

ECONOMIC DEVELOPMENT AGREEMENTS AND LEGAL REGIMES GOVERNING SUCH AGREEMENTS

By

Onu, Nengimote*

Abstract

The common means for conducting business activities in a host country is through investment contracts, which are commonly known as economic development agreements. Economic Developing Agreements play a veritable role in developing countries especially states that have the resources for its development but lack the skill, capital and technology technical know-how as we often call it – to bring those resources to its maximum use and benefits to advance that state to high status, thereby bringing it closer to developed countries. This work will thus examine the nature of economic development agreements and the legal regime governing same. In doing so, we shall look into the history and nature of economic development agreements and determine what laws that are designed to govern or regulate such agreements.

Key Words: *Economic Development, Agreement, Investment contracts, Transactions*

Introduction

Economic Development is the development of economic wealth of countries, regions or communities for the well-being of their inhabitants. From a policy perspective, economic development can be defined as efforts that seek to improve the economic well-being and quality of life for a community by creating and/or retaining jobs and supporting or growing incomes and the tax base.¹

Agreement is a negotiated and usually legally enforceable understanding between two or more legally competent parties. Although a binding contract can (and often does) result from an agreement, an agreement

* LLB, LLM, BL, B.Sc (Mgt), Lecturer Faculty of Law, Rivers State University, Port Harcourt – Nigeria. Email: nengiati@yahoo.co.uk; nengiati@gmail.com

¹www.svbic.com

typically documents the give-and-take of a negotiated settlement and a contract specifies the minimum acceptable standard of performance.²

Investment contracts are usually conducted through business activities and the contracts are commonly concluded between the government or its public entities and private foreign investors. Economic Development Agreements are established in such a way that the interests of the contracting state, which needs the technical skill and know-how of foreign experts and the interests of the foreign investor who is to take great risks without adequate guarantees are expressed in legally binding agreements for effective implementation.

Contract between states, or their public entities and foreign investors, including companies, cover wide range of commercial activities which may include selling or purchasing commodities and industrial goods, leasing equipment, contracting for turn projects, acquiring technology, the mining of mineral or oil resources, or obtaining specialized services.³ Economic development agreements provide assistance from government entities to private companies in exchange for jobs or economic development. The assistance may be in form of cash, loans, tax exemptions or other benefits and may be conditioned on the company achieving hiring targets or other milestone.⁴

The fact that the state enjoys sovereignty over its economic affairs puts it on a strong platform to give legal guarantee to the legitimate interest of the private contracting party. Thus, foreign investors, in order to obtain sufficient protection against the risk of having their rights nullified and the contractual equilibrium disturbed as a result of the state's intervention, seek an effective system comprising a mechanism which provides sufficient protection against this risk.⁵

According to Okogbule:

An economic development agreement is a contract between a host country – usually a developing country – and a private foreign corporation involving the participation of the latter in a certain development project or set of projects in the country either through

² www.businessdictionary.com

³ Legal Protection Of Economic Development Agreements< <https://www.jster.org/stable>>accessed 6th February 2022

⁴ Economic Development Agreements <contracts.onecle.com> accessed 6th February 2022

⁵ Legal Protection Of Economic Development Agreements< <https://www.jster.org/stable>>accessed 16th January 2022

*assistance in the exploitation of natural resources, available in the host state or in the construction, manufacturing or other sectors of the country's economy.*⁶

Importance of Economic Development Agreements

The importance of economic development agreements may be expressed with respect to the agreement itself. This is because the agreements are usually concluded by the parties, the parties not regulated by the same law: States are regulated or governed by international law, while foreign corporations are regulated by municipal laws of particular countries, despite the fact that transnational corporations continue to gain international recognition and economic relevance in the international scene.

There has been wide variance between writers whether the transactions should be regulated by international law or municipal or state laws. This has created the problem of laws that would regulate economic development agreements.

According to Okogbule,

*Consequently, it is of utmost importance that the law governing economic development agreements be such as to make them productive for all parties to the transactions adequate guarantees being made to secure the assurance of the state of the role in the development of its territory.*⁷

Furthermore, he asserted that:

*A thread which runs through the writings in this area is the general consensus, sometimes concealed, that the validity of economic development agreements is to be determined by the law of the host state...The law which determine the validity of the agreement should for all practical purposes, especially where the parties have not agreed on any other rules of law, govern the whole of the transaction. Thus, if we agree that the law of the host state governs the validity of the contract that law ought to regulate also the attendant incidents of the contract such as performance or breach.*⁸

⁶ N.S. Okogbule, *Legal Status of Economic Development Agreements* (Davis Printing & Packaging co. Ltd. Port Harcourt 2004) 22

⁷(n 6), 12.

