

**The Summer has Ended and We are Not
Saved! Towards a Transformative
Agenda for Africa’s Development**

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True compassion is more than flinging a coin to a beggar; it is not haphazard and superficial. It comes to see that an edifice which produces beggars needs restructuring. A true revolution of values will soon look uneasily on the glaring contrast of poverty and wealth.¹

I. AN EVENTFUL SUMMER

July 2005 was an eventful and atypical summer month; it was a month of great grief, great thrill, and great expectations. It was a month of great and inconsolable grief due to transnational terrorist attacks, including the devastating attacks in London on July 7² and in Egypt on July 23.³ Likewise, the inexpressible carnage in Iraq continued unabated in July 2005; indeed, the degree of terror in Iraq has reached the utmost bounds of the imaginable and perhaps gone beyond them. The mindless carnage in Iraq is a tumultuous consequence of the illegal and silly invasion of that country by the United States (U.S.) and its now dwindling coalition-of-the-willing states. Like communism, the inventors of the Iraqi invasion believe that it was a brilliant idea that could have worked had it been "done right."⁴ Notwithstanding, terrorism, like other transnational crimes

1. MARTIN LUTHER KING, JR., *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 148 (James Washington ed., 1992).

2. See *London Rocked by Terror Attacks*, BBC NEWS U.K. EDITION, July 7, 2005, <http://news.bbc.co.uk/1/hi/uk/4659093.stm> (reporting on three terrorist blasts on an underground network and on a double-decker bus in London); see also Alan Cowell, *Dozens Killed in Rush-hour Bombings 56 Minutes of Carnage Wipes out Olympic Joy*, INT'L HERALD TRIB. (Fr.), July 8, 2005, at 1 ("Bomb explosions tore through three subway trains and a red-painted double-decker bus . . . on Thursday, killing at least 37 people in carnage that left the city stunned and bloodied, but oddly stoic.").

3. See Dan Murphy, *Terror Strikes in Egypt*, THE CHRISTIAN SCI. MONITOR, July 23, 2005, available at http://www.csmonitor.com/earlyed/early_world072305.htm ("Two powerful car-bombs struck at the heart of Egypt's \$6 billion tourism industry early Saturday, killing 83 people from at least 5 countries.").

4. For perspectives on the invasion, see generally Jutta Brunnée & Stephen J. Toope, *The Use of Force: International Law After Iraq*, 53 INT'L & COMP. LAW. Q. 785

such as drug trafficking, represents a serious challenge to the values of civilization, since civilization is supposed to overcome the savage aggressiveness of the individual.⁵

July 2005 was also a month of great thrill, with Bob Geldof and other musical stars treating the world to a "Live 8" musical jamboree on July 2, reminiscent of the 1985 "Live Aid" concert that took place in the wake of the Ethiopian famine. The goal of the "Live 8" concert, attended by such world figures as Nelson Mandela, Bill Gates, and Kofi Annan, was to "Make Poverty History"—poverty being an affliction that actually or potentially includes all other afflictions⁶—and, in particular, to raise awareness of Africa's poverty.⁷ Finally, July 2005 was a month of great expectations: following "Live 8" and related activities, the Group of Eight (G8) industrial countries⁸ was expected to make tangible commitments towards eradicating or reducing Africa's poverty at their 2005 Gleneagles July Summit. It is a great tragedy that Africa is being repeatedly acted upon rather than being an actor in the international arena. These outbursts of sympathies and emotions painfully constitute the collective and vicarious humiliation of Africa's governments and peoples.

The extent to which the "Live 8" concert and related campaigns influenced the Gleneagles Summit is unclear; but one outcome of the Summit was the agreement by the G8 to cancel the debt of the 18 poorest nations, 15 of which are in Africa.⁹ Under the deal brokered by British Prime Minister Tony Blair, the G8 will fund debts to the World Bank and the African Development Bank (ADB), while debts to the

(2004); Ibrahim J. Gassama, *International Law at a Grotian Moment: The Invasion of Iraq in Context*, 18 EMORY INT'L L. REV. 1 (2004); Henry J. Richardson, III, *U.S. Hegemony, Race and Oil in Deciding United Nations Security Council Resolution 1441 on Iraq*, 17 TEMP. INT'L & COMP. L.J. 27 (2003).

5. Cf. SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENT* 61–62 (Penguin Books 2004) (1930) ("Civilization has to make every effort to limit man's aggressive drives and hold down their manifestations through the formation of psychological reactions.").

6. See C. S. LEWIS, *THE PROBLEM OF PAIN* 96 (1940).

7. See, e.g., *Live 8: Real Serious Music*, CBS NEWS ONLINE, July 2, 2005, <http://www.cbsnews.com/stories/2005/07/02/world/main705970.shtml> ("Musicians were taking to 10 stages from Tokyo to Toronto, Berlin to Johannesburg for a music marathon to raise awareness of African poverty and pressure the world's most powerful leaders to do something about it at the [G8] summit in Scotland next week.").

