FROM COLONIALISM TO REGIONALISM: THE YAOUNDÉ CONVENTIONS (1963–1974)

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Abstract How was 'international trade' between former European empires and their former colonies in Africa governed after decolonisation? In the 1960s, the vast majority of African countries became independent, and so a new arrangement was necessary to govern their economic relations with Europe. The Yaoundé Conventions were then concluded between the European Community (EC) and the bloc of postcolonial African countries. Specialised literature provides comprehensive accounts of the Yaoundé Conventions. However, little is known about the role of law and lawyers in their making and governance. Part of this story concerns political and intellectual struggles in the legal profession about which projects, ideas, and norms would be applicable. Another part concerns the work of lawyers to organise those policies, theories and visions into an emerging conception and to employ it to influence the production and management of the Yaoundé Conventions. This article combines historical and socio-legal approaches to show that a distinct legal conception of regional trade agreements—called here the 'development framework'—was pivotal to the design and application of the Yaoundé Conventions. This conception was primarily advanced and persuasively used by European and African lawyers. This contrasts with the conventional view that trade agreements are variations on a single legal concept. It is concluded that EC–Africa regionalism was a singular experiment, due significantly to the unique features of this legal conception.

Keywords: public international law, regional trade agreements, EU trade and development policy, neo-imperialism, Yaoundé Conventions, GATT, UNCTAD, EU–Africa regionalism, international trade law.

I. INTRODUCTION

Three years after leading the Republic of Cameroon to its independence, in its capital city, Yaoundé, President Ahmadou Ahidjo chaired a landmark event. On 20 July 1963, following two years of negotiations, the six members of the European Community (EC)[1] and the eighteen members of the Association of

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[1] The term 'EEC' (European Economic Community) is only used when emphasising the historical dimension (pre-Maastricht era) or the legal basis.

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African and Malagasy States (AAMS) signed the first international trade agreement between former European empires and their former African colonies. Walter Hallstein, the first President of the EEC Commission, celebrated the signing as 'a historic milestone in the long evolution of relations between industrialised and developing nations', which, he noted, are equal before the law, regardless of their economic power.[2] He affirmed that the new convention not only reflected a substantial improvement in comparison to the previous association but also reflected a fair balance between European and African goals: the continuation of close economic relations based on preferential trade and development aid.

The above event poses an important question: how was 'international trade' between former European empires and their former African colonies legally governed after decolonisation? After the vast majority of African countries became independent in the 1960s, new legal arrangements were regarded as necessary to regulate their trade relations with European countries. While former British colonies became members of the British Commonwealth, the former French and Belgian colonies concluded international treaties with the European Community (EC), the Yaoundé Conventions.[3]

Mainstream scholarship provides comprehensive and useful accounts and explanations of the evolution and significance of EC–Africa trade affairs in the second half of the twentieth century. Economics literature focuses primarily on the impact of EC–Africa regional trade agreements (RTAs) on international and regional trade and welfare.[4] Literature in political economy and postcolonial studies mainly investigates whether those RTAs served as instruments to sustain the dominance of Europe over Africa.[5] Literature on European integration typically explores the contribution of those RTAs to the

[2] Anonymous, 'La convention de Yaoundé exprime un juste équilibre entre les objectifs européens et africains, déclare M. Hallstein' *Le Monde* (22 July 1963), <www.lemonde.fr/archives/article/1963/07/22/la-convention-de-yaounde-exprime-un-juste-equilibre-entre-les-objectifs-europeens-et-africains-declare-m-hallstein_2207846_1819218.html>.

[3] Convention of Association between European Economic Community and the African and Malagasy States associated with that Community (signed 20 July 1963, entered into force 1 June 1964) OJ 1964 P 93/1430 (Yaoundé I); Convention of Association between European Economic Community and the African and Malagasy States associated with that Community (signed 29 July 1969, entered into force 1 January 1971) OJ 1970 L 282/2 (Yaoundé II).

[4] CA Cosgrove, 'Has the Lomé Convention Failed ACP Trade?' (1994) 48 JIA 223–49; M Sissoko *et al*, 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade' (1998) 1 AEBR 6–24; A Milward, *Politics and Economics in the History of the European Union* (Routledge 2005); W Ethier, 'The New Regionalism' (1998) 108 EJ 1149–61.

[5] I Montana, 'The Lomé Convention from Inception to the Dynamics of the Post-Cold War, 1957–1990s' (2003) 2 AAS 63–97; M Lister, *The European Union and the South: Relations with Developing Countries* (Routledge 1997); J Ravenhill, *Collective Clientelism: The Lomé Conventions and North–South Relations* (Columbia University Press 1985); W Zartman, *The Politics of Trade Negotiations between Africa and the European Economic Community: The Weak Confront the Strong* (Princeton University Press 1971); A Zack-Williams, 'Neo-imperialism and African Development' (2013) 40 RAPE 179–84.

EC's trade and development policy.[6] Finally, international legal literature predominantly examines the consistency of those RTAs with the rules of the General Agreement on Tariffs and Trade (GATT).[7]

This vast literature demonstrates not only that EC–Africa regionalism is a multidimensional phenomenon but also that its history is central to understanding today's governance of trade between Europe and Africa. Nonetheless, recent scholarship offers new insights for our understanding of both trade agreements and international law, exposing some gaps and limitations in how scholars have traditionally approached EC–Africa RTAs. First, economics literature shows that RTAs have been treated rather simplistically as a binary variable (being either there or not there), overlooking the significance of their content and form on international trade.[8] Secondly, political economy literature shows that political and intellectual attitudes, professional socialisation, and expert knowledge shape the construction and operation of RTAs by delimiting the range of what concepts, policies and institutions can, or should, be used.[9] It draws attention to the context-specific processes of generating, validating, disseminating, and legitimating conceptions for describing, understanding and designing RTAs.

Finally, legal literature shows that the relative influence of law over RTAs is sustained not only by the formalisation and enforcement, but also by the position of the legal profession within global governance.[10] This approach highlights the background work of lawyers in shaping multilateral and regional trade regimes.

Taken together, developments in each of these expert areas suggest that the understanding of EC–Africa regionalism can be complemented and augmented by offering a historical account of the role of law and lawyers in the making and operation of the Yaoundé Conventions. Part of this story concerns political and intellectual struggles in the legal profession about which projects, ideas, and norms can be validly and legitimately applied to RTAs. Another part

[6] M Lister, *The European Economic Community and the Developing World: The Role of the Lomé Convention* (Avebury 1988); L Bartels, 'The Trade and Development Policy of the European Union' (2007) 18 EJIL 715–756; M Holland, *The European Union and the Third World* (Palgrave 2002); M Doidge and M Holland, 'A Chronology of European Union Development Policy: Theory and Change' (2014) 17 KRIS 59–80.

[7] D Carreau *et al.*, *Droit International Économique* (Librairie Générale De Droit Et De Jurisprudence 1980); D Nguyen Quoc *et al.*, *Direito Internacional Público* (Fundação Calouste Gulbenkian 1999); M Matsushita *et al.*, *The World Trade Organization: Law, Practice, and Policy* (Oxford University Press 2015); J Gathii, *African Regional Trade Agreements as Legal Regimes* (Cambridge University Press 2011).

[8] S Baier *et al.*, 'Economic Integration Agreements and the Margins of International Trade' (2014) 93 JIE 339–350; T Kohl, 'Do We Really Know That Trade Agreements Increase Trade?' (2014) 150 RWE 443–469.

[9] F Söderbaum, *The Political Economy of Regionalism: The Case of Southern Africa* (Palgrave Macmillan 2004).

[10] A Lang and J Scott, 'The Hidden World of WTO Governance' (2009) 20 EJIL 575–614; DW Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press 2016).

concerns the work of lawyers to organise those policies, theories and visions into a novel conception and to employ it to structure negotiations and production of the Yaoundé Conventions, while ensuring the influence of international law in and over EC–Africa trade governance.

This historical account shows that a distinct legal conception—called here the 'development framework'—was pivotal to the making and the application of the Yaoundé Conventions. This conception was produced and used by European and African lawyers from the 1950s to the 1980s. This finding contrasts with the conventional view that RTAs are variations on a universal concept. It is concluded that the legal origins and governance of EC–Africa regionalism were a unique experiment in the development and operationalisation of a new conception underlying EC–Africa RTAs. The argument is developed in two sections. Section II retells the history of EC–Africa regionalism from the late nineteenth century until the 1970s. Section III examines the legal conception underlying the Yaoundé Conventions of 1963 and 1971.

II. A BRIEF HISTORY OF THE EC–AAMS TRADE REGIME

The origins of trade relations between Europe and Africa have been a controversial topic. Some scholars claim that their roots go back to the period between the late 1950s and the early 1970s, while others trace them even further back to the colonial legacy of the nineteenth century, or even the fifteenth century.[11] Since the purpose of this article is to examine the Yaoundé Conventions, the starting point of the analysis lies in the landmark events leading up to the foundation of the EC and decolonisation.

A. The French Empire, Union, and Community (1884–1960)

During the Berlin Conference of 1884–1885, Africa was partitioned into British, French, German, Belgian, and Portuguese colonies. Throughout this era, the pattern of trade between European empires and their African colonies became characterised by imperial rule.[12] This integrated Euro-African-Caribbean system was partially constituted by international law, which entitled empires to restrict colonies to trade only with their respective metropoles. After the Second World War, colonial systems progressively came to an end due to the weakening position of European empires and the increasing pressures of the Cold War superpowers, the anti-colonial United States and the anti-imperial Soviet Union.

Under British–American leadership, 23 major trading countries concluded the GATT in 1947 to regulate international trade and reduce tariffs, through reciprocal and non-discriminatory processes of market access exchange.[13] However, during negotiations, many imperial trading systems were still in

[11] Montana (n 5) 71–2. [12] ibid. [13] See below (n 60) and accompanying text.

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operation.[14] The survival of European empires in the postwar trading system posed a fundamental controversy between the US free trade position and the UK imperialist attitude. Remarkably, this disagreement was settled against the US position: GATT Article I:2 provided an exception for imperial trading systems.

Against this background, recently liberated, war-torn France was unwilling to renounce its former colonies. In 1946, the French Empire was reconstituted as the French Union,[15] a legal regime later grandfathered by Article I:2. In 1958, the French Union became the French Community, under which colonies were authorised to establish internal self-government, but still subject to French control in matters related to trade and defence.[16] Despite the decline in the economic importance of colonies, France regarded it as politically inconceivable to 'abandon' its colonies since they were conceived as forming a single cultural unity.

B. The Association (1957–1963)

The French imperial system rapidly changed in the 1950s and 1960s due to the foundation of the EC and the decolonisation process steered by the United Nations (UN). During the creation of the EC, France tried to convince its new partners that, by broadening the scope of the association to include some of their colonies, the future EC would benefit from trading with colonial markets.[17] Less convincingly, France also sought to sell the idea of a single cultural unity between European countries and their colonies.

These arguments were met with a certain degree of scepticism.[18] Market access to colonies was less advantageous than France had proposed since some of the colonies were in any case required under international treaties to trade on a non-discriminatory basis. It also appeared that French interests would continue to be protected by existing trade arrangements. Furthermore, the costs of this approach seemed to be significant.[19] Not only would EC members have to abandon their traditional and cheaper sources of tropical products, but they would also be required to provide financial aid to support the colonies. Not surprisingly, only Belgium supported the French proposal, whereas West Germany and the Netherlands were vigorously opposed, and Luxembourg and Italy were no more than indifferent.

[14] A Yusuf, *Legal Aspects of Trade-Preferences for Developing States: A Study in the Influence of Development Needs on the Evolution of International Law* (Martinus Nijhoff 1982) 7; M Trebilcock *et al*., *The Regulation of International Trade* (Routledge 2012) 56, 80.

[15] Milward (n 4) 80–4; Montana (n 5) 71–2.

[16] C Twitchett, *Europe and Africa: From Association to Partnership* (Saxon House 1978) 10; F Lynch, *France and the International Economy: From Vichy to the Treaty of Rome* (Routledge 1997) 166.

[17] W Barnes, *Europe and the Developing World: Association under Part IV of the Treaty of Rome* (Chatham House 1967) 25.

[18] Twitchett (n 16) 10.

[19] ibid.

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Despite such oppositions, France managed to secure support for its proposal.[20] The Treaty of Rome was signed in 1957, establishing the EC *and* a special trade regime with its members' colonies. Its primary goals were the construction of the European common market protected by an external customs union. The Treaty of Rome also provided that the creation of a *permanent* regime for governing trade between EC members and their colonies (the 'Association') was one of the EC's core activities (Article 3 (k)).[21] Specifically, Part IV established the Association to 'promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole' (Article 131).

The Association operated a system of 'privileged' market access between the EC and individual 'associated' overseas countries and territories (OCTs), which was complemented by the European Development Fund (EDF), a mechanism for providing financial aid.[22] Not surprisingly, Part IV was based on France's strategy of maintaining the colonies' dependence on the metropole.[23] The Association was, however, constituted as a 'free trade area' similar to the EC itself and, arguably, in compliance with GATT law.

