

THE GOVERNANCE OF GLOBALISATION: LEGAL PERSPECTIVES – A VIEW FROM AFRICA

NICHOLAS JOHN McNALLY

Introduction

The general situation in Africa south of the Sahara has continued to deteriorate since I wrote a note on 'Democracy in Africa' for the Academy's Workshop on Democracy in December 1996. See *Miscellanea I – Proceedings of the Workshop on Democracy*, published by the Academy in 1998.

Mats Lundahl of the Stockholm School of Economics, in a paper presented in Capetown in December 2001, provides a useful perspective on Africa as at that date in the following terms:

Excluding South Africa, the total income of sub-Saharan Africa amounts to a little more than that of Denmark – to be split among forty-eight nations (World Bank, 2001, pp. 274-5). The performance of most African economies during the last few decades leaves a lot to be desired. In 1950 GNP per capita for Africa South of the Sahara amounted to 11% of that of the OECD countries. In 1989 the figure had fallen to 5% (World Bank, 1991, p. 14). In terms of growth, Africa has performed a great deal worse than Latin America or Asia. During the 1980's GDP in the African countries declined by, on average, 1.3% per annum (Collier and Gunning, 1994, p 64). Today, average GDP per capita in Africa is lower than in 1970 (World Bank, 2000, p. 8).

In my own country, Zimbabwe, a once flourishing economy has been virtually destroyed over the last three years. Some modern writers on geopolitics, particularly right-wing American Republicans, have toyed with the idea of simply ignoring Africa, allowing it to collapse 'while the rest of the planet averts its gaze' (Philip Bobbitt 'The Shield of Achilles: War, Peace and

the Course of History'. And see also the essay by Robert Cooper 'The Post-Modern State and World Order' in 'Re-Ordering the World: The Long-term implications of September 11th' published by Foreign Policy Centre).

The Perception of Africa by the Church

In the face of all this we need to remind ourselves of basic Catholic philosophy. It was a fundamentally inspired policy decision of the early Church that Christ came to save, not merely the Jews, but all men, Jews, Greeks and pagans alike. St. Paul, in his letter to the Ephesians (3:2-3a,5-6) said:

This mystery that has now been revealed through the Spirit to his holy apostles and prophets was unknown to any men in past generations; it means that pagans now share the same inheritance, that they are parts of the same body, and that the same promise has been made to them, in Christ Jesus, through the Gospel.

And St. Peter, in a wonderfully expressive phrase (Acts 10:34) wrote to Cornelius and his household:

The truth, I have now come to realise, is that God does not have favourites, but that anyone, of any nationality, who fears God and does what is right, is acceptable to him.

The Church has consistently stood by Africa. Ever since Pius XII's Encyclical *Fidei Donum* in 1957 the Popes have called attention to the division between the developed and the developing worlds. *Populorum Progressio*, *Mater et Magistra* and *Gaudium et Spes* have underlined the moral obligations of the developed world in relation to such questions as aid, development, the functions of the IMF, the World Bank and other International Agencies. Particular emphasis has been laid on the negative effects of western protectionism, particularly in the areas of agriculture and textiles.

I wonder if it will not be seen, in a hundred years or so, that the trade policies of the West vis-à-vis the developing world have been as evil as we now perceive slavery and apartheid to have been.

Africa, therefore, cannot be written off. It is necessary to address positively and constructively the questions that arise when one considers the problems, and in particular the economic problems of the African continent.

Why is Africa backward? It has been a matter for endless speculation, as to why Africa has lagged behind the rest of the world. Certainly the abundance of land and natural resources may at first have inhibited innovation. But for one who has brought up a family in Zimbabwe in multi-racial

schools, it is clear that there are no significant differences in intellectual abilities or scholastic success between the races. What then are the reasons for Africa's backwardness?

Slavery and colonisation have fashionably been blamed. It can be argued that these are the results rather than the causes of that backwardness. In any event the major impact of slavery was a long time ago and the colonial era lasted for less than a century. The exception is South Africa, where colonisation lasted from 1652 to 1990. Is it coincidence that South Africa is the continent's economic giant? The rest of Africa has had between thirty and fifty years to recover, and, as I have indicated earlier, average GDP per capita in Africa today is less than it was in 1970. With tiny and isolated exceptions like Botswana and Mauritius, development has been negative. There are signs of recovery in Ghana, Uganda, Mozambique and Angola. But in each case it is recovery after disastrous collapse. There is no doubt that the terrible scourge of HIV/AIDS has since the 1980s worsened the situation, but we cannot pretend that without AIDS all would have been well.

