

# AN OUTLINE OF THE EUROPE – SOUTH AFRICA RELATIONS DURING AND POST THE APARTHEID ERA

Konstantinos Margaritis  
LLM Tilburg University, Greece  
konstantinos\_margaritis@yahoo.com

**Abstract:** *South Africa was always a main interest region for European countries. The United Kingdom, the Netherlands, France and many others at lesser extent, tried to establish control over the country due to its special geographical position. On the other hand, since 1948, South Africa had been characterized by a tremendous regime, the so-called apartheid. The idea of this paper is to clarify the position of certain European countries towards South Africa during this severe period for the latest and to outline the major development agreements between the EC/EU and South Africa after the fall of apartheid, since South Africa is an important trade partner for the Union.*

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## INTRODUCTION

In a broad sense, European countries have always played a major role in the history of South Africa. From the 15<sup>th</sup> century, when Portuguese navigators first discovered the coast, European countries interfere more and more in the social, political and economic reality of South Africa. A widespread example of interference which demonstrates the direction of political decisions taken from 17<sup>th</sup> century and above until nearly nowadays is that of Afrikaners which led to the establishment of the racial discrimination law better known as *apartheid*.

The political position of International Organisations and countries acting individually varies during the apartheid period. Taking into consideration the leading geo-strategic location of South Africa, some of the European countries (basically the United Kingdom) and the United States of America continued to promote their economic interests despite the general animadversion to the racial policies taken in South Africa, an animadversion expressed by the United Nations with many Resolutions.

After the end of the apartheid regime, with the transition to democracy, South Africa's status in the international economic scene rapidly evolved. Being considered as one of the major developing economies, the case of South Africa intrigued the interest of many countries and as a result plenty of agreements with economic nature were signed.

The role of the European Economic Community in the beginning and the European Community/European Union (EC/EU), after the enforcement of the Treaty on European Union (EU), is significant in the apartheid period as well as in the post-apartheid period in South Africa. In the early 1990's the European Union was the major trading partner of South Africa and a strong ally in the development of democracy after the end of the apartheid regime.

This paper will focus on the diplomatic and economic relationship between certain European countries as well as the European Community and South Africa during the apartheid period up to and included the agreements of economic nature that have been signed recently. A brief analysis of the legal basis for the completion of those agreements in the EC/EU Treaties will be provided for the better understanding of the background of decision making process within the European Union.

## **1. EUROPEAN POLICIES IN SOUTH AFRICA DURING APARTHEID**

A brief historical retrospect would be useful for a better understanding of the apartheid regime. Apartheid was a racial based law which was introduced by the National Party after winning the elections of 1948. In short terms, apartheid was based on the idea of superiority of white people over the aborigine black people; a superiority that originated from the time of colonization. The idea of apartheid as a policy firstly appeared in the 1930's and later on was used as a political slogan by the National Party in the 1948 elections. It was systematized under law and started to be implemented within the South African society during the premiership of Daniel Francois Nolan.

Citizens of South Africa were segregated into racial groups (white, black, mixed-color and Asian). For making the implementation of the apartheid regime more effective, the governments of South Africa, especially during the 1950's, inaugurated statutes and acts of law that strengthened the segregation among racial groups. In a more practical approach, the idea of apartheid had developed into a severe reality that nobody could override.

During that period the European countries were struggling with tremendous consequences that were a result of the World War II in both economical and social sphere. Therefore, most of the countries in Europe could not really focus their policy on dealing with problems outside their borders, especially so far away from Europe like South Africa, even though the apartheid matter was put in the United Nations agenda from 1952.

## 1.1 The decades of 1960 and 1970 - The first steps

South Africa was not a big issue for the new-established European Economic Community (EEC), even though the prosperity development of the European and overseas countries, in accordance with the principles of the Charter of the United Nations, was an objective clearly mentioned in the Treaty of Rome. The position concerning the political process in South Africa was an internal matter of each country in Europe. In the early 1960's the British Prime Minister Harold Mcmillan, during a public speech, criticized the apartheid policy. Despite the harsh criticism that had started to become international, the United Kingdom continued to involve economically in South Africa by applying trade agreements.

The only international organisation that dealt with the apartheid regime in the 1960's was the United Nations, by adopting Resolutions that condemned apartheid (Resolution 1761 in 1962) and led to voluntary arms embargo (Resolution 181 in 1963). While all EEC Member States had implemented Resolution 181, the United Kingdom announced arms embargo in 1964 after the Labour Party came into power.