The origins of the EC's 'trade and development policy' were the French proposal and the Treaty of Rome.[24] The EC policy was centred on an 'open door' strategy towards 'selected colonies' and a flexible approach to accommodating European integration and colonialism. Part IV constituted the Association, a legal regime devised to govern trade, and reaffirm the 'special relationship', between the EC and the 18 OCTs.

C. The Yaoundé Conventions (1963–1974)

The period from 1960 to 1973 became known as 'the era of decolonisation'. Starting with French Guinea's independence from France in 1958, most colonies followed a similar course in the early 1960s.[25] Decolonisation challenged the EC's trade and development policy since the newly independent African countries rejected the Association for reproducing the European system of (neo)colonial preferences, while prompting a demand for a new regime for regional trade. Moreover, these postcolonial States engaged in

[20] Ravenhill (n 5) 47–53; Milward (n 4) 82–3; 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 676.

[21] The term 'Association' was used by French politicians to describe their African programme as a dynamic interchange between the developed-metropole and underdeveloped-colonies (Milward (n 4) 82–3).

[22] Annex IV to the Treaty of Rome provided the list of OCTs.

[23] Lister (n 6) 20; Montana (n 5) 73.

[24] Montana (n 5) 71–2; A Flint, 'The End of a 'Special Relationship'? The New EU–ACP Economic Partnership Agreements' (2009) 36 RAPE 80–1.

[25] Lister (n 5) 61–2; Montana (n 5) 74–5; Milward (n 4) 80–4.

processes to create intra-African organisations.[26] The creation of the AAMS[27] was particularly important for helping its members build a united front in the two-year negotiations with the EC.[28] These events ended up shaping the EC–AAMS relationship.

In 1964, the Association was replaced by the Convention of Association between the EC and the AAMS. The Yaoundé Convention (Yaoundé I) was the first international treaty on trade and development cooperation concluded between formally equal and sovereign States of Europe and Africa. Whereas the Association governed EC-OCTs affairs, Yaoundé I regulated a (renewed) 'special partnership' of two regional blocs representing the First-developed and Third-developing worlds.[29] The formal recognition by EC members of the AAMS as a group and its partners as sovereign States, and of their mutual colonial heritage, formed the cornerstone of the Yaoundé Convention.

The Yaoundé regime was not legally constituted by a single 'convention'. Rather, it was formed by a network of bilateral agreements between the EC and individual AAMS members. Each agreement was valid for five years. Since the European and African partners were equal, the EC advocated for a relationship based on political equality, regional identities, trade reciprocity, and development assistance.[30] To achieve this purpose, Yaoundé I established a sophisticated and institutionalised regime for EC–AAMS trade governance. However, despite its 'democratic' design, the Yaoundé regime did not operate as a partnership of equals. Rather, it served to obfuscate the unbalanced dialogue between the two blocs, which reflected their extremely asymmetrical distribution of resources.[31]

As to trade and development cooperation, Yaoundé I replicated the main policy areas of Part IV of the Treaty of Rome. The AAMS continued to be accorded preference in the form of duty-free access for their products, except for those protected by the Common Agricultural Policy (CAP).[32] Since Yaoundé I was based on reciprocity, the AAMS committed to continually reducing their tariffs, opening quotas, and abolishing all quantitative

[26] Among them, the African and Malagasy Union (UAM) of 1961 was the most important, since it later became the AAMS (J Moss, 'The Yaoundé Convention, 1964–1975' (PhD thesis, New School for Social Research, 1978) 41; M Ajomo, 'Regional Economic Organisations the African Experience' (1976) 25 ICLQ 85).

[27] AAMS countries were Burundi (formerly part of Rwanda-Burundi), Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Congo (Brazzaville), Dahomey (now Benin), Gabon, Ivory Coast, Madagascar, Mali (formerly part of French Sudan), Mauritania (formerly part of French Sudan), Niger, Rwanda, Senegal, Somalia, Togo, Upper Volta (now Burkina Faso).

[28] 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 28–31.

[29] Montana (n 5) 75–76; Broberg (n 20) 677; A Hewitt, 'Development Assistance Policy and the ACP' in J Lodge (ed), *The European Community and the Challenge of the Future* (Pinter 1993) 305; R Gibb, 'Post-Lomé: The European Union and the South' (2000) 21 TWQ 462.

[30] Montana (n 5) 76–77; Bartels (n 6) 722–3.

[31] M Farrell, 'A Triumph of Realism over Idealism? Cooperation Between the European Union and Africa' (2005) 27 JEI 267.

[32] Yaoundé I arts 2(1) and 5(1).

restrictions for EC products within four years. This regime also maintained access to the EDF's financial aid, which depended on compliance with trade rules and commitments.

In 1969, the Yaoundé Convention was renewed for an additional five-year term (Yaoundé II). Some insignificant modifications were introduced.[33] Yet, its conclusion was considered as a force of stability for the AAMS countries, since Yaoundé I was marked by broad transformations. Some changes resulted from the rising 'Third World' and the attempt to challenge its dependence on the 'First' or 'Second Worlds'.[34] Others related to the AAMS's rejection of East–West confrontation in favour of a South–North agenda for economic cooperation. Both echoed the Third World movement towards a 'New International Economic Order' (NIEO), by calling for greater formal and material equality.[35] These events led the AAMS to demand a declaration that the Yaoundé regime was not a system of (neo)colonial domination but a free trade area among sovereign States.

The AAMS's demand was met with an expansionist policy by the EC. The EC began to conclude special arrangements with other developing countries, lowering or abolishing duties on a range of tropical products.[36] This proliferation of EC–South RTAs not only increased the complexity of EC–Africa regionalism but also reduced the priority given to the AAMS.[37] It was under these circumstances that the extension of the Yaoundé Convention was concluded in 1969.

By the early 1970s, the Yaoundé regime came under harsh criticism.[38] Internally, some accused it of promoting neo-imperialism and divisiveness among AAMS countries. Others claimed that it failed to promote economic integration or development. This reflected partially the AAMS's adoption of import-substitution strategies, and partially the French tactic of preventing other EC members' businesses from effectively accessing the AAMS markets. Consequently, the market share of EC–AAMS trade had steadily declined since 1964. Moreover, external factors caused the Yaoundé regime

[33] For instance, Mauritius was admitted as an associate member. Also, Yaoundé II arts 3(1) and 7(1) provided that African associates had to remove all duties and quantitative restrictions on EC imports, while Protocol No 4 authorised the African associates to participate in GSP schemes.

[34] Twitchett (n 16) 38, 145; Montana (n 5) 76–7.

[35] W Brown, 'Restructuring North-South Relations: ACP-EU Development Co-operation in a Liberal International Order' (2000) 27 RAPE 368–372.

[36] Holland (n 6) 29.

[37] The impression was that AAMS countries were just suppliers of residual markets that EC producers could not fill and so Yaoundé II provided them with a slight advantage over other developing countries (Ravenhill (n 5) 56). Until 1958, the OCTs provided 14.20 per cent of the share of developing world's exports to the EC. Under the Association (1958–63), the OCTs exports fell to 12.00 per cent. By the end of the Yaoundé regime (1964–1975), AAMS exports dropped to 5.80 per cent. From a world trade perspective, the AAMS's exports to the EC declined from 4.40 per cent (1970) to 3.63 per cent (1975). Similarly, the AAMS's imports from the EC dropped from 11.6 per cent (1958) to 9.9 per cent (1973) and then to 8.4 per cent (1974) (Sissoko *et al.* (n 4) 12–14; Ravenhill (n 5) 61).

[38] Holland (n 6) 31–3; Montana (n 5) 81–5; Flint (n 24) 80–1.

to be reconsidered. On the European front, the United Kingdom's accession to the EC in 1973 had the effect of bringing the 20 developing countries associated with the British Commonwealth under the EC's trade and development policy. On the international front, the EC–AAMS relationship was affected partially by the US efforts to prevent the EC from consolidating its influence over postcolonial Africa, and partially by the rise of the Third World movement.

Specifically, the continuous economic disappointment of the AAMS with the Yaoundé regime, and of developing countries with the GATT, led them to increase pressure over the First World to reform the world trading system.[39] Developing countries employed its growing commodity power to secure the approval of the Generalised System of Preferences (GSP) under the UNCTAD in 1968 and its 'reception' by the GATT through the Enabling Clause in 1971. These achievements paved the way for their campaigns for, and subsequent approvals of, the Charter of Economic Rights and Duties[40] and the NIEO Declaration and Programme[41] under the UN General Assembly in 1973–1974. Taking into consideration the external challenges and internal criticism, the EC and AAMS decided to phase out the Yaoundé regime and in 1973 launched negotiations for a new model for EC–Africa regionalism. These culminated in the signing of the first Lomé Convention in 1975.[42]

The Yaoundé Conventions symbolised at that time a landmark event in South–North relations. The literature typically accepts there were three main reasons for their importance. First, they were the first international treaties between former European metropoles and former African colonies.[43] Secondly, they replaced imperial trading systems by a regional trade regime based on sovereign equality, identity differentiation, reciprocal trade preferences, and development aid.[44] Thirdly, EC–Africa regionalism reflected both continuity and discontinuity with projects, norms and practices born in European integration and (post)colonialism. There is—as is argued in the next section—a fourth reason: the Yaoundé regime embodied a unique model of South–North RTAs, which was partly constructed and operated by international law according to an emerging conceptual framework.

[39] Montana (n 5) 81–5; Bartels (n 6) 731–2; J Steffek, *Embedded Liberalism and Its Critics: Justifying Global Governance in the American Century* (Palgrave 2006) 85–9.

[40] UN, Charter of Economic Rights and Duties of States (adopted 6 December 1973) UNGA Res 3281 (XXVIII).

[41] UN, Declaration on the Establishment of a New International Economic Order (adopted 1 May 1974) UNGA Res 3201 (S-VI); UN, Programme of Action on the Establishment of a New International Economic Order (adopted 1 May 1974) UNGA Res 3202 (S-VI).

[42] ACP-EEC Convention of Lomé (signed 28 February 1975, entered into force 1 April 1976) OJ 1975 L 104/35.

[43] C Gammage, *North-South Regional Trade Agreements as Legal Regimes: A Critical Assessment of the EU-SADC Economic Partnership Agreement* (EEP 2017) 137.

[44] Brown (n 35) 371–3.

III. THE MAKING AND GOVERNANCE OF THE YAOUNDÉ TRADE REGIME: LAWYERS AND THE RISE OF THE DEVELOPMENT FRAMEWORK

This section suggests that a more in-depth investigation of the role of international law and lawyers in making and governing the Yaoundé Conventions is needed. Recent developments in scholarship show that a more nuanced understanding of expert knowledge and practice, and their specialised modes of governance, can complement our comprehension of the continuities and ruptures in the fall of European imperial systems in Africa and the rise of EC–Africa regionalism.[45] Building on this scholarship, the formation and management of the Yaoundé regime are re-examined through the lens of a distinct group of non-State actors operating within, across and outside the EC and AAMS countries—that is, the legal community of diplomats, officials, legal practitioners and intellectuals involved in conceiving, debating, constructing and interpreting the Yaoundé Conventions.[46]

The starting point is the notion that expertise is specialised knowledge made real through authoritative practices.[47] Legal expertise is hence a form of specialised knowledge as much as a form of specialised governance produced and deployed by lawyers in their relationship with others. By conceiving RTAs as social constructions,[48] the Yaoundé regime becomes the contested outcome of the political and intellectual work of lawyers and other specialists located in distinct settings and jurisdictions. In the struggle for authority, they produced and employed competing forms of expertise to shape decision-making in and over regional governance of EC–AAMS relations.[49] Thus, in the highly formalised and institutionalised regime established by the Yaoundé Conventions,[50] it is reasonable to assume that lawyers and their expertise had significant authority in structuring decision-making.

To understand the critical role of legal expertise in EC–Africa regionalism, the common-sense tendency to regard EC–AAMS RTAs as exclusive outcomes of either interstate politics or economic forces needs to be suspended.[51] Instead, it is necessary to foreground the work of lawyers who stood (alongside other experts) between governments and societies, using expertise to advise decision-makers on legal matters concerning negotiations, implementation and management of the Yaoundé regime. If expertise structures lawyers' work (which, in turn, influence officials and policymakers' choices), then a nuanced understanding of the central link between production and use of specialised knowledge to exert authority through interpretation, argumentation and assertion, is essential.[52] The lawyers' legitimate and persuasive influence was grounded in, and often dependent on, the authority

[45] See above (nn 8–10) and accompanying text.
[46] My approach to this article draws broadly from the work of Kennedy (n 10), Lang and Scott (n 10), Koskenniemi (*The Politics of International Law* (Hart 2011)).
[47] Kennedy (n 10) 10810. [48] Söderbaum (n 9) 4–8. [49] See below sections III.A–C.
[50] Brown (n 35) 367–8; Farrell (n 31) 263–5. [51] Kennedy (n 10) 108–10. [52] ibid.

of their knowledge practices[53] identified with regional trade agreements. The *concept* of RTAs was one of the constitutive ideas of the postwar international trading system. However, competing *conceptions* (of that concept) were authoritatively advanced by lawyers and other experts. Their disagreements surrounding the 'fundamental' meaning of RTAs were often regarded as irresolvable and intractable.[54] This suggests that the concept of RTA was a contested idea at that time, serving as a battleground for competing conceptions.

