administration with clear responsibilities, is of doubtful value. The staff of the Executive Secretariat, as international civil servants, are not to be influenced by member States or other bodies.

Judiciary

Article 9 (iii) of the UDEAC Treaty empowers the Council of Heads of State to arbitrate on any disputes that arise between the member States of UDEAC concerning the implementation of the UDEAC Treaty. Article 10.6 of the UEAC Treaty gives similar powers to the Conference of Heads of State. The independent Common Market Tribunal of the East African Community or the European Court of Justice of the EEC have no counterpart within UDEAC or UEAC.

^{1/} UDEAC Treaty Article 20.

Attention should also be drawn again to the powers which the Council of Heads of State and the Conference of Heads of State each have as the final arbiter on all matters concerning which the Directing Committee and the Council of Ministers have respectively failed to reach a unanimous agreement.

Possible co-operation between UDEAC and UEAC

Both UDEAC and UEAC are, subject to the unanimous consent of the member States, open to any independent African State requesting admission. Both Customs Unions strive after the same economic objectives and their related institutional arrangements are not dissimilar to each other. The ideal proposal would be the assimilation of one group within the other. Considering the existing decision making arrangements already analysed, UDEAC seems to possess more effective decision making bodies than UEAC.

However, there are aspects of UDEAC which from a study of its Treaty might pose problems for UEAC member States if they were to become members of UDEAC. The role which the national assemblies of UDEAC member States play in the legislative decisions of UDEAC has no place in UEAC. The single tax régime and the Basic Investment Code of UDEAC might have to be re-negotiated in the light of the great potential of Congo (Democratic Republic) as a comparatively large producer of valuable raw material and consumer goods. In fact, what would actually emerge, would be a new Customs Union Treaty between the two Customs Unions and replacing the UDEAC and UEAC Treaties in so far as their economic provisions are concerned.

An economic association between two or more countries may, already indicated, range from the loosest type of form of mutual arrangements to the most intimate union. The establishment of a preferential area in the Central African sub-region is therefore the least far-reaching of these forms of economic association. Its object may be to grant to the members of the preferential area more favourable tariff treatment than that granted to third countries. In such a scheme, all tariff is not necessarily abolished between the members; mutual tariffs are lower than those tariffs applied to imports from other countries. This arrangement may also include co-operation on specific areas.

Thus, a method of partial integration may be obtained by the establishment of a technical free trade area in which the relevant rules of GATT are observed but the primary objective of which is to establish and maintain preferential tariffs. This had been the original motive for the establishment of LAFTA but even there, it was soon realized that trading activities alone without co-operation in economic, fiscal and development planning at the multinational level was not very fruitful.

In spite of the acceptance of inter-dependence as a desirable and inevitable feature of international economic life, sovereignty still remains an important factor influencing the decisions of States, even though the real question involves the wise use of such sovereignty by a State in choosing with whom, under what conditions, and to what extent, to exercise inter-dependence.

From this point of view, a realistic free trade area leaving the existing Customs Unions more or less intact seems to postulate greater latitude of choice in the nature and extent of inter-dependence between the Central African States in their consideration of meaningful economic co-operation in the sub-region. It would also seem to provide a more acceptable framework for economic co-operation in the present circumstances of the Central African sub-region.

There is also this factor that meaningful co-operation in one field and in a form which may be easier to accept now, may well lead to increased co-operation in other fields. The fact that both UDEAC and UEAC in each case, are separately pursuing similar programmes of trade liberalization and also the fact that all these countries are associated members of EEC will not only facilitate economic co-operation between them but may actually encourage the countries to find ways in which they can have greater economic integration.

It must, however, be pointed out that in a free trade area, realistic liberalization of trade is not achieved only through minimal arrangements outside purely trade matters and without some form of economic harmonization and integration of national development plans. Moreover, in a free trade area, questions involving the "rules of origin" and "deflections of trade" present their own peculiar problem.

There are also other problems which arise under free trade arrangements. The dismantling of existing trade barriers and other economic restrictions, which is necessary in the creation of a free trade area, will require some adjustments in the pattern of marketing, shift of investment and conditions of trade. Consequently, in order to mitigate this difficulty a period of transition may be provided for in the treaties establishing the association.