⁸ *Ibid.*, 15.

From the free world perspective, an important reason in support of substantial private assistance to less developed countries is that private investment tends, though not invariably, to associate with private areas of the economy in the recipient state.⁹ As state is a party to the foreign investment agreement,¹⁰ rules of international law cast light upon its status.

Historical Development of Economic Development Agreements

In the past, people sort for a way to survive economic hardship- it all began by trade by barter. People exchanged what they had for what they do not have and by so doing, the community grew and there was need for buying and selling. Countries where exchanging their goods for what they do not have from their neighbouring state in order to feed and develop their economy. Private individuals entered into simple contracts on how they can regulate their economic activities, but in their quest for profit, they practically had a free reign to exploit the available economic activities and so participated in both domestic and international trade. What people never knew was that in their quest for profit in business and expansion of their businesses, they were also developing and improving the economy of the state, but the unregulated private economic activities led to inequalities and distortions in the level of development.

After the second world war - where most economies were destroyed, - there was need for economic development by some states and despite the sovereignty of a state over its natural resources, states soon realized that there was much needed transformation of their societies especially in the aspect of economic development. Despite the need to develop the third world countries, there was also the need for the capitalist states of Western Europe and North America as well as the new socialist states of Eastern Europe to also see to the development of their economy. There was need to exploit the abundant resources of some developing countries with the exchange of technical skill and capital. These led developing countries to enter into agreement with transnational corporations from the developed countries as well.

The importance of agreement in economic transaction can hardly be over emphasized. Since it is the basic start point of any legal analysis of the

⁹ C.J. Olmstead, Economic Development Agreements, Part II: Agreements Between States and Aliens; choice of Law and Remedy, (1961) California Law Review 49/3/4/504

¹⁰ As C. J. Olmstead put it. That is to mean economic development agreements.

validity, incidents or enforcement of such commercial relations, hence the term economic development agreements. In this area, the agreement play an important role, which states the rights and duties of parties and how the rights are regulated even in the area of conflict between parties. It is in the quest to move from economics and politics to giving the transaction a legal instrumentality that the term economic development agreements came about.

The Nature Economic Development Agreements

The concept of permanent sovereignty of nations over their national resources was first raised in the United Nations in 1952, in connection with the movement for economic development and political interdependence by the developing countries.¹¹ Thereafter, it came to be viewed as an aspect of human rights.¹² In 1958, The United Nations General Assembly established the commission on permanent sovereignty over National Resources and there laid the foundation for a thorough study of the subject and its full impact on, and implications for foreign investment in the natural resources of the developing countries.¹³ After three full years of study and debate in different bodies of the United Nations system, the General Assembly passed resolution 1803 (XVII) of December, 14, 1962 on Permanent Sovereignty of States over their National Resources.¹⁴

In cases where foreign capital and technology have been invited to participate in the development, the relationship between the host state and the foreign investor should be governed by their agreement, the laws of the state, and international law. Such agreements shall be observed in good faith, but can be abrogated by expropriation, nationalization, and requisitioning if necessary for the national interests of the states concerned, on payment of appropriate compensation. The economic interdependence between states in areas such as transfer of technology,

¹¹ General Assembly Resolution 523, Integrated Economic Development and Commercial Agreements

¹² See Recommendations Concerning International Respect for the Right of Peoples and nations to self-determination G.A. Res 1314. (1958)

¹³ Recommendations Concerning International Respect for the Right of Peoples and nations to self-determination G.A. Res 1314. (1958)

¹⁴ The substance of this resolution is what is in use till date after various discussions. The resolution declared that the right of peoples and nations permanent sovereignty over their natural wealth and resources must be exercised in the interest of their natural development”.

international trends, and creation of regional economic institutions, minerals and fuel usage is not far-fetched.¹⁵

An OECD¹⁶ Communiqué pointed out that “Economic and financial interdependence between developed and developing countries is an increasingly important factor in the functioning of the world economy.”¹⁷ According to Lord McNair¹⁸

Economic development agreements between foreign investors and developing states, rich in natural resources but lacking in capital or technology, should be governed by a system of general principles of law recognized by civilized states. This system of law is not to be considered a part of public international law strict sensu, but a separate system of law, sharing with public international law “a common source of recruitment and inspiration”.