In this sense, *legal conceptions* can be understood as *conceptual frameworks* of (more or less coherently) articulated projects, norms and ideas that specify what constitutes an RTA in international law and how to craft, interpret and operate them. They were produced to assist lawyers in their work of making sense of and translating States' interests and values and socio-economic facts and needs into authoritative assertions and credible arguments about RTAs. This section aims to show that the construction and operation of the Yaoundé regime were significantly influenced through legal work. Specifically, the production and use of a bespoke legal conception were implicated in reinventing RTAs as a legal institution and embodying it into international treaties for governing trade and development cooperation between the (post-imperial) EC and the (newly independent) AAMS. In other words, the notion of a legal conception helps to account for the lawyers' knowledge practices that influenced the negotiations and management of EC–AAMS RTAs by structuring the ways officials and policymakers conceived, interpreted and implemented them.

Legal conceptions are the outcome of lawyers' 'dual-work'.[55] Within the legal field, their less visible work concerns the production of knowledge practices in the form of concepts, theories and methods.[56] The construction of a 'specialist conception' involved building a consensus not only on the description of, but also on how international law did (or should) relate to, EEC–AAMS RTAs. Part of the challenge was to choose from among the wide range of available projects, norms, ideas and stories, the ones to use in order to produce a (sufficiently) coherent and stable framework, which was fit for answering a series of 'core questions' (see below). The other part consisted

[53] Law is understood as a form of global knowledge practice, which is 'how' experts engage in global governance by deploying their specialist ideas and techniques to 'create' legitimate and authoritative modes of thinking and reasoning, 'constitute' spaces for public debates and decision-making, and 'justify' or 'contest' the outcomes (Kennedy (n 10) 4–5). Lawyers, for instance, do not merely interpret and apply RTAs, they 'make' them by articulating what RTAs are, how they function, and how they are created in, and governed by, international law, and by whom.

[54] See below sections III.B–C.

[55] Y Dezalay and B Garth, *Dealing in Virtue* (Chicago University Press 1996) 70–71; 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) 249–51.

[56] A Riles, 'Models and Documents: Artifacts of International Legal Knowledge' (1999) 48 ICLQ 805–11.

of ensuring its legitimacy and persuasiveness through a series of compromises concerning the framework's constitutive features. Thus, the analysis will show that a specialist conception resulted from continuous processes of differentiation, domination and disruption among and between European and African lawyers.

Within global governance, the more visible work of lawyers is to influence decision-making by advising governments and the general public on issues framed as matters of international law. In particular, their participation in the formation and management of EEC–AAMS RTAs required reviewing and adapting legal expertise to context-specific settings. African and European diplomats and officials were engaged in persuading, bargaining, or imposing provisions on the Yaoundé Conventions that reflected their countries' preferences and policies. Among them, lawyers—as the analysis will reveal—relied on a specialist framework to craft authoritative and credible arguments about reinventing and applying international law to solve differences and build cooperation[57] to manage EC–AAMS trade.

To be clear, the phenomenon to which this article seeks to draw attention is not 'development cooperation' as either postcolonial projects or practices of developed countries towards developing countries. Neither is the goal to provide a specific account or critique of how European States used the idea of 'special relationship' to (re)produce the (neo-) imperialist control over postcolonial Africa. These are well-known (although—arguably—insufficiently or inadequately explored) in specialised literature.[58] Rather, the broader claim made here is that we do not yet have a satisfactory analysis of the ways in which legal expertise affected decision-making in and over EC–Africa regionalism (and vice versa). This section aims to account for the critical function of legal expertise (and legal conceptions in particular) in the making of EEC–AAMS RTAs. It focuses specifically on how lawyers continuously reworked a specialist conception of RTAs, and how it shaped, at some fundamental level, the way the Yaoundé Conventions were thought of, constructed and governed through international law.

The remainder of this section historicises and analyses the specialist conception–called here the 'development framework'—and its influence over EC–Africa regionalism. It maps out the range of possibilities offered by the development framework and compares it to the decisions made and reasons presented in the course of the formation and interpretation of EEC–AAMS RTAs. By doing so, it seeks to substantiate the argument that the Yaoundé Conventions can be regarded as landmark international treaties for partially expressing the characteristic features of the development framework.

[57] W Sandholtz and A Stone Sweet, 'Law, Politics, and International Governance' in C Reus-Smit (ed), *The Politics of International Law* (Cambridge University Press 2004) 245–7; R Baxter, 'International Law in "Her Infinite Variety"' (1980) 29 ICQL 566.

[58] See above (nn 4–9); and Brown (n 35).

Although these core features were deeply entangled, their assessment can be organised around three dimensions: ideational, institutional, and jurisprudential.[59] Thus, the development framework—understood as lawyers' efforts to provide more or less coherent arguments and solutions to what they regarded as the chief preoccupations regarding EEC–AAMS RTAs—will be examined through three 'core questions': what were (or should be) the primary goals of the Yaoundé Conventions? How were legal ideas and techniques chosen, rejected and employed to produce and operate those RTAs? Which rules and institutions of international law were applicable to them?

A. Ideational Dimension: The Project for EC–Africa Regionalism

The (re)construction of regional trade agreements as legal conceptions rests partially, yet fundamentally, on a general commitment to ideational programmes for ordering trade relations towards a determined purpose. From the late 1940s to the 1980s, three rival programmes were globally influential: *liberal-welfarism*, *developmentalism* and *socialism*. However, only the former two shaped, alongside *neo-imperialism*, the mindset and practices of diplomats, officials, legal and non-legal experts involved in conceptualisation, negotiations, constructions and operation of the Yaoundé Conventions.

1. The ideational programmes for South-North regionalism

Conventional literature teaches that the postwar international trading system essentially reflected British–American policy proposals.[60] Under the recently founded United Nations, rounds of negotiations paved the way to the Havana Conference in 1948,[61] when the participating countries reached an agreement on the charter for establishing the International Trade Organisation (ITO). However, the ITO charter never entered into force because of its later rejection by the US Congress. As a solution, some participating countries turned the General Agreement on Tariffs and Trade (GATT), an interim agreement concluded in 1947, into a permanent arrangement. Over time, the GATT became a *de facto* international organisation equipped with a code of conduct and a dispute settlement mechanism.

[59] Inspired by D Trubek and A Santos, 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in D Trubek and A Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press 2006).

[60] Trebilcock *et al.* (n 14) 24–25; JH Jackson, 'The Evolution of the World Trading System – The Legal and Institutional Context' in D Bethlehem *et al.* (eds), *The Oxford Handbook of International Trade Law* (Oxford University Press 2009) 31–4.

[61] Havana Charter for an International Trade Organization (adopted 24 March 1948) UN Doc E/CONF.2/78.

Less explored in the literature is that the British–American proposals were grounded in 'liberal-welfarism',[62] a shared ideational programme for governing international trade. Generally overlooked, however, is the fact that the failure of the ITO marked a moment of ideational dissensus. This, in turn, allowed the emergence of socialism and developmentalism and the survival of neo-imperialism.

In 1949, the Soviet Union and other socialist countries created the socialist-inspired Council for Mutual Economic Assistance (COMECON).[63] An equally important development occurred when the Third-World movement supported the foundation of the developmentalist-oriented United Nations Conference on Trade and Development (UNCTAD) in 1964.[64] Both alternatives aspired to constitute distinct multilateral trading systems. Conversely, neo-imperialism never took off as a global programme. Yet it was adapted and embedded by European countries into forms of associations and commonwealths,[65] enabling them to accommodate American–Soviet pressures and liberal-welfarist and developmentalist dominance, while partially preserving its legacy in the ideal of special relationships.[66]

In contrast to conventional literature, this section suggests that the four decades following World War II should not be described as a period in which the world economy was governed by a coherent and stable international economic order.[67] Instead, they would be more accurately described as a period characterised by the ideational fragmentation of global governance into three multilateral trading systems and a constellation of RTAs. Each trade regime was shaped, with varying degrees of influence, by those ideational programmes. In particular, their relevance rested on setting up the programmatic parameters for (re)conceiving South-North RTAs' primary goals. As examined below, the ideas and practices available to lawyers engaged in the making of the Yaoundé Conventions were predominantly inspired by liberal-welfarism and developmentalism, while neo-imperialism endured under their programmatic umbrellas by becoming enmeshed into policies and institutions. Consequently, the development framework's

[62] The ideational programme embedded into the British–American proposals and also the GATT has received a wide variety of labels since 1947: 'liberalism', 'neo-liberalism', and 'liberal-welfarism'. I adopted Emmanuelle Jouannet's *liberal-welfarism* due to its explanatory power and despite its potential anachronic effect (*The Liberal-welfarist Law of Nations: A History of International Law* (Cambridge University Press 2012) 249–53).

[63] E Ustor, 'Decision-making in the Council for Mutual Economic Assistance' (1971) 134 RdC 163–295; G Schiavone, *The Institutions of Comecon* (Macmillan 1981).

[64] S El-Naggar, 'The United Nations Conference on Trade and Development: Background, Aims and Policies' (1969) 128 RdC 241–345; J Toye, *UNCTAD at 50: A Short History* (UN 2014).

[65] For instance, the French Union, the British Commonwealth, the EC–OCTs Association and the Yaoundé Conventions.

[66] P Hansen and S Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism* (Bloomsbury 2014) 15.

[67] C Lafer, *A OMC e a regulação do comércio internacional: uma visão brasileira* (Forense 1998) 20–2.

ideational dimension expressed the processes of differentiation, domination, and conciliation between these programmes. What follows is only a simplification that probably does not do justice to all facets and nuances of those programmes.

a) The liberal-welfarist programme for South-North regionalism

Liberal-welfarism was centred on the creation of a postwar trading system founded on a compromise between the liberal aspiration for a world trade based on non-discriminatory and reciprocal relations and the welfarist goal of ensuring domestic economic and social development through State intervention.[68] The function of international law was to serve as the legitimate and authoritative instrument to secure stability for the expansion of economic interdependence, while accommodating those core goals without triggering a race to protectionism.

However, the idea of regionalism fits uneasily with liberal-welfarism, since it was associated with the interwar trade wars and European (neo-)imperialism.[69] Most supporters believed that universal free trade was the fairer and the most efficient policy for economic development. Since they were against any form of discriminatory or protectionist arrangements, RTAs should, in their view, be forbidden. Others argued that regionalism was not ontologically against liberal-welfarism. It could help complement universal free trade, provided that RTAs were consistent with GATT law, and so mandated to foster trade liberalisation and economic integration.

A particular question underlay this disagreement: whether development is, or should be, a central component of South-North RTAs. A specific project—called 'modernisation'—was produced to accommodate trade and development cooperation between developed and developing countries under liberal-welfarism.[70] While its political origins were deeply rooted in US policy favouring decolonisation and rejecting socialism, its intellectual foundation was grounded in two emerging sub-disciplines: neoclassical development economics and political science. In the postwar period, modernisation quickly became the orthodoxy in Western developed countries.

Modernisation thinkers were engaged in adapting Keynesian-inspired economics and liberal institutions to solve the problems of 'decolonisation'

[68] JG Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism and the Post-war Economic Order' (1982) 36 IO 379; A Lang, 'Reconstructing Embedded Liberalism: John Gerard Ruggie and Constructivist Approaches to the Study of the International Trade Regime' (2006) 9 JIEL 81; Jouannet (n 62); Steffek (n 39) 85–89.

[69] Yusuf (n 14) 3–10, 47–50; Trebilcock *et al.* (n 14) 24–5, 83–6.

[70] J Cypher and J Dietz, *The Process of Economic Development* (Routledge 2009); G Rist, *The History of Development from Western Origins to Global Faith* (Zed 2008); JM Hodge, 'Writing the History of Development (Part 1: The First Wave)' (2015) 6 Humanity: IJHRHD 429–63. For alternative views, see M Cowen and RW Shenton, *Doctrines of Development* (Routledge 1996).

and 'underdevelopment'.[71] They proposed to apply policy-oriented sciences to help (postcolonial) developing countries become a Western industrial economy. To overcome the dualist-sector challenge of rural underemployment and late industrialisation, developing countries should, they argued, adopt policies and instruments for reproducing the historical path taken by developed countries.