Institutions

Whichever of the methods of economic co-operation is accepted as desirable, it would be necessary to provide it with some effective institutional arrangements. The nature of such arrangements would naturally depend on the form of co-operation that is favoured and its intensity.

It has already been indicated that in both UDEAC and UEAC tariff negotiations with third countries fall within the province of their supreme executive bodies and it would therefore seem that where co-operation takes the form of mutual tariff preferences, their negotiation and supervision should be entrusted to these supreme executive bodies assisted by their subordinate organs.

Mutual tariff preferences can exist side by side with co-operation in selected economic fields and the institutional arrangements for such co-operation would have to be related to the fields selected and the depth of co-operation envisaged.

In this regard, ad hoc joint bodies of the Central African countries rather than of UDEAC and UEAC - for the Treaties establishing the two Customs Unions do not appear to provide, apart from tariffs questions, for association with other countries on a selective basis - charged with implementation relating to the selected fields of co-operation and under the supervisory powers of the Central African Heads of State, should be feasible.

How much independent power of decision making should be vested in such joint bodies would depend on the nature of the fields selected for co-operation and the extent to which the countries are prepared to divest themselves of control.

Prior to the absorption of the East African Airways Corporation within the East African Community arrangements, this airline, as an ad hoc sector of East African Co-operation, acted quite independently of the East African Governments although they were represented on the board of the airline, in the discharge of its functions in the competitive international airline business.

The more global the scope of economic co-operation envisaged, the greater the need for an effective multinational organ. Thus a free trade area arrangement which transcends mere preferential tariff arrangements and selected fields of economic co-operation, would require for its satisfactory operation a business like Council of Ministers concerned with trade or development with the power to supervise effectively the operation of the free trade area, to modify its rules and to establish subordinate committees to assist it in its work. An independent free trade area tribunal may be required to settle disputes; also, an effective though not necessarily large secretariat to prepare studies, service the Council of Ministers and draw attention to activities that derogate from the principles of the free trade area would be essential. The Heads of State of the countries involved in such a free trade area may supervise the work of the Council of Ministers and would negotiate with other States seeking association with the free trade area. The same institutional arrangements would, suitably modified, apply to a Customs Union arrangement.

Exception and escape clause

All multinational arrangements provide for exception and escape clause. This is clearly desirable as the facts of economic life have proved, and especially so, in multinational arrangements for economic integration, that even though a rule may be desirable and proper in relation to the majority of cases sought to be regulated, there would still be cases which cannot be subjected to an accepted general rule.

Exceptions either on security grounds which usually apply over the whole range of the provisions of a multinational arrangement and which can be invoked unilaterally, or relating to quantitative restrictions for the purpose of protecting human and animal life, public

morals, historic or artistic treasures, precious metals and agricultural products, etc., exist in EFTA, GATT, EEC and the East African Community.

The treaties establishing these economic communities also provide for escape clauses whereby a member State may depart from the rules of the Treaty on the grounds of balance of payments difficulties and difficulties in particular sectors. Unlike the exception clauses, the scope of which are clearly defined, escape clauses function as a safety valve and are employed only in cases of extraordinary pressure in relation to the very principles enshrined in the Treaty. The remedial nature of escape clauses means that they cannot be used unilaterally and are usually accompanied by consultations, recommendations, submission of reports and other rules provided for the implementation of escape clauses. An executive arm of the multinational community usually supervises and sometimes controls the use of escape clauses by member States.

Whilst the UEAC Treaty is silent on all matters dealing with the problems of free trade area, UDEAC as has been already indicated, provides for a certificate of origin of goods and escape clauses for the purposes of a member State protecting its development or industrialization or counter-acting serious disturbances in sectors of its economy. The application of the escape clauses are subject to the supervision of the Directing Committee of UDEAC.