I am not sure that it is profitable to speculate on the reasons for Africa's backwardness. Nor do I believe it to be useful for Africa to spend too much time looking for people to blame for our present plight. But I believe it may be instructive to look at the structure of society in the continent today, and at the culture which underpins that structure.

The Structure of African Society

African Society is totally different from modern Western society. Generally speaking there is a small, westernised urban elite, who are in every way capable of living what one may call a westernised existence and of taking part in the maintaining of a modern economy. Perhaps the classic representative of this group is the current Secretary General of the United Nations, Kofi Annan. But alongside them is a huge, illiterate and impoverished peasantry, whose lives are organised along tribal lines. They live in a subsistence economy. They do not comprehend economics. Their leaders are appointed or elected, not by reason of their economic programmes, but in accordance with long-established and often cumbersome traditions. They live often in conditions of poverty not easily understood by Westerners. They live according to simple customary legal systems in which there is no hint of such sophisticated concepts as the separation of powers, the independence of the judiciary, multi-party democracy, or even, in its fullest sense, the rule of law.

This is, of course, a thumb-nail sketch. There are groups who link the two extremes. On the one hand, the urban poor; on the other, the richer peasants, often organised into communities growing a particular crop. But it is sufficient for my purposes to leave it at that.

African Culture

I do not wish in any way to detract from the richness of African culture in such areas as music, religion, art, sculpture, inter-personal relationships and the recognition of the dignity of the individual. I am concerned here with the concept of development, and with the influence of culture on development. I rely on Jacques Barzun's work 'From Dawn to Decadence' for support for the proposition that a particular culture, however rich in other ways, may be inconsistent with, or even hostile to economic development. He gives as an example (p. 106) 16th Century Spain, where the culture of the *hidalgo* kept Spain poor, and indeed increased its poverty by means of inflation, despite the enormous inflows of wealth, largely in the form of silver coming in from the New World (South America) in the great annual convoys of the Silver Fleet. The cultures that have developed out of the social structures in Africa which I have so briefly described have not been cultures of economic development. The politico/religious structures have tended to be hostile to personal initiative. There has been a discouragement of the idea of personal accountability for one's own actions. Misfortunes are blamed on the anger of the ancestors, rather than on bad planning or lack of foresight. Priorities in life are utterly different from those in the West. This cultural outlook is at the root of the spectacular incompetence which is often the hallmark of African administration, and is more destructive even than corruption.

African Political Cultures

In societies which can fairly be described as feudal or even pre-feudal, because of the economic relationships between people and their leaders, many African politicians have found the way to success has been by harnessing the discontent of the masses of the impoverished. A culture of violence has developed. Unemployed youth, faced with the boredom of village life, can easily be recruited, armed with AK 47s, and persuaded, with remarkably little effort, to carry out with enthusiasm the most unspeakable cruelties.

The fact that the President of South Africa, Thabo Mbeki, speaks of an 'African Renaissance' supports the idea that we are presently in a pre-renaissance culture. And if our social structures are, as I have suggested, in many ways even pre-feudal, it will be apparent that one cannot simply democratise Africa by a process of giving everyone a vote. (The Americans will, I suspect, soon learn this in Iraq, although the cultural impediments to democracy in the Middle East are quite different from those in sub-Saharan Africa.) Education and cultural development must go hand in hand with democratisation and economic development. It will not happen quickly.

Africa and Globalisation

What has all this to do with globalisation? The point that I am trying to make is that, in reality, Africa is not ready to cope with the challenges of globalisation, and will inevitably be left behind. For the foreseeable future Africa will need to be treated with special care. Africa is entitled to demand that there be a constant review of the terms of trade by which the West protects its agricultural and textile industries in particular, to the great detriment of Africa. But apart from that, more needs to be done, and is being done, by the people of Africa themselves.

Africa is taking active steps to restructure itself to cope with globalisation, and I propose to conclude my commentary by drawing attention to two major developments. They are the re-organising of the former Organisation of African Unity into the new African Union (AU) and the establishing of the New Partnership for Africa's Development (NEPAD).