The State was assigned a central role in this undertaking since it arguably occupied the perfect position to use policy-oriented expertise to direct the transition of its economy from traditional to capitalist.[72] Domestically, it should maintain order and stability as the preconditions for fostering endogenous economic growth. Internationally, it should serve as the main intermediary between the national socio-economic needs and the liberal-welfarist package of economic opportunities and assistance offered by benign Western developed countries.

Inspired by modernisation, South-North RTAs were broadly rethought as regional systems to regulate trade and provide aid. Specifically, the EC reconceived them as regimes for economic interdependence and welfare, subject to its trade and development policy.[73] While liberal-welfarism tended to associate EC–Africa regionalism with trade preferences negatively, European modernisation held a positive view, aligning it with economic integration and development assistance.

b) The developmentalist programme for South-North regionalism

Developmentalism emerged in reaction to the domination of liberal-welfarism in the postwar period. It was born out of developing countries' engagement in the United Nations and their reactions to the Cold War and decolonisation.[74] It reflected their shared desire for a new international trading system devised to balance two core goals: the aspiration for a fairer, though (inter)dependent, world economy centred on a multilateral system of preferential trading, and the need for State intervention to secure economic emancipation through development measures. Although international law was regarded as a First-World instrument for economic exploitation, it could arguably be rehabilitated to foster economic development, reduce

[71] Rist (n 70) 73; Hodge (n 70) 446–9.

[72] N Gilman, *Mandarins of the Future: Modernization Theory in Cold War America* (Johns Hopkins University Press 2007) 4, 16–17; Doidge and Holland (n 6) 60–5; Hodge (n 70) 433–4; Brown (n 35) 369–71.

[73] 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* (Karthala 1993) 88; Broberg (n 20) 676.

[74] El-Naggar (n 64); Cypher and Dietz (n 70); M Bedjaoui, *Towards a New International Economic Order* (Holmes & Meier 1979); TO Elias, *New Horizons in International Law* (Martinus Nijhoff 1992); M Bennouna, *Droit International du Développement: Tiers Monde et Interpellation du Droit International* (Berger-Levrault, 1983); 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 Doc A/39/504/Add.1 (23 October 1984).

inequalities, and ensure domestic policy space and equal participation in global governance.

Reconceiving regionalism was a central part of developmentalism.[75] It aimed to subvert the use of South-North RTAs as neo-imperial systems of preferences, which were arguably disguised as free trade areas under the GATT. A specific project—called 'structuralism'—was produced to reconceptualise trade and development cooperation between developed and developing countries. Specifically, regionalism was reimagined as a strategic mechanism for directing trade to foster development. The genesis of structuralism goes back to the early 1950s when a group of Latin American economists employed heterodox theories and methods to challenge neoclassical development economics and policies.[76] Their purpose was to explain the reasons for declining returns of commodities trade, and why the specialisation in these products fails to promote economic growth, diversification and industrialisation, and, more importantly, development, as otherwise assumed by modernisation.

The ground-breaking contribution of the new sub-disciplines of structuralist economics, and of later institutionalist and dependency theories, was that 'underdevelopment' was not a stage of the development path on which countries were stuck due to deficiencies caused by colonisation or civilisational backwardness.[77] It was, instead, the political-economic outcome of a global capitalist system devised to exploit peripheral commodities economies through their subjugation to core industrial economies. Differences in terms of trade constituted evidence of the structural bias of this system, which sustained continuous economic progress at the 'core', while perpetuating underdevelopment at the 'periphery'. Hence, the modernisation strategy of replicating the Western-style path of development in the Third World was impossible.

The structuralist counterproposal was to transform the into a central promoter of development.[78] Domestically, States should implement import-substitution industrialisation (ISI) and export-led growth policies. Internationally, they should protect their economic development by either decoupling from global mechanisms of capitalist exploitation or resisting them through legal reforms intended to construct the NIEO.[79] South-North RTAs could be reconstructed as regional systems for development through trade. They should provide special and differential treatment, by which non-reciprocal trade preferences

[75] Yusuf (n 14) 18–21; El-Naggar (n 64) 286–8.
[76] Cypher and Dietz (n 70) Ch 6; Doidge and Holland (n 6) 60–5.
[77] Cypher and Dietz (n 70) 168–9.
[78] ibid 169–80.
[79] The NIEO Declaration offered a wide recipe of structuralist-inspired policies and instruments for developing countries to deal with international trade, which included international mechanisms for promoting (i) better and more stable commodity prices, (ii) non-reciprocal and preferential access to developed markets, and (iii) greater economic and technical assistance with no conditionality (Doidge and Holland (n 6) 60–5).

would be granted by developed partners to developing partners and extended on a non-discriminatory basis to third-party developing countries.

c) The neo-imperialist programme for South-North regionalism

In contrast to other programmes, neo-imperialism was rejected as a universal blueprint for the (postwar) international trading system. Rather, it was a response of Western Europe to the Cold War and decolonisation.[80] It expressed an ideal of trade arrangements that aimed to balance two core objectives: the desire for political and economic interdependence and complementarity through neo-imperial trading systems; and the formation of postcolonial States to protect national elites, social-cultural ties with former metropoles, and colonial modes of administration and production. The role of international law was to promote social and economic interdependence and complementarity by constituting hierarchies among formally equal States according to their stages of civilisation-development.[81]

The neo-imperialist programme for South-North regionalism is the by-product of two intertwined goals: European integration and (de) colonisation.[82] Its roots go back to the interwar period when the ideal of natural complementarity and interdependence between European metropoles and colonies emerged. This rationale provided the foundation for projects for the absorption of colonial people into the European civilisation through economic and welfare policies.

Of particular importance, the 'Eurafrica' project proposed to achieve European unification through the assimilation of Africa by reinventing colonialism.[83] However, the postwar geopolitical landscape demanded the Eurafrica project eschew its ill-reputed colonialism. Consequently, the success of Western Europe's integration and autonomy was reframed as dependent on forging a 'special partnership' with (post)colonial Africa. Under this partnership, Europeans would provide paternalistic patronage, preferential trade, and technical and financial aid in exchange for the continuation of Africa's economic and social development and political support.

The pioneers of neo-imperialism were not academics but officials who produced a body of expert knowledge and policies for colonial

[80] Hansen and Jonsson (n 66) 15–16, 244.

[81] L Eslava, 'The Developmental State: Independence, Dependency and the History of the South' in J Bernstorff and P Dann (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (2019) 79–82.

[82] Montana (n 5) 74; Milward (n 4) 83.

[83] Hansen and Jonsson (n 66) 5–9; CO Kwarteng, *Africa and the European Challenge: Survival in a Changing World* (Avebury 1997) 50–1; G Martin, 'Africa and the Ideology of Eurafrica: Neo-Colonialism or Pan-Africanism?' (1982) 20 JMAS 221–2.

administration.[84] Some became involved in the foundation of the European Community. They faced the challenge of dealing with increasing demands for African independence while confronting the necessity of integrating Europe and Africa into a political and economic community. This understanding made Eurafrica an attractive project for fostering European integration through the transformation of colonial Africa into non-colonial Eurafrica. This symbiotic community would be constituted not by European empires and African colonies but rather by the EC, European members, and African associates. Yet, it presumed a civilisational hierarchy centred on racial and technical inequalities. The overall purpose was, therefore, to promote the union and prosperity of its participants by striking a compromise between preserving Europe's indirect rule and civilising mission (without the colonial blame) and fostering Africa's social and economic development (while avoiding it turning to protectionism, anti-Western resentment or socialism).

The State was regarded as the legitimate heir of colonial government, serving as the gatekeeper of special partnerships with the (former) metropoles and as the guarantor of social order and economic progress.[85] Domestically, it should pursue development through self-government, planned intervention and protection of modernising elites, bureaucratic-centralised administration, and outward-looking modes of economic production inherited from colonialism. Internationally, it should promote integration through the reinvention of imperial trading systems as a regional trade regime for collective governance, exclusive membership, and mutual interdependence and complementarity.[86] While the partners were conceived as formally equals and capable of reciprocally exchanging trade preferences, they were also regarded as unequal in complying with rules and policies and managing trade and development aid.

2. The EC–AAMS project for regional development cooperation

Although it might seem counterintuitive today, the United Nations is the starting point for understanding how liberal-welfarism, developmentalism and neo-imperialism came to shape EC–Africa regionalism. The UN was established in the postwar period to preside over all areas of international affairs.[87] The UN General Assembly served as a permanent forum for mediating distinct (and sometimes rival) initiatives at the multilateral and regional levels. It was under UN auspices that the core features of the EC–AAMS project for

[84] F Cooper, 'Writing the History of Development' (2010) 8 JMEH 9–14; Hansen and Jonsson, Eurafrica (n 66) 239, 244, 253–5

[85] Kwarteng (n 83) 50–1, 117; Hansen and Jonsson (n 66) 15–16, 184, 246–51; Cooper (n 84) 17–18; Eslava (n 81) 79–82.

[86] CA Cosgrove, 'The Common Market and Its Colonial Heritage' (1969) 4 JCH 78.

[87] Carreau *et al.* (n 7) 15–21, 36–37; Nguyen Quoc *et al*. (n 7) 946–7; Elias (n 74) 25–8, 39–40.

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regional development cooperation were openly debated in light of the disputes between the GATT and UNCTAD.

The GATT constituted a multilateral setting with great influence over trade matters related to regionalism, but not to decolonisation and development. From the outset, GATT rules directed the EC's interactions with Africa by severely constraining the imperial systems and then imposing limits upon RTAs.[88] Article XXIV not only disciplined the formation of free trade areas (FTAs) and customs unions (CUs) but also operated to infuse liberal-welfarism into their content. After decolonisation, many African countries were encouraged to join the GATT. However, most of their exporting goods (ie commodities and textiles) fell outside its mandate. Thus, the GATT shaped the project mainly through negotiations and debates on the consistency of EEC–AAMS RTAs with Article XXIV.[89]

Conversely, the UNCTAD was a multilateral setting devoted to 'trade and development' matters. It exerted significant influence over post-independence Africa. It also shaped EC–AAMS affairs through the formation and implementation of the Generalised System of Preferences and, later, advocacy for the implementation of the NIEO project.[90] Specifically, the GSP was conceived as an alternative system of discriminatory and non-reciprocal trade, by which developed countries unilaterally granted market access to developing countries.[91] Hence, the UNCTAD affected the project only indirectly through GSP negotiations.[92]

The European Community was itself a powerful site for debating EC–AAMS relations. From the start, the EC's trade and development policy was not grounded in a single ideational programme.[93] In the 1950s, neo-imperialism and liberal-welfarism shaped the EC, affecting the early years of its colonial policies. Initially, neo-imperialism was a prevailing force. As decolonisation progressed, liberal-welfarism gradually became dominant. By contrast, developmentalism was initially rejected. When post-independent AAMS States employed it to demand changes in the 'trade and development policy', they prompted the EC to debate developmentalism and eventually incorporate some of its proposals. Thus, deliberations among EC members over their economic relations with the AAMS affected the project.

Notwithstanding, it was EC–AAMS negotiations that created the setting for diplomats and experts to determine limits and agree on the fundamental premises and general goals for their economic relationship. The tension between neo-imperialism, liberal-welfarism and developmentalism underpinned proposals and arguments of negotiators. Between clashes and

[88] GATT Arts I:1-2, and XXIV.
[89] See below (nn 146–165) and accompanying text.
[90] Yusuf (n 14) 21–3, 83–90; El–Naggar (n 64) 275–6.
[91] UNCTAD, Resolution 21(II). Preferential or free entry of exports of manufactures and semi-manufactures of developing countries to the developed countries (UNCTAD, 1968-I, Vol. I, United Nations, 1968).
[92] See below (nn 166–172) and accompanying text.
[93] Doidge and Holland (n 6) 60–5.

compromises, a common understanding around four core premises gradually emerged in the form of the EC–AAMS project.

The first assumption was that the world of empires and colonies was progressively superseded by a world view of interdependent States. Postcolonial countries were reconceptualised as 'underdeveloped' or 'developing' economies,[94] constrained by internal 'primitive-backward' practices or external 'neo-imperialist' or 'capitalist' exploitation. Developed countries were repositioned from imperial powers to stewards for a prosperous world economy.[95] Second, developing countries' main purpose was presumably self-sustaining economic growth achieved by either 'naturally travelling' along or 'intentionally striving' for the Western-like development path. Third, States were regarded as the central actor to promote development through (direct or indirect) intervention. Fourth, development was understood as an economic problem that could be scientifically analysed and technically solved through policies, rules and institutions.