Special treatment of the less developed member States

In both UDEAC and UEAC, provision is made to give special treatment to the less economically developed areas of the two groups. Whilst these arrangements would continue to operate in the context of the arrangements establishing these two groups, consideration would have to be given to the less developed member States in any new sub-regional economic co-operation arrangements. Apart from the device of providing for a slower time-table for the elimination of tariffs, quantitative restrictions and other methods of protecting industries for the less developed member State, other methods such as the increase of international liquidity of the member State concerned, the imposition of export control by it in the event of shortage of raw materials produced by it and needed

by its own industries, the imposition by it of taxes on products originating from the other member States, etc., would require consideration. This does not exclude from consideration the introduction of some system such as those provided in the UDEAC and UEAC Treaties to deal with the position of the land-locked and less developed member States. However, whatever equalizing methods that may be formulated must come under the supervision and review of whatever central body that may be established under the new economic co-operation arrangement.

In UDEAC, the equalization methods implicit in the temporary rights of member States to impose a "complementary import tax" to meet the differing budgetary needs of the member States and the operation of the Solidarity Fund which appears to be intended merely to compensate for errors in declarations and for the advantages of the transit trade and not intended to provide by way of fiscal compensation for any difference in the wider benefits that may accrue from the Customs Union to the different member States do not seem to have provided a satisfactory panacea for the re-distribution of revenue from customs tariffs problems of its less developed member States. The important provisions of the UDEAC Treaty already discussed and relating to the harmonization of development plans, the co-ordination of the distribution of industries within the agreed framework laid down in the UDEAC Treaty, and the right of a member State to restrict by taxes or quantitative restriction the import of products of other member States which have not been harmonized within UDEAC or placed under the régime of the taxe unique are important provisions which even though their full effect cannot now be fully assessed, nevertheless deserve consideration and possible modification as possible factors in the context of any new economic integration arrangements.

In the East African Community arrangements, the attempt is made to tackle the problem of unequal benefits derived from its common market by the collection of and direct payment by its unified customs service of customs duties, subject to certain deductions to meet the cost of running that service, to the partner State where the goods concerned are consumed. The customs service is also obliged to send to the

Ministers of Finance of the Partner States trade statistics. The temporary transfer tax system whereby a Partner State in overall trade deficit with the other Partner States in manufactured East African goods may impose a transfer tax on manufactured imports from the other Partner States provided that the Partner State imposing the transfer tax produces or is about to produce similar goods to the extent of 15 per cent of its domestic consumption or of a total value of about 100,000, is another equalization device although it derogates from the principles of free trade. The maximum transfer tax that may be imposed shall not exceed 50 per cent of the external duty applicable to the goods concerned. Any transfer tax imposed shall lapse after eight years and all transfer taxes shall lapse fifteen years after the imposition of the first transfer tax. Transfer tax is collected by the unified customs service and paid to the Partner State imposing it less the cost of collection.

An autonomous East African Development Bank is established to which each Partner State makes equal contribution but which shall devote more of its resources to the less developed Partner States.

Conclusion

Even though the UDEAC Treaty is more comprehensive than the UEAC Treaty, neither of them include all the detail rules and provisions that have come to be commonplace with treaties establishing Customs Unions. These details are left to be settled in the one case, by the Directing Committee and in the other, by the Council of Ministers and specialized technical committees. If any lesson is to be derived from this, it is that simplicity in integration structure coupled with wide potential executive powers to make enforceable decisions is the common concept in multinational decision making arrangements in the Central African sub-region. This same concept may be usefully applied when considering the structure, functions and powers of the decision making organs of any agreed form of economic co-operation in the Central African sub-region.

It must also be pointed out that a great deal is not known about the actual implementation of the very recent UEAC Treaty and the difficulties which its comparatively bare provisions may have generated. The impact of UDEAC which has existed for a much longer period is also shrouded in some uncertainty. The proposals for co-operation between the two customs unions are therefore at this stage clearly theoretical and derived mainly from the impersonal text of their relevant treaties and the common legal concepts if such rigid rules do exist, that have come to be applied to international economic integration.

And finally, once a decision is made on the form of economic co-operation which the countries in the sub-region wish to establish, the Executive Secretary of the Economic Commission for Africa will do its utmost to provide the countries with the necessary technical assistance in order to give effect to the decisions of these member States. In this endeavour, the Executive Secretary will not only mobilize resources of the Economic Commission for Africa, but, if necessary, will make efforts to enlist the assistance of the international community.

- - - - -