Furthermore, McNair outlined seven features as characterized in economic development agreements namely:

1. The agreements have a “foreign element” because they are usually made between a state and a foreign private corporation which owes its existence to the laws of a foreign state and derives its capital primarily from nationals of the state.
2. They are not simple contracts of sale, but involve long-term commitment to invest large amounts of capital and technology in the development of the natural resources of the developing state.
3. They often involve the creation of rights which are not purely contractual but are more akin to property rights, such as the right to possess and exercise considerable authority over large areas of the territory of the developing state.
4. Such agreements often vest in the foreign corporation “certain rights of an unusual and semi-political character” such as freedom from certain taxes and import duties.
5. They sometimes involve the diplomatic efforts of the state of the investor.

¹⁵ n.7,p19

¹⁶Organization of Economic Cooperation and Development

¹⁷ Ibid 19, O.E.C.D. Communiqué on the Economic situation, O.E.C.D Press Release, Press/A 185) 31 of April 12, 1985 reproduced in International Legal Materials, Vol. XXIV Number 3, May 1985 at 906-910

¹⁸The General Principles of Law Recognized by Civilized Nations, 33 BRIT. Y. B.INTL. L (1957)

6. The legal systems of the developing contracting states and the state of the investor “frequently have very little in common, either in content or in the stages of developments”.
7. The agreements frequently provide for arbitration of disputes in a manner that excludes the national courts of both parties.

Okogbule,¹⁹ also gave eight legal characteristics of economic development agreements, thus:

1. Economic development agreements are usually concluded between a sovereign state or a public body of that state, and a private foreign corporation or a group of corporations.
2. They usually involve the long term exploitation of natural resources or the construction of vital industrial plants in the developing country.²⁰
3. They invariably form part of the national economic development plans of the developing countries and as such have tremendous impact on the public sector of their economies.
4. They often involve the conferment of the private foreign corporation of rights which are more extensive than ordinary contractual rights. The right to the possession of large areas of the territory of the host state often selected by the foreign corporations and the right to exercise considerable amount of control within such areas.
5. Certain social and economic obligations are also imposed on the transnational corporation. The effect of this is that quite apart from the contribution derivable from the main project itself; these foreign corporations contribute indirectly to the promotion of welfare services in the developing country.
6. The consequences of the performance or breach of these agreements may necessitate the concern and protection of the

¹⁹N. S. Okogbule, *Legal Status of Economic Development Agreements* (Davis Printing & Packaging co. Ltd. Port Harcourt 2004) 22

²⁰*Ibid*, The Joint venture agreement between the Zambian Government, the Zambian Anglo-American Limited and Roan Selection Trust Limited in 1970 concerning the exploitation of copper ores in Zambia. The signal importance of these agreements derive from the fact that the exploitation of natural resources by foreign corporations may deprive the country of an important factor of economic prosperity.

corporation by the state of its incorporation through the channel provided by international law.²¹

7. In order to take care of any dispute which may arise in the course of performance of the contract, stipulations are often inserted in the agreement concerning the settlement of such dispute.
8. The parties can, on the doctrine of "party autonomy," choose the rules of law to govern the operation of the contract.

Economic development is the only way developing countries can make progress and this was realized far back as in the 1960s when it was asserted that: "Economic development is for the less developed countries a matter of survival, an issue as vital as any question of war and peace"²².

Forms of Economic Development Agreements

There are several forms of economic development agreement, from the 18th centuries of concession to the 19th centuries of the various forms of Joint participation. The awareness these agreement have created on the economy of the host states has led to their exercise of greater control and the involvement of the state in their operation. The initial type of transaction was the Concession Agreement which conferred very extensive rights on the transnational corporation to engage in the exploitation and disposal of certain mineral resources²³ in the territories of the host state. After the Concession Agreement the joint venture agreement between the parties came, but for the developing countries, it limited them to mere ownership of equity shares and membership of the management boards but these ventures are still controlled by private foreign corporation. We shall take a brief look at some forms of these agreements.

A) Concession Agreement

This is the oldest form of economic development agreement of the 18th century - which grants extensive ownership rights to foreign corporation.

²¹Barcelona Traction Case, where the Belgian Government sought to claim reparation for damage allegedly caused to its nationals who were shareholders in the Barcelona Traction, Light and Power Company Limited, a company incorporated in Canada. The ICJ rejected the Belgian Government's claim on the ground that the company was not a national of Belgium and it had not been shown that Canada could effectively grant its diplomatic protection on the company.