More concretely, the project expressed the shared purposes of EC–Africa regionalism as the promotion of the development of AAMS partners through economic cooperation with EC partners, and a (re)affirmation of the EC–AAMS commitment to cultivating a 'special relationship'. It embodied an unbalanced compromise between modernisation, structuralism and neo-imperialism, bending in favour of the former. It was continuously ameliorated and rebalanced through negotiations until it became dominant, marginalising neo-imperialism and other South-North rival projects.[96]

3. *The ideational dimension of the development framework*

In the context of EC–Africa regionalism, lawyers engaged with and eventually appropriated the project for regional development cooperation through legal expertise. As negotiations advanced, they were called on to translate the project into legal arguments and treaty provisions. Their hidden work was to organise and select from the available legal vernacular the ideas, norms and techniques that could be used to conceptualise, construct and manage RTAs according to the emerging project. This professional routine led them to rethink the legal concept of RTAs in accordance with the project as its core features were progressively justified and legally encoded into the EC–AAMS regime. This endeavour culminated in an attempt to change the concept's

[94] Rist (n 70) 79.

[95] JM Hodge, 'Writing the History of Development (Pt 2: Longer, Deeper, Wider)' (2016) 7 Humanity: IJHRHD 130–2.

[96] There were other competing projects for governing South-North regionalism. For instance, the EC–North Mediterranean project for regional economic integration (eg EEC–Turkey RTA of 1963) and the EC–South Mediterranean project for regional trade cooperation (eg EEC–Morocco RTA of 1969).

ideational dimension. Despite its failure, the effort ultimately contributed to the formation of a specialist framework.

The production of a specialist conception faced a central challenge: the hybrid character of the project challenged the efforts to ensure the concept's theoretical consistency and thus its persuasiveness. Whereas some features of neo-imperialism, liberal-welfarism and developmentalism shared commonalities, others were profoundly contradictory. While economists and other experts developed specialist theories and policies for each programme (ie modernisation and structuralism), lawyers' work was largely the opposite. Part of it was to review legal ideas and practices to incorporate or reject features of the programmes. The other part was to accommodate choices regarding such features by offering compelling legal reasons for incorporating them into the Yaoundé Conventions. It was through lawyers' participation in treaty-making that EC–AAMS negotiations affected, in turn, legal expertise.

Between 1947 and 1975, the influence of neo-imperialism, liberal-welfarism and developmentalism over EC–Africa regionalism varied. The ideational features of the Association were drawn directly from the Treaty of Rome and indirectly from the French Community.[97] The Association embedded neo-imperialism but displayed a liberal-welfarist façade. It was mandated to assist the OCTs in catching up with (European) civilisation by supporting their 'modernisation' and 'industrialisation' efforts.[98] Part IV provided liberal-welfarist policies to achieve these goals.[99] On the liberal front, FTAs were established to help OCTs generate foreign exchange by exporting commodities for which they enjoyed a competitive advantage. On the welfarist front, the EDF provided funding for OCTs' public investments (assuming that it was sufficient to finance economic development).

Shortly after its establishment, the Association faced growing decolonisation demands, advances in liberal-welfarism, and developmentalist critiques.[100] These challenges caused the EC to defend and reconsider its trade and development policy. Indeed, the Yaoundé negotiations created an opportunity to review the ideational features of EC–Africa regionalism. The EC–AAMS project gradually emerged and evolved throughout the 1960s. Its core features suggest that the programmes did not have the same weight. Liberal-welfarism dominated the EC's trade and development policy, while some developmentalist ideas were integrated, and neo-imperialism was ostracised yet not purged.[101] Just as importantly, the project laid down the ideational

[97] Ravenhill (n 5) 47–54.

[98] EEC, 'Association des Etats d'Outre-Mer à la Communauté. Considérations sur le futur régime d'association', CCOM Document (61) 110 (12 July 1961) 3.

[99] J Ferrandi, 'EEC Action in the Associated Countries' (Address delivered to the African and Malagasy Economic Conference, Marseilles, 1962) 26–7; Sissoko *et al.* (n 4) 10.

[100] Doidge and Holland (n 6) 62–3.

[101] The EC's Memorandum on a Community Policy for Development Cooperation of 1971 expressed the emerging project for regional economic development. It explicitly used liberal-welfarist and developmentalist policy vocabularies (Doidge and Holland (n 6) 64). For instance,

foundation on which lawyers constructed the Yaoundé Conventions while rethinking their underlying conception. Although the institutional outcome was a disappointment for mostly reincorporating the Association as RTAs, the Yaoundé regime would progressively reflect a new ideational balance.

All in all, the first decades of EC–Africa regionalism witnessed the formation of the project for regional development cooperation and a re-engagement with the concept of RTAs. The project's ideational hybridity and the need for diplomatic compromises paved the way for lawyers to review what was regarded as the primary functions of RTAs. This contributed to the formation of a specialist conception that replaced free trade with development as the primary policy for the Yaoundé Conventions.

B. Institutional Dimension: The Governance of EC–Africa Regionalism

From the clashes and *détentes* between neo-imperialism, liberal-welfarism and developmentalism, four visions of South-North regionalism emerged in the postwar period within the boundaries of particular institutional settings. They were inspired by the most influential regimes with mandates over trade affairs: the UN, GATT, UNCTAD, and EC. The visions articulated norms, ideas and techniques around 'models' of South-North RTAs.[102] Their relative importance for the Yaoundé Conventions depended on how, where, and by whom these visions were articulated as (persuasive) arguments.

1. The institutional visions of South-North regionalism

a) The liberal-welfarist model for South-North regimes: The GATT

The GATT-centric vision resulted from the efforts to read history through a liberal-welfarist lens. Its stories and lessons emphasised the tension between multilateralism and regionalism embedded into GATT Articles I:1 and XXIV.[103] It was very critical of imperial systems and also suspicious of RTAs for threatening the GATT system centred on non-discrimination and reciprocity. Yet, EEC-AAMS RTAs could be politically tolerable if they were constituted as FTAs or CUs according to Article XXIV and modelled on the GATT itself. Thus, to be formally and functionally consistent with GATT law, the Yaoundé Conventions should replicate the GATT model.

it stated that economic development was dependent on 'economic take-off', a direct reference to Rostow's modernisation theory. By contrast, it committed the EC to make 'its own contribution to the establishment of a more just international order', reproducing the NIEO's central claim (EEC, 'Commission Memorandum on a Community Policy for Development Cooperation' SEC (71) 2700 final (27 July 1971) EC Bulletin 5/71, 8, 18).

[102] Riles (n 56) 806–8.

[103] Carreau *et al.* (n 7) 79–81, 256–261; T Flory, *Le G.A.T.T.: droit international et commerce mondial* (LGDJ 1968) 13–20.

b) The postcolonial model for South-North regimes: The EC

The European-centric vision was the compromise between neo-imperialist and liberal-welfarist understandings of the past and future of Europe. Their narratives and lessons placed European integration projects at centre stage and then focused on their relationships with developing countries.[104] Trade arrangements between the EC and (colonial or postcolonial) Africa were regarded as multi-dimensional phenomena, expressing economic interests, development commitments, and historical-cultural ties. Consequently, EEC–AAMS RTAs were not solely understood as FTAs subject to GATT Article XXIV.[105] They were, instead, conceived as integration mechanisms for development cooperation. The EC's trade and development policy was deemed as instrumental and complementary to the EC integration project itself. Thus, the model for EC–Africa regionalism was ultimately the EC itself, but adapted to account for the unequal stage of development between the two blocs. This explains designing the Yaoundé Conventions based on the Treaty of Rome and the French Community.

Those two visions shared key lessons from stories of regionalism. Both offered models that prohibited partners' adoption of discriminatory and protectionist measures similar to those responsible for the collapse of the liberal trading system. The use of law to constitute international institutions to govern interstate trade was also a common strategy. Specifically, they agreed on the need for a (postwar) world trading system. However, they diverged as to the (legitimate) use and (suitable) design of South-North RTAs. Whereas the GATT-centric vision favoured multilateralism and a (very narrow) GATT-FTA model, the European-centric vision defended regionalism and an EC model.

c) The developmentalist models for South-North regimes: The UN and UNCTAD

By contrast, two visions grounded in developmentalism offered models centred on the UN and UNCTAD. Although they agreed with the other visions on the significance of the interwar events, the lessons learned from them were profoundly different: the nineteenth-century liberal trading system, which inspired the GATT, was regarded as responsible for making imperialism possible. Consequently, it was rejected as a model for South-North RTAs. Instead, the central lessons taken into consideration to (re)invent EC–Africa regionalism were related to formal decolonisation, political independence, and economic (inter)dependence.

[104] F Luchaire, 'Les associations à la Communauté économique européenne' (1975) 144 RdC 241–308; JC 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* (Professional Books 1987); D Vignes, 'Communautés Européennes et Pays en Développement' (1988) 210 RdC 225–400.

[105] Feuer (n 73) 88.

The UN-centric vision was built on stories and lessons about socio-economic transformations leading up to decolonisation and integration of Third-World countries under UN auspices.[106] It conceived South-North RTAs as international trading systems between (sovereign) developed countries and (sovereign) developing countries, which often shared historical and cultural ties. Particularly, they were understood as institutionalised regimes of economic (inter)dependence for development cooperation. Their functions were to foster economic growth, reclaim AAMS States' participation in world trade, demand aid from former empires, and dispel colonial images of their backwardness. Hence, the UN was regarded as the model to be used to help postcolonial developing countries reassert their equality to Western developed countries.

Decolonisation was also the landmark event for the UNCTAD-centric vision.[107] Yet, it was perceived as a moment of betrayal rather than victory, since it only replaced a visible with an invisible international system of exploitation under the GATT.[108] FTAs and CUs were regarded as systems of development cooperation for neo-imperialist exploitation because they reinforced the principles of discrimination among developing countries and reciprocity between developed and developing counties in direct contradiction to the General Principle Eight of UNCTAD law. This vision aspired, therefore, to reinvent South-North RTAs (generally) and the Yaoundé Conventions (in particular) as non-discriminatory and non-reciprocal trade schemes under the GSP.

The four visions were, with different degrees of influence, regarded as legitimate and valid parts of the development framework. This means that this specialist conception was broader and more resilient to accommodate their diversity and tensions. However, the acceptance of a wider variety of visions did not mean that they were all created equal or that they all enjoyed the same persuasiveness. Their relative authority was context-specific and so constrained by institutional settings and ideational boundaries. Enmeshed in national, regional or multilateral sites, lawyers could use any of their models to make a credible argument about the virtues and vices of the EC–AAMS regime. The remainder of this section examines the Yaoundé Conventions to uncover the four visions' impact.

2. *The Yaoundé regime of EC–Africa regionalism*

The Yaoundé Conventions were comprehensive international treaties. They were critical in the formation and application of the development framework.

[106] Elias (n 74); TO Elias, *Africa and the Development of International Law* (MNijhoff 1974). *See* also I Gruhn, 'The Lomé Convention: Inching towards Interdependence' (1976) 30 IO 241–262.

[107] El-Naggar (n 64); Abi-Saab (n 74); Bedjaoui (n 74); and Bennouna (n 74).

[108] J Gathii, 'A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias' (2008) 21 LJIL 339.

This evolving conception incorporated a range of valid models for designing and managing the Yaoundé regime.

Although its normative and institutional architecture 'reincorporated' the Association, the Yaoundé regime was progressively transformed as the new conception emerged. The Association's mandate was to achieve the EC's core goal of increasing trade and promoting the OCTs' development.[109] It combined a GATT-style system of market access with the EC's common external tariff, aiming to protect the OCT exports by imposing high tariffs on third-party suppliers.[110] Finally, the EDF, an exclusive funding mechanism, provided development aid. Not surprisingly, supporters of the GATT-, UN- and UNCTAD-centric visions accused the Association of perpetuating the existing colonial-metropole relationship under an FTA façade. Conversely, champions of the European-centric vision argued that its purpose was to preserve historical-cultural ties between the EC and the OCTs rather than to implement an EC-style economic integration.[111] Despite those critiques, the Association's architecture largely survived in Yaoundé I.

The Yaoundé regime is distinctively characterised by the combination of eight features. First, the Yaoundé I's preamble suggests the dominant influence exerted by the GATT/European-centric visions while the developmentalist-inspired visions appear only marginal. The contracting parties must observe 'the United Nations Charter' (UN-centric vision) and the 'Treaty of Rome' to achieve 'the economic, social and cultural progress of their countries' (European-centric vision).[112]

Second, Yaoundé I served as a legal instrument for 'regime transposition'.[113] Part IV and the Implementing Conventions on the Association of the OCTs with the EC (ICs) were 'legal agreements' that challenged the classical notion of the centrality of sovereign States as the (sole) subjects of international law. Hence, Yaoundé I can be understood as 'reconstructing' Part IV and ICs as 'international treaties' or 'FTAs'[114] to reflect the change in the legal status of AAMS States.

Moreover, GATT/European-centric narratives described the shift from 'associated OCTs' to 'associated states' as a 'natural', 'logical', or perhaps 'strategic', outcome of a global or European event. Globally, this

[109] Ravenhill (n 5) 47–54; Bartels (n 6) 717–22.