During the first years of the 1970's there was still not any collective political action on behalf of the EEC. When the United Kingdom entered the EEC in 1973, the Community aligned its position in the case of South Africa as it was generally believed that this matter was more "British" because of the connection of South Africa with the United Kingdom since the colonization period and the membership of the first to the Commonwealth. Meanwhile, the United Nations had moved to the reinforcement of the arms embargo in South Africa by adopting Resolution 232 in 1970, a resolution without any binding effects as the United Kingdom, France and the United States of America did not participate in the procedure. This fact demonstrates the contradictory positions that some of the European countries had adopted.

On the other hand, the pressure on the South African apartheid government was increased on behalf of some countries in Europe. In 1975, Belgium (EEC Member State) stopped providing assistance to its citizens emigrating to South Africa. Furthermore, Spain and Austria ended their visa agreements with South Africa and initiated stricter measures for South African citizens to apply for visa.

During that decade the UN was fighting against the apartheid regime with the adoption of severe measures. The most important were set by Resolution 418 in 1977 which revised Resolution 232 and introduced mandatory arms and oil embargo in South Africa. In the meantime, in 1976, the UN General Assembly had adopted Resolution 31/6K by which the UN Members were pressed to

reduce their investments to South Africa. Another important document was Resolution 33/183 in 1979, which included a proposal for stopping financial loans in the case of South Africa.

### *The Code of Conduct*

The first synchronized attempt on behalf of the EEC came out in 1976 from the President of the Council of Foreign Ministers at that time, the Luxembourgian Prime Minister Gaston Thorn, who explicitly focused on “the condemnation of the policy of apartheid in South Africa”. Therefore, it became quite clear that a common European policy was needed to combat and eliminate the apartheid regime from South Africa; and it had been finally inaugurated. Movements for establishing a new political situation in South Africa were established and coordinated actions were announced in order for the EEC to achieve the target mentioned above. Actions adopted included funding of non-white South African organizations and as a result, facilitating non-white’s people access to education, providing them with medical aid and generally trying to decrease the social inequalities between white and non-white. The position of the United Kingdom in relation with those particular actions was not totally harmonized to this of the other Member States. The UK refused to participate in the funding of the largest non-white South African organization, the African National Congress (ANC) as well as other organizations related to ANC, since the United Kingdom had officially characterised it as a terrorist organization. Once again, the EEC failed to adopt common actions within a specific problem.

It was as late as 1977 when the first and only measure had been employed to achieve the target of removing the apartheid regime in South Africa. Containing a series of guiding principles with regard to the format of enterprise in the apartheid environment, the Code underlined the need of promoting social rights for workers in South Africa, especially fundamental rights like the right to equal pay, the right of non-discrimination in workplace, the right to establish trade unions. As an outcome, the Community firms that wanted to extend their activities in South Africa shall implement those principles.

Although the Code of Conduct enclosed the political will of the EEC to restrict the “doctrine” of apartheid especially in the workplace and to promote the principle of equality and in general, the rule of law in South Africa, much criticism has been flayed concerning the effectiveness of the measure. The major critics were focused on the fact that there was no official EEC institution for observing the compliance of the firms with the Code. As a result, it was part of national competence to monitor the progress of implementation of the Code, something that varied from country to

country. From a practical point of view, there were main differences in the way that EEC Member States introduced the Code into their national legislation. Another important weakness of the Code was the lack of sanctions in case of non compliance. That absence gave to the Code a non compulsory character and hence could not deal with the problems in the most efficient way.

To sum up, the Code of Conduct was the first organized attempt on behalf of the EEC to combat the social inequalities in South Africa. In that sense, despite the scarcities that have been mentioned, it demonstrates a political will, which finally transformed into a decision of an international organization of major influence to oppose the apartheid regime.

## **1.2 The 1980's**

During the 1980's the international pressure for the abandonment of the apartheid regime became stronger. Most of the European countries, acting individually, have strengthened their restrictions against the apartheid government. Italy, Denmark, Sweden, France, Portugal, Spain, the Netherlands, Austria, Ireland reinforced their embargo to South Africa in both the economic and military field. The declaration of Swedish Prime Minister Olof Palme, who stated that "apartheid cannot be reformed; it has to be eliminated" is evidential of the dominating political opinion in Europe.

Furthermore, the role of the UN became more active during this decade. Restrictions mentioned in Resolution 566 of 1985 became binding to UN Member States "that have not done so" up to that time. Plus, Resolution 569 in 1985 introduced new sanctions against the republic of South Africa.

