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DRAFT CHARTER OF MULTINATIONAL INDUSTRIAL  
ENTERPRISES

1. This paper is not itself a Draft Charter of Multinational Industrial Enterprises since it would be premature to prepare one at this stage without knowing the specific multinational industries involved and the Member States of the PTA that are prepared to undertake such schemes. Further, such Member States should also first determine the kind of role they would like to play with respect to the control of the activities of a given multinational industrial enterprises.

2. The paper will content itself with making proposals based on African precedents concerning the type of legal framework that may be suitable for the multinational industries concerned.

3. First of all, two or more Member States of the PTA should agree upon the establishment of a joint enterprise and define its purpose. For this a master agreement setting this out in detail including the equity share of the Member States would have to be spelt out. It is possible that apart from the Member States of the PTA other States or entities may be permitted to take up shares in the multinational joint enterprise. There are examples of such co-existence in Africa. This is the case with respect to Air Afrique which apart from its African States shareholders, has other shareholders consisting of French business interests such as the Societe pour le developpement du transport aeriennes en Afrique and the Union des Transport Aeriennes. Kenya, Tanzania, Uganda, Zambia and the Southern Line Ltd., a shipping line, were partners in the erstwhile Eastern African Shipping Line. On 7 May 1982, membership of the African Development Bank became open to non-African States. Apart from Kenya, Uganda and Tanzania, the other members of the East African Development Bank are business enterprises.

4. The master agreement will set out the desire of the Member States of the PTA concerned to establish the particular multinational industrial enterprise concerned, its objectives, where it is to operate and the principles of its operations, its membership and other matters of principle. For instance, the Treaty establishing a Regional Cement Complex in West Africa between Ghana, Ivory Coast and Togo contains provisions whereby the contracting parties are to acquire the land for the purpose of the Complex, install and provide necessary infrastructure, facilitate the importation of raw materials and equipment etc., and the entry of skilled employees of the Complex and grant duty-free importation of the furniture, personal effects and vehicles to certain employees of the Complex. Such master agreements include the Treaty for East African Corporation with respect to the establishment of such defunct enterprises as the East African Harbours Corporations and the 1980 Treaty of the East African Development Bank which kept that Bank alive after the collapse of the East African Community

5. The details as to the management and operations of the enterprise are usually left to subsidiary multilateral agreements which are binding on the Member States of the enterprise involved, or to the company law applicable in the country where the enterprise is to have its principal place of business or branches. In the case of the East African Development Bank, such details can be found in the Charter annexed to the 1980 Treaty, thus making the Charter part of the municipal law of the contracting parties, similarly such details with respect of the East African Railways Corporation could be found in the subsidiary East African Railways Corporation Act which was enacted as legislation of the Partner States of the East African Community. In the case of the Cement Complex, its Treaty provides that the Company shall be governed by the Treaty, by the Statutes and by the law of the country of its registered office to the extent not covered by the Treaty or the Statutes. The Statutes which set out in detail the management and operational rules of the Cement Complex, are annexed to the Treaty. With respect to the Eastern African Shipping Line, these question were regulated under the Company law of Tanzania where its registered office was located. Under the proposed arrangements concerning the operation of ECOWAS multinational enterprises within the framework of ECOWAS, the special incentives to be granted to ECOWAS enterprises and their qualifications for such incentives are to be regulated by a multilateral treaty to be entered into between the Member States of ECOWAS whilst the establishment and operations of such enterprises are to be regulated by the Company Law of Member State where they are registered. The general rule is that detailed regulations concerning the management and operations of multinational enterprises are governed by the municipal law of the country where it is registered either by way of accepted treaty obligations as in the case of the Corporations of the East African Community or by the national company law.

6. Whether a multinational industrial enterprise should have subsidiaries or not is a matter which would be stipulated in its objectives, and the details concerning its operations. Once this is done, subsidiaries in which the Member States of the PTA concerned have such equity shares as they wish with corresponding controlling powers, can be established. Here again the establishment can be achieved either by way of multinational agreements or under the prevailing company law of the Member State of the PTA where the subsidiary may have its place of business.

7. In conclusion, the decision based on a technical study to establish a multinational industrial enterprise including its scope, objectives, membership and similar matters of fundamental importance would first have to be taken before a charter of such an enterprise can be drafted.