[110] Under Part IV, EC members committed to extending the benefits of the internal process of trade liberalisation within the EC to the OCTs, which included a gradual reduction, and eventual elimination, of customs duties and quantitative restrictions, except for sensitive products. On the other side, OCTs agreed to reduce duties and open up quotas for EC products, following a transitional schedule; nevertheless, OCTs were still allowed to impose both quantitative restrictions on non-quota imports and customs duties to foster industrialisation and produce revenue for their budget (Treaty of Rome arts 13, 14, 32, 33, and 133; IC arts 9 and 14).

[111] Ravenhill (n 5) 52–3.

[112] Yaoundé I Preamble (*compare* with arts 3(k) and 131 of the Treaty of Rome).

[113] Bartels (n 6) 723–4.

[114] As Part IV and the ICs, Yaoundé I was constructed not as a single FTA but rather as a bundle of interconnected FTAs (arts 8 and 9).

transformation resulted from either the dynamics of the Cold War, the GATT, or the US–EC foreign policies. From a European viewpoint, it expressed a compromise between French–Belgian neo-imperialism and the EC integration project. Supporters of those visions mostly conceived decolonisation as a mere exchange of formal titles (from 'OCTs' to 'states'), since AAMS countries remained economically dependent on exports to the EC market.[115]

Conversely, from a UN-centric perspective, decolonisation was the single most critical event of the twentieth century. The OCTs' rejection of the Association in favour of political sovereignty, self-determination and nationalism was a watershed episode, regardless of its economic implications.[116] Thus, the Association's transformation into the Yaoundé regime was not a game of appearances for AAMS States. Instead, it symbolised the former colonisers' acknowledgement of their new status as 'subjects' of international law and consequent entitlement to enter into 'treaties'.

Third, the Yaoundé Conventions constituted a uniquely complex regime of EC–Africa regionalism. They were built on neo-imperialism, reshaped by the GATT and EC models, and slightly chastened by the UN-centric view. The chief consequence was to shift their underlying teleology from 'assimilation' to 'development'.[117] The notion of empire as a process of gradual assimilation of colonised peoples into the European civilisation was intrinsically embedded into the Association. This programme's appeal was weakened during Yaoundé negotiations and governance, and its ideational influence, marginalised in favour of the notion of development. The EC was also 'reinvented' as the steward of the 'less developed' societies. Thus, to become advanced countries, the AAMS should follow the EC's trade and development policies.

Fourth, despite its complexity and ambition, the Yaoundé regime was designed as a transitory solution with an initial duration of five years. For European/UN-centric visions, the Yaoundé's finite goals were to assist AAMS countries in stabilising and developing their economies while promoting their integration into the global economy. For GATT/UNCTAD-centric visions, their temporality reflected the EC's protectionist or neo-imperialist strategy (respectively) of using uncertainty to sustain its hegemonic ascendency over the AAMS.

Fifth, the Yaoundé Conventions' structure and content also changed. Formally, they were organised into four core titles,[118] each of them

[115] Milward (n 4) 80–6; Lister (n 5) 61–2. [116] ibid. [117] ibid.

[118] Yaoundé I was comprised of four core and one miscellaneous titles: I – Trade (arts 1–14); II – Financial and Technical Cooperation (arts 15–28); III – Right of Establishment, Services, Payments and Capital (arts 29–38); IV – Institutions of the Association (arts 39–53); and V – General and Final Provisions (arts 54–64).

combining provisions crafted in the form of rules or standards.[119] Substantially, they integrated under a regime of distinct economic areas ranging from trade, services and investment to development and technical assistance. Despite some degree of variation, their formal structure closely followed a specific normative pattern: liberal-free-trade norms were often crafted as rules, while welfarist-development-aid norms were mostly constructed as standards.

Titles on 'trade', 'right of establishment, services' and 'institutions' were mainly constituted of rule-based provisions, whereas the title on 'financial and technical co-operation', of standard-based norms. For example, provisions on trade cooperation were modelled (directly) on Part IV 'rules' and (indirectly) on GATT 'rules'. Conversely, provisions on development finance were 'standards', setting forth vague rights and obligations that required ongoing decision-making.

Sixth, the Yaoundé regime constituted a regional trading system that embedded the core features of GATT/European-centric visions. At the regional level, partners were not only expected to treat one another on a non-discriminatory basis, but also regarded as formally equal and thus willing and able to reciprocally exchange trade concessions.[120] At the domestic level, they were authorised to legislate on social and economic matters, limited only to not imposing discriminatory treatment between them.[121] These goals contrasted with the Association, under which the OCTs were not required to liberalise trade among themselves.

For instance, the title on trade implemented FTA-type arrangements centred on a gradual reduction of customs duties and quantitative restrictions.[122] Its provisions were mostly structured as rule-based norms, establishing clear and self-executing obligations and rights. Yet standard-based provisions were also added as 'domestic exceptions' to give some flexibility in the application of the liberal-free-trade rules.[123]

Seventh, the Yaoundé regime also established a development cooperation system reflecting aspects of European/UN-centric visions. The purpose was to assist AAMS countries in integrating into the global (or European) economy through the EC's financial and technical support. The development cooperation was not unconditional and automatic, however. Not only were

[119] Norms can be formally designed as rules or standards. While rules are deemed to be rigid and objective, and aim to increase certainty, standards are regarded as flexible and subjective, and aspire to realise substantive objectives. Rules tend to be associated with legal norms directing free trade, whereas standards are often used as legal norms for welfarist policies. Rules are generally criticised for supporting a mechanical decision-making process that leads to over- or under-inclusiveness, whereas standards are attacked for defending biased decision-making that is subject to arbitrariness (D Kennedy, 'Form and Substance in Private Law Adjudication' (1976) 89 HLR 1687–1688, 1695–1696).

[120] Holland (n 6) 29.

[121] Bartels (n 6) 724–5.

[122] Pursuant to arts 2 and 11, all products from AAMS countries received preferential treatment, except for those covered by the newly established EC's CAP. There were also preferential measures providing progressive liberalisation of products originating in EC countries (art 2).

[123] Art 6 provided the right to impose either quantitative restrictions on non-quota imports or customs duties to protect infant industry.

AAMS countries required to adhere to the regional trade system, but also their access to aid was dependent on the EC's discretion.[124] For instance, the title on financial and technical cooperation did not set forth clear and self-executing rights and obligations. Provisions on financial aid and technical assistance were designed as welfarist-development-standards, requiring affirmative interactions and continuous decision-making to be realised.[125]

Eighth, the Yaoundé regime rested on a complex structure of four main governance bodies.[126] The 'association council', assisted by the 'association committee', was composed of one representative of each partner, and met annually to make binding decisions based on joint agreement. The 'parliamentary conference' had an advisory function, whereas the 'court of arbitration' was the dispute settlement mechanism.

Despite its sophistication, this governance structure was not particularly relevant for managing the Yaoundé regime. It was perceived as unable to make significant decisions due to its design. Instead, its function was mostly symbolic, serving to bolster the self-respect and confidence of AAMS partners.[127] While trade and investment provisions were largely self-executing rules, financial and technical assistance provisions were mostly standards, which required case-by-case deliberation. These decisions fell, however, outside the mandate of those bodies, the EC having sole discretion over them.

3. The institutional dimension of the development framework

Against this backdrop, EC–Africa regionalism was profoundly reshaped from the time of the Association until Yaoundé II's expiration, despite its normative and institutional architecture remaining unchanged. The four visions offered, nonetheless, competing characterisations of the Yaoundé regime's model, which could be articulated as: a system of trade preference for development cooperation (GATT-centric vision), a system of integration for development cooperation (European-centric vision), a system of economic (inter) dependency for development cooperation (UN-centric vision), or a system of development cooperation for neo-imperial exploitation (UNCTAD-centric vision).

[124] Gammage (n 43) 140.

[125] For instance, access to financial resources of the EDF and the European Investment Bank (EIB) was conditioned on the EC's sole discretion (arts 21–23). The implications were two-fold. Only one-third of the EDF's fund was successfully claimed by the AAMS and disbursed by the EC. The bulk of the EDF's resources was invested into infrastructure projects, excluding or undersupplying all other areas, notably the industrial sector (Holland (n 6) 29). Interestingly, the EDF seemed to be as much the EC's aid to itself as it was to AAMS, since a substantial proportion of the resources was actually spent to acquire EC products and services (Zartman (n 28) 28).

[126] Arts 39–53.

[127] W Feld, 'The Association Agreements of the European Communities: A Comparative Analysis' (1965) 19 IO 243.

The challenge of subscribing to a single definition of the Yaoundé regime arises from two of its features. First, the Yaoundé Conventions were new and sophisticated RTAs; yet, they were produced and managed using the Association's normative and institutional architecture. What distinguished the Yaoundé regime from the Association was its governance practices, which embraced the GATT/European visions and accommodated the developmentalist visions, while rejecting neo-imperialism. Yaoundé governance was, therefore, continuously (re)conceived, debated, and practised through the models.

Second, the development framework empowered lawyers to influence the Yaoundé regime. It employed the legal vernacular to organise and translate the wide repertoire of stories, lessons, ideas and norms provided by the four visions into legal arguments about the Yaoundé Conventions. It was through argumentative practice that lawyers deployed the framework to influence Yaoundé negotiations and governance. The consequence of these two features was that its regime was characterised by hybrid normative argumentation and creative institutional practice.

C. Jurisprudential Dimension: The Law of EC–Africa Regionalism

The field of international law experienced a sharp ascendency in the postwar period. Lawyers often imagined themselves as being part of a transnational community that shared a set of historical facts, professional ethos, disciplinary vernacular, and differentiated styles of thinking and reasoning.[128] Legal expertise was regarded as legitimate and authoritative knowledge that enabled lawyers to participate in the reconstruction and management of the international economic order.[129] Particularly, they regarded themselves as a profession committed to the advancement of the world trading system.

Internally, the field of international law was experiencing a period of significant transformation.[130] This process was partially endogenous and led by lawyers' cultural change[131] and increasingly innovative attitudes towards international law, and partially exogenous and driven by ideational, political and economic transformations. Consequently, attempts to 'renovate' legal expertise faced numerous challenges.

In the context of EC–Africa regionalism, the work of embedding one of the ideational programmes was confronted by two obstacles: first, each programme faced equally persuasive contenders; and, second, the need to expel remaining

[128] O Schachter, 'The Invisible College of International Lawyers' (1977) 72 NWULR 223–6; 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* (Cambridge University Press 2006) 22–3.

[129] Carreau *et al.* (n 7) 14, 27–9, 35–40; Nguyen Quoc *et al.* (n 7) 895–900, 946–7.

[130] Kennedy (n 128) 37–59; Kennedy (n 10) 102–6.

[131] M Van Hoecke and M Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law' (1998) 47 ICLQ 515–16.

features of classical liberalism and imperialism. Moreover, lawyers had to handle the legacy of declining jurisprudential projects,[132] while supporting their next generation. Of equal importance, the field was affected by the increasing fragmentation of disciplinary authority across State borders. European institutions established to govern the production and authority of norms and knowledge were increasingly contested by their regional counterparts. This process of 'creative (re)construction', which inflicted enduring, structural transformations on international law, was not frictionless or unilateral. Instead, these dynamics of reception/rejection of norms, ideas and methods were shaped by political alliances and intellectual commitments. The result was a period of intense conflict and innovation.

1. *The jurisprudential approaches to South-North regionalism*

As reputable experts intertwined in the fabric of EC–Africa regionalism, lawyers broadly shared a sense of professional identity, disciplinary mission and specialised knowledge. French[133] and African[134] schools of international law embraced some conceptual understandings and historical landmarks as foundations of the postwar international legal order. The essential lesson was that international law had not made a decisive contribution to preventing either the collapse of the liberal trading system or the outbreak of World War II.[135] They accepted the idea that a core function of international law was (or ought to be) to constrain State discretion in adopting protectionist-discriminatory policies and engaging in predatory behaviour. The

[132] By the end of the 1940s, the once prominent projects of Hans Kelsen's legal formalism, Hersch Lauterpacht's natural law, Georges Scelle's sociologism and Carl Schmitt's scepticism were either marginalised or under review within the international legal field (M Koskenniemi, 'Chapter 2 – International Law in the World of Ideas' in J Crawford and M Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press 2012) 54–6; E Jouannet, 'A Century of French International Law Scholarship' (2009) 61 MLR 95–9).

[133] The choice of focusing on the French lawyers is justified on two grounds. First, France was not only economically dependent on its imperial system but also used its influence over negotiations of the Treaty of Rome to secure the incorporation of its colonies into the EC project (see ABOVE sections II.B–C), and later over the EEC's Directorate General for Overseas Territories (later Development) mandated to oversee the EC's trade and development policy. Secondly, French lawyers were the most interested and committed to the reconstruction of the French trade policy through negotiations of the GATT (at the multilateral level), the EC (at the regional level), and the French Union and later Community, the Association, and the Yaoundé Conventions (at the South-North level). Consequently, Yaoundé I reincorporated the Association, which, in turn, was substantially modelled on the French Community (for similar conclusions, see Gautron (n 104)).