²²Balewa T., "Nigeria Looks Ahead", foreign Vol. 41 (1962-63) 135.

²³Mineral resources that were exploited were large in the oil industry especially in the developing states.

This concession is to explore and exploit mineral resources on a land and the concession period is usually very long between 50 to 100 years. The foreign investors usually pay royalties to the host state, like in form of tax over the rights granted to them, but these royalties were very low compared to the profits which was made by the foreign company. The reason for these inequalities in the bargaining power was because the host state were mostly inexperienced as to the kind of operation the investors want to carry out and the investors had superior technical skills, commercial experience, and expertise which were lacking in most of the developing countries.

There are advantages to these concession agreements; first, the royalty payment is a particularly easy type of levy to administer. To collect tax based on units of output, the government needs only have a physical count of the volume of production. Secondly, the royalty seems to guarantee a certain payment to the government for the depleted resources irrespective of the company's profits and the world market price for the resource. As long as there is production or sales, the government should receive revenue.²⁴

Despite the Resolution 1803 (XVII) on the permanent sovereignty over natural resources, the early concession agreement in their pristine purity precludes host state from exercising sovereign rights over the resources covered under such concession. Today, emphasis is made by the government to increase participation in the ownership of the enterprise and the management of the ventures.

B) Equity- Sharing Arrangement

Equity sharing arrangement gained prominence in the 1960s with ownership of shares by the host state in the transnational corporation that is to be involved in the operation-. Normally in equity sharing arrangement the host government obtains interest without a financial contribution, but in exchange for all or part of its right to levy an income tax.

In this system of agreement government still retain the right to tax but the initial capital for exploration are usually provided by the foreign partner and they are reimbursed back from the revenue earned. The government does not have effective voice in the management of the corporations in

²⁴ D.N. Smith and L.T. Wells Jr, *Mineral Agreements in Developing Countries: Structures and substance* (69 A.J.I.L. 1975)567

the equity sharing agreement, what happens is that decisions on such vital management and operational issues as production methods, procurement of equipment, appointment of technical staff still remain in the hand of these transnational corporations although awareness is been created for the training of the indigenous staff in the technical aspect of such jobs, to ensure that they can effectively take control of the enterprises after an initial period of under study.

C) Service and Work Contracts

This form of agreement places right on the host state as the sole owner of the natural resource in question while the transnational corporation is regarded as a “contractor” or a hired technician. The transnational corporations are not seen as concession holders or partners.

The transnational corporations are taken as working for the host state and its service is paid in cash or kind and there is a fixed fee plus a payment based on profits. The contractor usually promises to assist in the marketing of the products in the agreement. Service and work gives the ownership rights of the host state to its natural resources and the effectiveness of these contract depends on the level of technical know-how and managerial skill possessed by the host state which helps them to monitor the operation of the contractors.

D) Production - Sharing Agreement

In this form of agreement responsibilities are shared in predetermined proportions of the production by the host government and the transnational corporation, but these production- sharing contract vary according to the particular natural resource available to its development.

In this production sharing contract, the transnational corporation bears the risk of exploration (in financing and technical assistance) but they will be paid from percentage of the produce. Ownership of the natural resources is vested in the host state while the transnational corporation acquired title to own shares in their investment. The managerial pattern of work in these forms of agreement is done in phases and submitted to the host state for approval.

E) Turnkey Contracts

Turnkey contract can be in the case of *Park Plaza State Bank of St. Louis Park v. C.W.S. Development Co.*²⁵ which states as follows:

*Turnkey Contract "is construction – trade language for a construction contract which requires the contractor to bear the full responsibility for and the full cost of development until the project is complete. Typically, the contractor must obtain interim financing, acquire the land, have plans drawn up, manage the construction and pay sub-contractors and material men. When the project is completed to the satisfaction of the ultimate owner, the contractor 'turns over the key' and receives full payment for the development cost accrued.*²⁶

Recently, the responsibility of transnational corporation goes beyond this definition, it covers the various functional responsibilities in respect of production training and operations during the post-construction stage of project implementation. These arrangement of contract also implement various capital projects such as construction of petrochemical plants, iron and steel as complexes, refineries and so on, in the developing countries and they have far reaching technological development on these developing countries where transfer of technology is achieved. These have increased economic development and objective in the economic technological advancement.

The Legal Regime of Economic Development Agreements

Agreements between states and private foreign investors are considered neither international agreements nor private contracts. They seem to fall within public international law on the one hand, and private international law on the other hand.