### *The European Special Programme*

Even though the EEC had already declared its opposition to apartheid, a common political position was difficult to be adopted mainly due to the United Kingdom's main disagreement. In 1985 the Commission proposed measures in both positive and restrictive way. Being pressed by the international environment, the UK finally agreed with the proposal of the Commission which led to the adoption of the European Special Programme (ESP) at the same year. It took the form of a financial aid to people who were suffering because of the apartheid policy and to non violent anti-apartheid organizations. The restrictive way contained a package of restrictions in economic and

diplomatic level which will had as an outcome the achievement of Community's ultimate target concerning South Africa: the elimination of apartheid.

A political, commonly accepted, method to deal with this particular issue was difficult to be espoused among the EEC Member States. The United Kingdom insisted on the initial position of "limited economic sanctions", therefore, as it has been argued, the enforcement of the ESP delayed for a few years. Indeed, statistics prove that in 1986 and 1987 the funds disbursed to organizations according to the ESP plan were increased compared to those of 1985. In particular, during 1986 10 million ECU were spent on behalf of the EEC; an amount that was doubled during 1987.

It is a commonplace that further steps were taken against the apartheid rule. EEC Member States agreed in a political framework of actions that must be taken; once again lack of consensus can be observed. This lack of consensus is related to the general political approach that some Member States had adopted with regard to this matter. In order to promote its own economic interests and taking into consideration that South Africa was (and still is) an important investing partner, the United Kingdom had strongly disagreed with the full economic sanction plan and proposed "limited economic sanctions".

On the other hand the Nordic countries and France were strongly in favour of total ban in all ways. Sweden, Denmark and Norway had condemned many times in the past the apartheid system and developed mutual relationships with anti-apartheid organizations like the ANC. As it has been argued by President Mandela "only Norway and Sweden were forthcoming with contributions to the ANC" by providing assistance and scholarships, money for legal defence and humanitarian aid for political prisoners. With the effectiveness of the measures adopted in a Community level being doubted, the EEC did less than it could possibly do.

## **2. THE TRANSITIONAL PERIOD (1990-1994)**

Beyond dispute, international political pressure on the apartheid government contributed the maximum to the downfall of the regime. After 1990, the negotiation procedures started among the leading powers in South Africa (National Party and the African National Congress) for the changes needed for the transition to real democracy. During that period, the apartheid laws were repealed and elections based on the principle "one man-one vote" were proclaimed. As it is mentioned above the EC Member States individually and the European Community (EC) as an organization had put sanctions to South Africa in key areas (diplomacy, military, economy, culture) because of the

apartheid. The abolishment of those sanctions was a slow and difficult procedure which started in 1990 after the leader of ANC Nelson Mandela was released from prison.

The first free elections took place in South Africa on 27 April 1994. For the accomplishment of that objective, an assisting mechanism would be needed in order for violent reactions to be avoided and for the credibility of the election process to be guaranteed. The EC supported this emprise by establishing an electoral commission, the EU Electoral Unit, which was constituted by 307 observers including police officers. A very important action on behalf of the Community that demonstrates the political system will try to restore democracy in South Africa.

The outcome of this effort has been characterized as successful. The smooth transition to democracy in South Africa became a top priority for the European Union. Plus, it is of much importance that all Member States agreed to the package of measures that must be adopted for the achievement of that difficult task.

### **3. PROMOTION OF DEMOCRACY AS AN AIM IN EC/EU: LEGAL BASIS**

Giving the definition of what is now described as democracy, the ancient Greek philosopher Aristotle argued that democracy (polity) is “rule of the many for the public weal” in contrast with other types of government in which the power is exercised by one or by the few. The basic element which differentiates democracy as a regime among others is the sense of freedom that citizens enjoy; the principle that everyone has the right to run as a candidate and be elected to a public post or authority. The contribution in a worldwide status of development of this fundamental right, which prescribes the rule of law in liberal societies, could not be out of the negotiation process for the signature of Maastricht Treaty.

The promotion of democracy, human rights and the rule of law is referred to in many articles in EU Treaties as one of the main objective of the EC/EU. With the enactment of the Maastricht Treaty and the establishment of the European Union article 177 (2) TEC (now article 208 TFEU) was formulated for this purpose. Furthermore, the principle of consolidating democracy was introduced into the 2<sup>nd</sup> pillar (Common Foreign and Security Policy) in article 11 (now article 24) TEU.

Article 177 (2) TEC set an objective by combining the development co-operation process with the development of democracy and the rule of law. In particular, the consolidation of democracy was explicitly characterized as a “general objective” for the purpose of article 177, a fact that demonstrates the significance of the second paragraph within the sphere of development co-

operation. In addition, article 11 in the TEU, concerning the newly-established (for the time) Common Foreign and Security Policy (CFSP), included the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms as an aim for EU.