[134] Despite all the obvious difficulties and critiques associated with using the notion of regions to identify and qualify groups of lawyers or schools of legal thought, it does play a useful and sometimes indispensable function when employed in an appropriately qualified and contextualised way, which enables analysis of some fundamental features of the history of international law (A Anghie,' Identifying Regions in the History of International Law' in B Fassbender and A Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012) 1059–60).

[135] Carreau *et al.* (n 7) 78–83, 257–8; Nguyen Quoc *et al*. (n 7) 946–8; Bennouna (n 74) 212–13; El-Naggar (n 64) 256–60; Elias (n 74) 39–40.

establishment of the UN and its specialised agencies was part of the postwar consensus on the progressive institutionalisation of global economic governance and the reconstruction of national economies. The best solution to regulate and manage trade, in particular, was to use 'international treaties' for creating multilateral and regional trade agreements and organisations.

The similarities between French and African schools ceased at this point. As shown below, their understandings of the role of international law in South-North regionalism diverged considerably. Neither of them produced 'grand' systems of norms, ideas and techniques. Their jurisprudential approaches consisted of highly experimental and inconsistent attempts to (re) conceptualise South-North RTAs according to preferred projects. Within the context of EC–Africa regionalism, four projects gained relevance: *voluntarism*, *sociologism*, *contributionism*, and *critical*.

Preoccupied with the Cold War, French lawyers produced voluntarism and sociologism.[136] They essentially aimed to reconcile legal neo-positivism with the liberal-welfarist programme of GATT law. Taking decolonisation seriously, African lawyers developed the contributionist and critical projects.[137] They sought to criticise and reform Western-centric international law of the world trading system through the developmentalist spirit of UNCTAD law. Out of this moment of creative (re)constructions, three approaches—reformist, apologetic and utopian—emerged, each offering a distinct understanding of how international law relates to EC–Africa regionalism.[138] The next sections offer a simplification that probably does not do justice to all aspects of those schools and approaches. Some lawyers would not affiliate themselves with either.

a) The French schools of international law: Between reformist voluntarism and apologetic sociologism

French voluntarism produced a 'reformist approach' by which South-North regionalism was understood as economic relations between capitalist countries in different stages of development.[139] Two ideational programmes were regarded as equally respected. Liberal-welfarism gave rise to the (multilateral) GATT and (regional) North-North RTAs, which aimed to foster economic integration among their members. Conversely, developmentalism brought about the (multilateral) UNCTAD and (regional) GSP schemes and South-North RTAs, which aimed to assist developing countries in 'catching-up' with developed economies.

[136] Jouannet (n 136) 83–131; E Jouannet, 'French and American Perspectives on International Law: Legal Cultures and International Law' (2006) 58 MLR 292. [137] Gathii (n 108).
[138] Sakr (n 55) Ch 6.
[139] Nguyen Quoc *et al*. (n 7) 895–914, 946–58; Feuer (n 73) 88–9; GL Lacharrière, 'Aspects récents du classement d'un pays comme moins développé' (1967) 12 AFDI 704–6; M Virally, 'Vers un droit international du développement' (1965) 11 AFDI 3–12.

From a reformist viewpoint,[140] GATT Article XXIV was unfit for regulating South-North RTAs, since it established rigid and formalist rules designed for governing economic integration among (equal) developed countries (eg EEC and EFTA). Conversely, the Amendment of 1965, which introduced Part IV to the GATT, was welcomed for making GATT law suitable to discipline South-North regionalism. It provided flexible and purposeful standards for accommodating the Third World's needs, preferences, and values. However, voluntarist premises (unintentionally) reasserted (neo-imperialist) notions of temporality, speciality and hierarchy in international law by conceiving South-North regimes as 'provisional', 'differential' and 'non-universal'.[141] Thus, the Yaoundé Conventions were conceptualised as 'transitory' regimes created by a 'special' body of 'contingent' legal rules and institutions under GATT Part IV to assist AAMS countries in overcoming their underdeveloped condition.

French sociologism was deeply committed to liberal-welfarism. It inspired an 'apologetic approach' by which all RTAs were regarded as discriminatory arrangements for reciprocally exchanging economic advantages between partners.[142] South-North RTAs were conceptualised as preferential instruments expressing States' selfish interests. Consequently, they were subject to GATT Article XXIV rather than any other 'special and differential' rule under GATT or UNCTAD laws.[143] For fundamentally contradicting the GATT principle of non-discrimination, the Yaoundé Conventions should be rigorously controlled by Article XXIV and ideally phased out.

b) The African schools of international law: Critical utopia

African contributionism produced scant literature on South-North regionalism, not articulating a clear approach.[144] By contrast, the African critical school gave birth to the 'utopian approach', by which the GATT and South-North RTAs were regarded as instruments for perpetuating the First World's exploitation of the Third World.[145] The creation of the UNCTAD led to the reconceptualisation of South-North RTAs as 'special regimes' of preferential trade (in contrast to the GSP) capable of fostering cooperative (inter)dependency and emancipatory development. The Yaoundé regime should, in this view, be continuously reworked to attain two goals. Its core function should shift from a liberal-welfarist instrument for economic

[140] Nguyen Quoc *et al*. (n 7) 895–914, 946–58; Feuer (n 73) 88–9.
[141] Nguyen Quoc *et al*. (n 7) 906–10; Feuer (n 73) 88–9.
[142] Carreau *et al.* (n 7) 84–5, 308–9, 343–7, 361–3, 621.
[143] ibid.
[144] Nevertheless, it is reasonable to infer from the contributionist literature that South-North RTAs would only be regarded as valid and legitimate if they constituted and regulated by international law, and resulted from equal and fair negotiations between developed and developing countries (Elias (n 74) 25–8, 198–208, 378–81).
[145] Bedjaoui, (n 74) 104–14, 207–9; Bennouna (n 74) 8–19, 212–29, 315–16.

exploitation to a developmentalist mechanism for economic development. UNCTAD law rather than GATT law should regulate it.

The above approaches enjoyed distinct degrees of sophistication and persuasiveness. The next section suggests that they were tactically used to negotiate, craft, and interpret the Yaoundé Conventions. They were also used to argue about what (kind of) international law ought to be applied to them. They were employed to assign meaning to the texts of the GATT and UNCTAD in the process of arguing about Yaoundé provisions. Yet, their persuasiveness and authority varied over time and place, depending on contextual factors.

2. *International law of the Yaoundé Conventions*

While the Cold War and decolonisation were the chief drivers of global transformations, EC–Africa regionalism was significantly shaped by the GATT and UNCTAD. They constituted the main multilateral fora where jurisprudential approaches were employed—with varying degrees of influence—to reframe controversies over the Yaoundé Conventions as legal issues and to propose solutions through legal argumentation.

a) GATT law of the Yaoundé regime

The GATT was the site where debates about the Yaoundé Conventions were largely reasoned through law and policy. These RTAs were a central topic during and after the 1963–1967 Kennedy Round of multilateral negotiations.[146] Contracting parties—which were neither allowed to nor willing to accede to the Yaoundé regime—sought to protect their interests by using negotiations to contest its consistency with GATT law. For instance, the United States accused it of perpetuating preferential treatment that distorted trade flows. By contrast, developing contracting parties claimed that their products were unfairly discriminated against and prevented from accessing the EC market.[147] Indeed, the Yaoundé Conventions symbolised for their critics the EC's greater commitment to preferential rather than free trade.

Moreover, contracting parties were entitled to challenge the validity or legitimacy of an RTA through the GATT's multilateral review mechanism.[148] This involved a process in which ad hoc working parties were

[146] Milward (n 4) 88–9; Bartels (n 6) 728–9; L Coppolaro, *The Making of a World Trading Power: The European Economic Community (EEC) in the GATT Kennedy Round Negotiations (1963–67)* (Ashgate 2013) 1756.

[147] The United States argued that the Yaoundé Conventions provided the EC with a justification, along with its CAP, to not increase its tariff concessions on agricultural products. Distinctively, developing countries claimed that the Yaoundé Conventions weakened the effort to make the GSP the primary multilateral trade regime, which was devised to benefit developing countries alike (Coppolaro (n 146) 175–6).

[148] Art XXIV:7.

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established to assess compliance of notified FTAs and CUs with Article XXIV and then to report to the GATT Council.[149] The evaluation focused on two core requirements: RTAs must not raise barriers to trade with third countries (Article XXIV:5), and must eliminate all restrictive commerce regulations on substantially all the trade between them (Article XXIV:8).

The EC's notifications to the GATT claimed that the Yaoundé Conventions fully complied with Article XXIV.[150] Nevertheless, developing countries opposed them by raising six legal objections.[151] Each of them can be roughly associated with at least one jurisprudential approach. First, the Yaoundé Conventions were accused of being formally constituted as FTAs while illegitimately functioning as instruments for extending the grandfathered imperial systems under Article I:2 (utopian approach, yet implied in the apologetic and reformist approaches).[152]

Secondly, the Yaoundé Conventions were attacked for their unclear and unstable architecture (apologetic approach, yet implicit in the reformist approach).[153] Their 'legal identity' as FTAs was challenged, since they were constituted of a network of FTAs under a common arrangement named 'convention'. This network of FTAs was not expressly authorised under Article XXIV. Moreover, they were also accused of encouraging the proliferation of RTAs and thus weakening the non-discrimination principle. This would ultimately violate the general requirement of Article XXIV:4, which mandated RTAs to create rather than divert trade. Finally, the absence of a plan for eliminating trade barriers between the partners raised doubts as to whether the Yaoundé Conventions were FTAs (from the time of formation) or interim agreements. Thus, their complexity made it almost impossible to reach a definitive conclusion on their compatibility with Article XXIV.

Thirdly, two opposite claims were made to challenge the 'temporality' of each Yaoundé Convention.[154] Some argued that 'an extensive or indefinite period' was an 'implicit requirement' of Article XXIV, since RTAs' aim is to promote economic integration (apologetic approach). Others asserted that the Yaoundé Conventions could not be permanent since the 'historical or other' reasons for their conclusion were transitory in nature (reformist approach).

Fourthly, there was controversy over the AAMS's authorisation to increase duties for development needs.[155] Some claimed that such safeguard measures

[149] Z Hafez, 'Weak Discipline: GATT Article XXIV and the Emerging WTO Jurisprudence on RTAs' (2003) 79 NDLR 902–4.

[150] GATT, *Report of the Working Party on EEC/Association of African and Malagasy States and of Non-European Territories* (Yaoundé-I Report) GATT Doc L/2441 (3 June 1965); GATT, *Report of the Working Party on Convention of Association between European Economic Community and the African and Malagasy States* (Yaoundé-II Report) GATT Doc L/3465 (20 November 1970).

[151] Yaoundé-I Report paras 20–29.

[152] Yaoundé-II Report para 5.

[153] Yaoundé-I Report paras 4, 13, 19, 23–24; Yaoundé-II Report para 4.

[154] *Compare* Yaoundé-I Report para 5–6 *with* Yaoundé-II Report para 15–16.

[155] Yaoundé-I Report para 7, 30; Yaoundé-II Report para 11–12, 20.

would be inconsistent with Article XXIV:8(b), which requires the elimination of duties on 'substantially all the trade'. This expression was broadly interpreted as a prohibition on FTAs to adopt duties or other restrictions for 'any protective purpose' (apologetic approach). Others argued that the resort to those safeguards by developing countries was not only likely but also economically justified, based on their development needs (reformist approach). This implied that such measures were justified under Article XXIV:8(b).

Fifthly, there was a direct attack on the reciprocal character of the Yaoundé Conventions (reformist approach, yet implicit in the utopian approach).[156] Some claimed that South-North FTAs should not require reciprocal concessions from developing countries, which would be unable to accord free entry to 'substantially all' products from developed countries. Hence, this Article XXIV requirement should be interpreted in light of GATT Part IV to justify developing countries' not being obliged to reciprocate advantages under FTAs.

The last and most disruptive objection challenged the applicability of Article XXIV and GATT law (broadly) to South-North RTAs (utopian approach). Some questioned only the suitability of Article XXIV on the grounds that its rules were unfit.[157] In examining Yaoundé II, one contracting party argued that GATT law was not applicable. Instead, it was argued, it should be regulated by the (newly agreed) GSP under UNCTAD law.[158]

The EC and AAMS responded to those attacks by asserting that the Yaoundé Conventions constituted FTAs consistent with Article XXIV[159] (apologetic approach). GATT rules—they argued—required neither the implementation of a particular model, nor evidence that FTAs created rather than diverted trade, or indefinite duration of FTAs.