As a state is a party to economic development agreements, rules of general international law may also apply, however, such agreements are limited in subject matter to the extent that the terms in the agreement are inconsistent with international standards or in conflict with the UN chapter.²⁷

²⁵227 N.W. 2nd 560 (Minn) 1975

²⁶n.7,p37

²⁷ Violation of International standard can occur if a state enters into a contract with a private foreign investor to develop and manage domestic slave trade or to execute genocide edicts promulgated by the host state.

The subject matter of the agreement may also conflict with the law of the state party. For instance, the law of the state may prohibit the private foreign investor from obtaining any interest in land in the state. If the investor knows of the prohibition, an agreement under which he was to receive an interest in land would normally be invalid.

Where the transaction is between states, there is hardly raised difficult problems that are unresolved, this is because, the applicable laws emanate from a combination of state laws or international law would automatically apply, especially where the states are subjects of international law.

There is obviously a feud between jurist from capital exporting countries and capital importing countries. While the former is of the view that these agreements should be governed by international law, transnational law or general principles of law recognized by civilized nations, the latter is of the view that municipal laws of the host state should govern the transaction. This is not devoid of some exceptions as some jurists in the capital importing countries are of the view that since transnational corporations are taking up international recognizance, international laws should also govern the agreements they enter into especially in economic development agreements²⁸.

It can therefore be deduced that law is important to economic development agreements as a regulatory instrument to provide a framework to necessitate or guide the economic principles stated in the agreements. Dr. Elias rightly states that "Law and economics are interdependent instruments of social control ... in no country are the two kept in water-tight compartments..."²⁹

The Problems Regulating Economic Development Agreement

In every contract entered by parties, there are terms and rules governing those agreements. Every party to the contract has a responsibility to keep its own part of the bargain. Where any of the party to the contract fails in his or her own part of the contract, the order party can seek remedy through the law or will have recourse to the terms of the contract on how the issue of dispute is to be settled.

²⁸ D.A Ijalaye, *The Extension of corporation personality in International Law*, (Oceana Publications Inc., NewYork, 1978) 242.

²⁹ T.O. Elias, *Law in a Developing society*. Inaugural Lecture, University of Lagos 1969, 18 Cited in N.S. Okogbule, *Legal Status of Economic Development Agreements* (Davis Printing & Packaging co. Ltd. Port Harcourt 2004) 43. See also Seidman R.B *Wisconsin Law Review* (1966)996.

Economic Development Agreements are agreements related to the exploitation of natural resources available in the developing countries. Majorly, every state desires the development of its economy and the wellbeing of its citizens, while the foreign corporations are majorly out to make profit and that is why they invest heavily in the exploration and exploitation of the state's natural resources.

Due to the nature of these agreements the regulatory laws to govern their operation where no provisions are expressly made makes it difficult on which of the legal framework or legal system to apply. Why it is difficult to apply any of the laws (international law, municipal law and the general principles of law recognized by civilized nations) is because the agreements are concluded between states which are subjects of international law, and private foreign corporations registered under the municipal laws of particular countries, and regarded as "object" of international law³⁰.

In considering a choice of remedy for disputes arising out of foreign investment agreements, one faces two general situations: First, where the parties have expressly set forth a method of remedy within the agreement; second, where they have not. While some agreements contain provision for arbitration and specified the procedure for the appointment of the arbitrators.

The problem to these agreements is which law to be applied during time of dispute between parties.

Some parties decide the:

- (1) Application of the local law of the contracting state alone.
- (2) Application of principles of law common between the contracting state and the state of the investors.
- (3) Application of the law of the contracting state to one part of the agreement and international law to other parts.
- (4) Application of international law alone.

The question which is posed by governments between a developing country and a foreign investor for the development of that country's natural resources is whether the proper legal system to govern such

³⁰ N.S. Okogbule, *Legal Status of Economic Development Agreements* (Davis Printing & Packaging co. Ltd. Port Harcourt 2004) 8

agreements should be determined by the procedures and practices which have been describe above.³¹

The answer to this question will depend on whether the purposes for such inquiry are the same as for private contracts having international connections, or state as a contracting party as well as a sovereign.