The African Union

At the extraordinary summit of the Organisation of African Unity (OAU) in Sirte, Libya, in September 1999, African heads of state and government decided to form the African Union. This was intended to be more than a simple change of name. The OAU had been ineffective, and built around the principle of national sovereignty and non-interference in the affairs of member states. Now, under the influence of Libya, the idea of a United States of Africa began to catch the imagination of the leaders, though many were unconvinced. There is provision in the Charter of the African Union for the ultimate creation of an African Parliament, an African Court and a common African currency. The AU is seen as a more activist organisation than the OAU, readier if necessary to intervene in the internal affairs of member

states. In July 2002, in Durban, South Africa, the OAU formally ceased to exist and the AU took its place. Although the founding document of the AU was written in 1999, it was an outline agreement without operational and procedural rules for the eighteen AU organs. So far, to quote Ross Herbert of the South African Institute of International Affairs,

The Assembly of Heads of State, the Executive Council and the Permanent Representatives Council have been established. The Peace and Security Council (PSC) and the Pan-African Parliament documents have been drafted, but await signature, ratification and funding before they become operational. The AU Commission, its operational bureaucracy, will operate on an interim basis this year (2002) but contentious negotiations are still ongoing over its structure and which if any of the old OAU staff will be transferred to the AU.

Twelve other AU organs remain to be defined: the Court of Justice, African Central Bank, African Monetary Fund, African Investment Bank, the Economic, Social and Cultural Council (to receive input from NGOs and civil society) and seven specialised sectoral technical committees of the Executive Council. It remains to be seen whether the AU will live up to the expectations of its founders. It may well be that its success or failure will depend upon the success or failure of its major brain child, the New Partnership for Africa's Development (NEPAD).

NEPAD

NEPAD is, so far, little more than a document drafted largely in the corridors of power in Pretoria, South Africa, approved by heads of state in Abuja, Nigeria, in October 2001, and 'sold' to the African Union members as a constructive way of engaging the forces of globalisation and as a road-map to the goal of the African Renaissance. The partnership envisaged is one between Africa and the developed world. The latter will offer aid and investment, debt relief and trade access. The former will undertake to reform itself, primarily through what is known as the 'Peer Review Mechanism'. I quote Ross Herbert again:

NEPAD is most often in the press likened to a 'Marshall Plan' for Africa, but it is substantially more. The Marshall Plan was a straightforward effort to reconstruct what was. NEPAD's mission is largely to construct something that has not yet been, promising to tackle in the process the full range of Africa's problems. Its overriding goal is to end Africa's underdevelopment and poverty. It is part programme, part philosophy and part shopping list...

In presenting NEPAD to the South African Parliament, President Thabo Mbeki said:

It is a call for a new relationship of partnership between Africa and the international community, especially the highly industrialised countries, to overcome the developmental chasm that has widened over centuries of unequal relations. In this regard, we are not asking for favours but for fairness and justice, a better life for Africans and a secure future for all humanity. This programme is premised on African ownership, African control of the projects and programmes, with African leaders accepting openly and unequivocally that they will play their part in ending poverty and bringing about sustainable development. We are agreed that we must strengthen democracy on the continent; we must entrench a human rights culture; we must end existing conflicts and prevent new conflicts. We have to deal with corruption and be accountable to one another for all our actions.

Clearly these measures of ensuring democracy, good governance and the absence of wars and conflicts, are important both for the well-being of the people of Africa and for the creation of positive conditions for investment, economic growth and development.

The African Peer Review Mechanism (APRM)

The most striking feature of NEPAD is the Peer Review Mechanism. This is the administrative machinery by means of which member states of the African Union will voluntarily submit themselves to periodic review by a panel of Eminent Persons, will facilitate such reviews, and will be guided by agreed parameters for good political governance and good economic and corporate governance. An elaborate structure has been proposed and agreed. How it will be funded, how it will be staffed, and to what extent member states will submit to such reviews remains to be seen. For many people the situation in Zimbabwe is the first and most immediate test for the APRM.

Conclusion

NEPAD is Africa's answer to globalisation. Cynics may say it will never get off the ground. But its value lies primarily in the fact that it is a road-map. It sets up an ideal, a target, for African leaders to aim at. Even if the

ideal is not achieved, partial success may redefine the way African leaders think about themselves and their objectives. And finally, the document itself is a focus for attention by the developed world and international agencies, concentrating their endeavours on the areas in which Africa seeks development investment and on the quid pro quo of improved governance which they are entitled to demand.