Three substantive counterarguments were put forward. First, the EC addressed the consistency of safeguard measures to promote development with GATT law on two grounds (apologetic approach).[160] Since all RTAs provided safeguard clauses, their compatibility could only be assessed according to their use post facto rather than ex ante. Also, the EC rejected the objection against the existence of safeguard measures. It argued that such a view was founded on 'an out-of-date philosophy of economic development'.[161]

Secondly, the claim about the inconsistency of FTAs in providing reciprocal exchanges between developed and developing countries was rejected based on the inexistence of such limitation in Article XXIV and the fact that the Yaoundé Conventions expressed their partners' interests and consent.[162] Thirdly, the EC

[156] Yaoundé–I Report para 14, 25–27; Yaoundé-II Report para 7, 12, 22.
[157] Yaoundé-I Report para 14, 25–26, 30.
[158] Yaoundé-II Report para 7.
[159] Yaoundé-I Report 30–32; Yaoundé-II Report 4–6, 14, 29–33; Yaoundé-II Report para 16; Bartels (n 6) 729; Steffek (n 39) 85–9.
[160] Yaoundé-I Report para 7, 30; Yaoundé–II Report para 12, 29–30.
[161] Yaoundé-II Report para 12.
[162] Yaoundé-I Report para 30–31; Yaoundé-II Report para 21.

and AAMS refuted objections to the applicability of Article XXIV to South-North RTAs, asserting that '[t]here was no reason to believe that the framers of Article XXIV had overlooked the possibility of free-trade areas between countries at different stages of development'.[163] They claimed further that Article XXIV:5 provided that GATT rules should not prevent the formation of RTAs.

The EC–AAMS responses were not entirely accepted. As typical in the GATT, the legal issue of whether the Yaoundé Conventions were consistent with Article XXIV was not resolved by either an agreement within their working parties or the dispute settlement mechanism.[164] Rather, the 'legal' decision was 'suspended' by diplomatic compromises that diverged the conflict to the ongoing negotiations under the Kennedy Round.[165]

b) UNCTAD law of the Yaoundé regime

From 1964 onwards, the UNCTAD became an alternative setting where legal and policy debates about the Yaoundé Conventions took place. Developed countries and the EC (in particular) were often accused of benefiting from the structural exploitation of the Third World.

The UNCTAD's first session found that developed economies had an unfair advantage over developing economies because the price of commodities tended to decline relative to the price of manufactured goods over the long term.[166] This 'deterioration of the terms of trade' was a structural imbalance that shifted bargaining power towards developed countries, leaving developing countries with little to offer in negotiations. The initial attempt to deal with this phenomenon took the legal (but non-binding) form of the General Principle Eight.[167] This Principle provided that developed countries should grant general non-reciprocal, non-discriminatory trade concessions to developing countries. In the UNCTAD's second session, Resolution 21(II) was adopted, turning the Principle into a mutual agreement on the establishment of the GSP.[168]

Furthermore, Principle Eight and other UNCTAD recommendations led to the 1965 Amendment of 'Part IV: Trade and Development' of the GATT. During the years between the UNCTAD's first (1964) and second (1968) sessions, Yaoundé I came into force (1964) and negotiations for Yaoundé II (1969) were underway. Some developing countries began to attack the

[163] Yaoundé-I Report para 14, 30; Yaoundé-II Report para 21, 23.
[164] Yusuf (n 14) 21; Bartels (n 6) 729; Coppolaro (n 146) 175–6.
[165] Although the United States rigorously objected to any preferential arrangement, it believed that the Kennedy Round would reduce so drastically trade tariffs that preferential margins would be irrelevant (Yusuf (n 14) 21).
[166] UNCTAD, *Proceedings of the United Nations Conference on Trade and Development* (UNCTAD Proceedings 1964-I) Vol. I, UN (1964) 4–11.
[167] UNCTAD Proceedings 1964-I 20.
[168] UNCTAD Proceedings 1968-I 38; UNCTAD Resolution 21(II).

Yaoundé Conventions as the nemesis of the GSP for three central reasons (utopian approach).[169] First, they were constituted and regulated by GATT law. Second, they legitimised a GATT-inspired FTA of reciprocal exchange of discriminatory preferences. Third, their membership rules differentiated between AAMS and other developing countries.

The EC and AAMS responded to those objections in different ways. The EC tried to reframe the debate back to a European-centric vision by offering the so-called 'Brasseur Plan' as an alternative to the GSP (reformist approach).[170] The Plan proposed to create a system of managed markets devised to grant preferential access to selected infant industries of developing countries for a limited time. The aim was to protect developed countries from adverse effects, while supporting developing countries' uncompetitive exports through selective preferences negotiated with each beneficiary according to its development stage.

Distinctively, the AAMS argued that the Yaoundé Conventions were not in contradiction to General Principle Eight (reformist approach), since it would be unreasonable to expect any country to abandon existing preferences before the introduction of the GSP.[171] The EC–AAMS responses were not completely dismissed. Yet, the Brasseur Plan was clearly rejected because it would not only increase the discretion of developed countries over developing countries but would also fragment the bargaining positions of the latter.[172] Despite the united defence of the Yaoundé Conventions within the GATT and UNCTAD, the 1970s witnessed profound transformations in EC–AAMS trade relations caused by internal and external factors.[173]

Against this background, the Yaoundé Conventions represented the first, yet controversial, experiment. The legal arguments that were put forward by the EC, the AAMS, and other countries suggest they were crafted through the three jurisprudential approaches. Obviously, GATT Reports and UNCTAD Proceedings provide no more than partial evidence of their fluid influence over the ways legal rules and institutions were articulated to argue about and provide solutions to the Yaoundé Conventions. Some conclusions can, nonetheless, be inferred from the above analysis.

[169] UNCTAD, *Proceedings of the United Nations Conference on Trade and Development, Second Session, New Delhi, 1 February–29 March 1968* (UNCTAD Proceedings 1968-I) Vol. I, UN (1968) 342–3; UNCTAD, *Proceedings of the United Nations Conference on Trade and Development, Second Session, New Delhi, 1 February–29 March 1968* (UNCTAD Proceedings 1968-V) Vol. V, UN (1968) 34, 39–44; Bartels (n 6) 724–9.

[170] UNCTAD, *Proceedings of the United Nations Conference on Trade and Development* (UNCTAD Proceedings 1964-II) Vol. II, UN (1964) 108–13; Yusuf (n 14) 21; Bartels (n 6) 731; Steffek (n 39) 85–9.

[171] UNCTAD Proceedings 1968-I 138 (Madagascar), 176 (Togo).

[172] The Brasseur Plan was also strongly opposed by champions of the apologetic approach, since it would not only legitimise systems of preferential trade but also make them even more complex (Steffek (n 39) 87).

[173] See above (nn 38–39) and accompanying text.

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3. *The jurisprudential dimension of the development framework*

The specialist conception of EEC–AAMS RTAs played an important role in defining the jurisprudential boundaries and possibilities of international law. It worked (sometimes) as 'description' and (sometimes) as 'norm'. Descriptively, it characterised the essential properties that an entity must possess to be qualified as an FTA or CU under GATT law or as a 'regional system of preference' under UNCTAD law. Normatively, it referred to rules and institutions applicable to constituting and regulating the EC–AAMS regime. The question that lawyers had to continuously (re)address was: how could (or should) the relations between the descriptive and prescriptive aspects of EEC–AAMS RTAs be understood through international law and against a fragmented world trading system?

Drawing from historical accounts, lawyers articulated descriptive lessons by which the Yaoundé Conventions could be differentiated from the past preferential and imperial systems, which were regarded as illegitimate and illegal. However, difficulties emerged when they sought to determine which facts and norms counted to demarcate the boundaries of legality and legitimacy. To undertake this task, three jurisprudential approaches were produced, and their echoes can be found, with varying degrees of persuasiveness, in countries' legal arguments within the GATT and UNCTAD.

The apologetic approach's influence was largely confined to the GATT. Apologetic-inspired arguments generally asserted that Article XXIV was the primary test for determining the legality and legitimacy of RTAs under GATT law.[174] However, the 1965 Amendment led them to formally acknowledge the subsidiary (but not the lack of) application of Article XXIV vis-à-vis Part IV to South-North RTAs and the Yaoundé Conventions (in particular).

Distinctively, the reformist approach was persuasive in the GATT and UNCTAD. Reformist-inspired arguments largely acknowledged the virtues of Article XXIV, yet stressed its normative limits vis-à-vis developing countries' needs. Article XXIV reflected developed countries' postwar understanding of the benefits of European integration projects.[175] Consequently, its rules were unfit for promoting economic development of postcolonial African countries. Hence, Article XXIV should be combined with Part IV to govern the Yaoundé Conventions under GATT law. Similarly, reformist-inspired arguments proposed to 'universalise' the Yaoundé regime to South-North economic affairs through the Brasseur Plan, which was (arguably) consistent with UNCTAD law.

Legal arguments about EEC–AAMS RTAs grounded in the utopian approach were more commonly found in the GATT rather than UNCTAD documents; yet, they were less compelling in the former forum. Within the

[174] Carreau *et al.* (n 7) 307–11, 361–3.

[175] Nguyen Quoc *et al*. (n 7) 895–914, 950–8.

GATT, they often challenged the applicability of Article XXIV to EEC–AAMS RTAs, implicitly assuming that its rules served to realise developed countries' policies and interests, which included the reproduction of systems of exploitation of the Third World.[176] Hence, they advocated for replacing GATT law with UNCTAD law as the legal foundation of the Yaoundé Conventions. Similar reasoning was followed in the UNCTAD to contest the virtues of those Conventions and accuse them of embedding a neo-imperialist project. Some even questioned their legality and legitimacy on the grounds that the GSP was the appropriate regime to govern South-North regionalism (broadly).

The patterns of legal argumentation about the Yaoundé Conventions seemed to reflect the unequal degree of persuasiveness of jurisprudential approaches. Each line of reasoning claimed (internal) validity and legitimacy based on its 'scientific' analyses of facts and norms related to EC–Africa regionalism. Yet, their (external) validity and legitimacy were grounded in the development framework's authority as an expert mode of dealing with trade interests and controversies over EC–Africa regionalism through international law. Therefore, I contend that the combination of (normative and factual) indeterminacy with the general authority entrusted to the development framework empowered States to use international law to defend their policies, reach consensus, or resolve disagreements over the Yaoundé Conventions. This specialist conception allowed officials, diplomats, and lawyers to debate matters of EC–AAMS trade by translating them into 'apolitical' and 'objective' legal issues and offering solutions to deal with them through international law.

IV. CONCLUSION

The Yaoundé Conventions are landmark international treaties for (re) constituting the EC–AAMS trade regime during the historical moment when numerous South-North RTAs entered into force following decolonisation. Although past scholarship acknowledges their important legacies, it often overlooks the role of international law and lawyers in their making and governance.

This article contributes to filling in this gap by historicising EC–Africa regionalism as a way to foreground the relevance of legal norms and expertise to the Yaoundé Conventions. It shows that the Yaoundé regime was meaningfully shaped by lawyers' efforts to rework the concept of regional trade agreements as a means to reimagine how trade between former European empires and their former African colonies could or should be (re)constructed and managed through international law. Of equal importance, it suggests that the processes undertaken to produce a conceptual framework for

[176] Bennouna (n 74) 212–29.

EEC–AAMS RTAs were affected by—but also influenced—distribution of political and economic power, the repositioning of economic development at the centre of their policy mandate, and the creation of new opportunities for alternative norms, ideas and practices. In this sense, the Yaoundé Conventions were, in substantial part, negotiated, designed and operated through a specialist conception, which provided a framework, distinct from the ones applicable to other RTAs. Between 1960 and 1975, the development framework helped to bring into being a new model of South-North RTAs for governing EC–AAMS trade.

Furthermore, conventional literature mainly conceives the Yaoundé regime as a contingent product of either the EC's foreign policy, economic and political forces, or GATT's institutional defects. By contrast, this article unveils how lawyers employed the development framework as a legal mode of governance to structure and guide decision-making over and within the Yaoundé regime. It also suggests the ways a legal conception empowers and constrains lawyers' imaginative practice and expert influence over and within governance institutions. This analysis—it is argued—is not always easy for scholars to detect, since it requires careful and comprehensive tracing through archival, documental and scholarly work. In doing that work, scholars must be open to examining the potential significance of social and historical phenomena that have often been forgotten with the passage of time.

The novelty and importance of recognising the existence and influence of the development framework lie not just in learning from history. This lesson is also relevant today in helping open new avenues to address contemporary debates about the future of the world trading system. Broadly, how do legal arguments employ GATT/WTO law to impose substantive and formal limits on RTAs? Specifically, how does the dominant legal conception of RTAs structure the application of Article XXIV to conceiving, designing and interpreting South-North RTAs? These questions call attention to the empowering and constraining effects of conceptual frameworks on the ways of thinking and practising the international law of South-North regionalism. This article aims to assist in addressing those and related questions by showing that today's legal conception of RTAs is neither the only alternative nor the necessary outcome of a jurisprudential and institutional evolution towards conceptual perfection of the international law of regionalism.