In 1996, the European Court of Justice (ECJ) stated that no Treaty provision conferred on the Community institutions any general power to enact rules on human rights or to conclude international conventions on this field. Another important decision of the ECJ regarding this matter was that of *Portugal vs. Council* case where the Court among others stated that “the question of respect for human rights and democratic principles is not a specific field of cooperation”. Those two predications complicated the matter of Community co-operation with other countries when the topic of co-operation was *stricto sensu* human rights.

The EU strengthened its institutional background with adoption of two regulations related to possible human rights projects by the Council: Council Regulation 975/1999 and Council Regulation 976/1999. Article 179 TEC (now article 209 TFEU) was the legal basis as it stated that “the Council shall adopt the measures necessary to further the objectives referred to in article 177”. Furthermore, the Treaty of Nice had specifically included article 181a TEC which set up the prerequisites for economic, financial and technical co-operation with third countries. Paragraph 1 indicated that “Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law and to the objective of respecting human rights and fundamental freedoms”. This new provision enabled the Community to broaden its policies within the field of human rights. Taking into consideration the Court’s judgments mentioned, the topic of EC/EU competence to conclude international agreements on a basis of human rights was still under discussion.

After the Lisbon amendment in 2009, this topic has been finally solved after years of political and legal argumentation. Now article 47 TEU explicitly state that the EU has legal personality and therefore is competent in completing international agreements.

#### **4. MAJOR EC/EU - SOUTH AFRICA AGREEMENTS AFTER THE APARTHEID**

After the election of Nelson Mandela as the President of South Africa, a new era had begun for the country, also regarding its relationship with European Union.

As it is mentioned above, the South Africa issue evolved into a top priority for the EU. The geographical position of the country and the natural richness constituted important reasons for the

development of a further investment policy. In 1994 in an EU-South Africa foreign ministers conference the major aspects of the European policy in South Africa were defined. It was agreed that the most important fields of interest that needed to be expanded were political dialogue, private investment, regional integration and trade and development cooperation. As a result an Interim Co-operation Agreement was signed between the EU and South Africa on October 1994. The two partners agreed to promote co-operation especially in the economic field by increasing the investments on behalf of the EU in South Africa and for the EU to assist the development by supporting financially South Africa.

After the conclusion of the Interim Co-operation Agreement, South Africa requested its participation in the Lomé Convention in 1994 alleging economic problems related to the apartheid period. The EU rejected not only this specific request, but also another South African proposal for participation in the provisions of the Convention that are related to trade matters. The reasons for the rejection can be summarized in three arguments. The main argument was that South Africa did not have the status of a developing country at that time according to the World Trade Organisation (WTO) standards. The membership of South Africa in Lomé Convention would have as a result a negative criticism on behalf of the other WTO members.

The second argument was that the participation of South Africa would destabilize the whole Lomé Convention emprise by eroding the priorities that were set up by its other members. The third EU argument was that South Africa could negatively affect key sectors of EU economy (such as agriculture) and economies of other countries that the EU has given priority.

In 1995, the EU started formulating a long-term framework concerning its relationship with South Africa. The EU strategy, with regard to this matter, can be encompassed in two main directions> the conditions under which South Africa would participate in the Lomé Convention and the conclusion of a bilateral trade and co-operation agreement.

#### **4.1 Accession to the Lomé Convention**

The EU and South Africa signed the Lomé Protocol by which South Africa got the status of a “qualified member” of the Lomé Convention. All provisions concerning trade issues were left out of the agreement in order to become the subject of a bilateral agreement. The table below schematically explains which articles of the Convention were applicable and which were not.

**Table 1 - Main terms of South Africa's accession to the Lomé Convention**

Articles applicable to South Africa	Articles not applicable to South Africa
Technical, cultural and social co-operation	General trade arrangements
Regional co-operation	STABEX
Eligibility for tenders for the 8 <sup>th</sup> European Development Fund, but excluding ACP preferential treatment	YSMIN
Industrial development	Structural Adjustment Support
Investment promotion and protection	EDF resources (assistance instead from the EPRD, funded through the Community budget)
Participation in the institutions of the Convention	

The table demonstrates that South Africa participated in major sectors of the Convention, like the industrial development and investment promotion and protection. In addition the membership in the institutions of the Lomé Convention was of great political importance. Taking into consideration that South Africa exerted influence more than any other member of the Convention, the country could participate in any intergovernmental institution of the Convention promoting its position. In the same way, the co-operation with South Africa was enhanced even more in the fields of development, policy and trade under the Cotonou Partnership Agreement which followed the Lomé Convention.