The common practice is that a state as a sovereign having control and authority over people and events within its jurisdiction, as well as having total responsibility for the well-being of its body politic, a state can make sovereign decision and take sovereign action within its jurisdiction. While a contractor is deemed to contract under its own law, and its rights and obligations are determined under that law.³²

1. Looking at these issues, choosing the investor's (contractor) own law will mean giving away the right of sovereignty of the host state.
2. For a state to accept the international law it must be proven that there was a breach of obligation or to the contrary to any rules of international law.
3. A state may be subject to international law but a private foreign investor is not a subject to international law. So there is also a problem as to which party is to be bound by the international court of justice.
4. The choice of applying the general principle of law recognized by civilized nations.

There are different arguments as to how to regulate these agreements.

Casteneda³³ is of the opinion that those from capital importing countries insist that the municipal law of the host state ought to govern. Under the municipal law some have argued that the law can be changed by the legislation altering the stipulation contained in the agreement and this defeats the expectation of the transnational corporation. For the International law, because the state is a subject and the private investor is not, so the international law cannot stand. While placing both parties to agreement under international law will mean under-mining the sovereignty of the host state.

³¹ A.N. Onejeme, 'The Law of Natural Resources Development: Agreements Between Developing Countries and Foreign Investors' <<https://surface.syr.edu>> accessed 6th March 2022.

³²*Ibid.*

³³Casteneda J., *The Underdeveloped Nations and the Development of International Law*(102 Hague Recuil des Cours 1961)339

According to Lord McNair “the choice is not likely to be made when the pair of countries involved, for instance great Britain and Italy, have sufficiently modernized their legal system so that the contracting parties will be content to adopt one of them for the regulation of the contract or one for certain part of the contract and the other for other part”. Here they believe that the agreement should be governed by the municipal law.³⁴

The law is basically that were there are express terms by both parties, the term of the agreement should stand and where there is a provision for arbitration they should go through it. But where no clear words as to the settlement of the dispute, the law which determine the validity of the agreement should for all practical purposes, especially where the parties have not agreed on any other rules of law, govern the whole of the transaction.³⁵

Conclusion

We may conclude that private investment in the less developed countries is both an economic necessity and a desired policy approach. These investment agreements or development policies have been guaranteed through conventions and treaties between states.³⁶ Lord McNair³⁷ asserts that “we must rid ourselves of the idea that the only alternatives are public international law or the municipal law of the state party but that such agreements are to be governed by the general principles of law recognized by civilized nations”. Jessup on the other hand concluded that international law or municipal law or both may be applicable.³⁸

It is noteworthy to say that Economic Development Agreement is an important tool that all developing states need typically to improve the well-being of its citizens. The use of foreign experts, and especially private foreign investors brings the harmony – though with great risk – that the parties need through proper laws guiding them to achieve a happy ending.

³⁴ N.S. Okogbule, *Legal Status of Economic Development Agreements* (Davis Printing & Packaging co. Ltd. Port Harcourt 2004)

³⁵ *Ibid.*

³⁶ Jessup, *Transnational Law*, (ch. 3 1956).

³⁷ See draft convention on Investment Abroad (1959), more widely known as Abs convention, where the contracting states agree to ensure “fair and equitable” treatment to the property of the nationals of the other parties.

³⁸ McNair, *The General Principles of Law Recognized by Civilized Nations* (33 *brit. Y.B. Int'l L.* 1958) 1, 4.

Recommendations

Economic development Agreement has helped in the development of nations especially the underdeveloped countries and the western world. This is because from the natural resources of the underdeveloped it has helped in developing even the western world. These agreement have been able to create a relationship between countries and the international world at large. But the regulatory laws are inadequate and need to be looked into as to which law should govern the transaction between contracting parties.

- 1) The parties to the agreement should expressly state in the face of the contracting document which law should govern them in case of dispute or breach.
- 2) Whereas, private foreign corporations are registered under the municipal laws of the host state, the municipal law of the host state should govern their transaction.
- 3) Parties to Economic Development Agreements should be bound by a common law applicable to the host state and the private foreign investor by initiating a level playing ground like the WTO (World Trade Organization) and GATT (General Agreement on Trade and Tariff) and/or regional laws which is common to the parties.
- 4) Where neither international law nor municipal law nor even general principles of law recognized by civilized nations can settle dispute between the contracting parties, the parties should resort to arbitration. Parties should state in their agreement an arbitration clause and the number of arbitrators, and how it should be conducted.
- 5) Transnational Corporations can place reliance on the rule of international law which attaches responsibility on the states when their territory does not accord with acceptable standards. That standard may be adjudged by reference to the Minimum International Standard (MIS) or a National Treatment Standard (NTS).