#### **4.2 The Trade, Co-operation and Development Agreement (TCDA)**

A bilateral agreement with South Africa in the field of trade and development was an additional pillar of interest for the EU. On the other hand, South Africa was highly interested in reconstructing its economy even more by giving the potential to local uncompetitive industries to develop; a goal that could be better achieved by the EU large investment ability of the country.

In November 1996 the European Commission had published a green paper with regard to the future of the Lomé Convention, which appeared not to fill all the requirements set by the EU for further actions that must be taken in the area. The Commission proposed to divide Lomé Convention into regional bilateral agreements based on the strategy adopted on behalf of the Union within each particular region; specifically the green paper mentioned that: “an agreement with sub-Saharan Africa that embraced South Africa would clearly be very meaningful for Europe”.

During the same month the Council adopted regulation no. 2259/96 concerning development co-operation with South Africa. According to the regulation the EU “shall implement financial and technical cooperation with South Africa to support the policies and reforms carried out by that

country's national authorities" in key sectors of economy and social affairs. For this purpose an action programme was organised, the so-called European Programme for Reconstruction and Development in South Africa which, according to article 1, would contribute to the country's harmonious and sustainable economic and social development and to consolidation of the foundations laid for a democratic society and a State, governed by the rule of law, where human rights and fundamental freedoms are respected. The support of democratization and the protection of human rights were considered to be a major issue for Union's actions in South Africa once again after the apartheid period. The validity of the regulation was until 1999. Afterwards, the Council adopted regulation no. 1726/2000, based on regulation no. 2259/96, for continuing supporting policies and reforms undertaken by the South African authorities.

In January 1997 South Africa presented its diplomatic position for negotiating a trade and development agreement. After a long negotiation process which ended in March 1999, the Trade, Co-operation and Development Agreement (TCDA) was signed on October 1999 and entered into force on 1 January 2000. The purpose of the agreement was the establishment of a free-trade area, so a better access to the South African market for EU and to the European market for South Africa would be secured. In the field of development co-operation the EU continued providing aid to South Africa through the financing instrument for developing co-operation with starting funds of 980 million Euros for South Africa.

In addition the TCDA also contained provisions that were related to co-operation in human rights issues. Particularly, in the field of social justice, the freedom of association, the sex equality, the rights for workers were guaranteed. Plus, the agreement focused on social matters in a broad sense as the environmental change, the combat against drugs and the co-operation in health issues. To sum up, the TCDA provided co-operation among the parts in a variety of sectors and policies, making South Africa one of the most important trading partners for the Union.

This last position was confirmed in the European Union-South Africa Strategic Partnership and the subsequent Joint Action Plan on May 2007. A main common position was the upgrade of political dialogue among the two parts even in Ministerial level. The programme focused on enhancement of current co-operation in sectors such as development, trade and investment, science and technology. Moreover, more areas of co-operation were put in schedule to be developed. Areas in the sector of social policy (combating crime, education and training, employment and social affairs, sports) as well as pure economic areas (regional development policy, macro-economic factors) were prioritized.

## CONCLUSIONS

From the time of the colonization South Africa played a significant role for European countries and as a result the country was characterised as one of the most important trade partners for Europe, especially for the Netherlands, the United Kingdom and France.

After the establishment of the apartheid regime in 1948, the political situation in South Africa had been relinquished, as Europe passed through the post World War II period with the reconstruction of the region to be set up as first and only priority. The UN, as an international organization, adopted several resolutions for fighting apartheid, a policy that was not always acceptable by some of the members. The first attempt on behalf of the EEC to take common measures was in the late 70's with the Code of Conduct, for eliminating the social inequalities in the work place. During the 80's, after negotiations, the ESP was adopted, a boycott programme that put economic sanctions in South African apartheid government and financed anti-apartheid movements. Nevertheless it has been widely argued that the EEC did not take the appropriate measures to fight apartheid.

In the 1990's, after the abolishment of the apartheid regime and the transition to democracy, the EC/EU tried to create strong economic relationship with South Africa. After the rejection of accession in the Lomé Convention, the EU focused on the conclusion of a Free Trade Agreement with South Africa. The co-operation between those two partners was consummated with the conclusion of the TCDA, an agreement that strengthened both EU and South Africa trade access to the market.

The importance of the co-operation with South Africa is apparent and is affirmed from the continuing EU policy towards this country. The European Commission adopted Regulation No. 1726/2000 based on Regulation No. 2259/96 for further co-operation with South Africa. In 2002 the two partners signed the Wine and Spirits Agreement, a minor, but more specialised trade bargain. Finally the EU-South Africa Joint Action Plan in 2007 demonstrated the strong political and economical relationship after the democratisation of the country in 1994 since the EU was and remains the leading partner of South Africa in almost every field of interest.

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