8. The G8 countries are Canada, France, Germany, Italy, Japan, Russia, United Kingdom (U.K.), and U.S. *Id.*

9. African countries that will benefit from the debt relief/cancellation are Benin, Burkina Faso, Ethiopia, Ghana, Madagascar, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Tanzania, Uganda, and Zambia.

International Monetary Fund (IMF) will be catered for by “existing IMF resources.” The G8 also promised to boost aid for developing countries by \$50 billion (£28.8 billion), to provide rapid and flexible multilateral and bilateral debt relief for post-conflict countries and to allocate grant financing for reconstruction needs.¹⁰

This article examines the promised debt relief and commends the G8 for taking the initiative to assist a continent in crisis. The article, however, argues that debt relief is far from a complete cure, and that Sub-Saharan Africa (SSA) needs more than handouts from the G8 to overcome poverty. Debt relief is merely the end of the beginning;¹¹ it is, at best, a gesture of support to Africa’s effort at meeting human security, which the African Union (A.U.) defines as “the security of the individual in terms of satisfaction of his/her basic needs.”¹² Africa’s problems are conspicuous, though their solutions seem to defy reason and common sense. There are three external trajectories to Africa’s development crisis: the first is the debt question; the second is the aid question; and the third is the trade question.¹³ The Blair Commission Report¹⁴ sums up Africa’s internal

10. See THE GLENEAGLES COMMUNIQUÉ, BBC NEWS U.K. EDITION (2005), http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/g8_gleneagles_communique.pdf (last visited Nov. 5, 2005) [hereinafter GLENEAGLES COMMUNIQUÉ]. See also *G8 Leaders Agree \$50bn Aid Boost*, BBC NEWS U.K. EDITION, July 8, 2005, <http://news.bbc.co.uk/1/hi/business/4662297.stm>.

11. Cf. Joseph Stiglitz, *The End of the Beginning*, THE GUARDIAN [U.K.], July 12, 2005, available at <http://www.guardian.co.uk/hearafrica05/story/0,15756,1526537,00.html> (arguing that debt relief alone won’t relieve third-world poverty).

12. African Union Non-Aggression and Common Defence Pact, Afr. Union art. 1, para. k, 4th Ord. Sess., (adopted Jan. 31, 2005), available at <http://www.africa-union.org> (on file with author) [hereinafter AU Non-Aggression Pact] (stressing that human security includes “the creation of social, economic, political, environmental and cultural conditions necessary for the survival and dignity of the individual, the protection of and respect for human rights, good governance and the guarantee for each individual of opportunities and choices for his/her full development;” *id.*); see generally GLOBALIZATION, HUMAN SECURITY AND THE AFRICAN EXPERIENCE (Caroline Thomas & Peter Wilkin eds., 1999) (exploring security from a human perspective).

13. See Organization of African Unity, *New Partnership for Africa’s Development*, ¶ 3, (Oct. 2001), available at http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/oau/keydocs/NEPAD.pdf [hereinafter NEPAD] (“Historically accession to the institutions of the international community, the credit and aid binomial has underlined the logic of African development.”); cf. Algiers Declaration, Org. Afr. Unity, 35th Ord. Sess., at 7, O.A.U. Doc. AHG/Decl.1 (XXXV) (July 12–14, 1999), available at http://www.africa-union.org/Official_documents/Heads%20of%20State%20Summits/hog/9HoGAssembly1999.pdf [hereinafter Algiers Declaration]. The OAU states that, [D]espite the tremendous efforts invested by our countries to reorganize and restructure their economics at a very high social cost, our economies are increasingly facing a serious deterioration of the terms of trade, a decline in international development co-operation, a continuous fall in official development aid, an exacerbation of the external debt problem and the resurgence of protectionism on the part of the developed countries.

Id.

14. Commission for Africa, *Our Common Interest: Report of the Commission for Africa* 16 (2005), available at <http://www.commissionforafrica.org/english/report/>

development trajectories thus: “Africa’s history over the last fifty years has been blighted by two areas of weakness. These have been capacity—the ability to design and deliver policies; and accountability—how well a state answers to its people.”¹⁵ This article will argue that while Africa needs the international community’s support for capacity building, it must take up the challenge of accountability and pull itself up by its bootstraps.

Part II addresses the debt burden, the long struggle and arguments (legal and moral) for its relief, and the promised reprieve by the G8, all in the context of global distributive justice. Part III examines Africa’s other external development trajectories—aid and trade—and argues that market access offers great potential for Africa’s growth, though it is hard to draw the same conclusion about aid. Part IV focuses on internal dynamics, including Africa’s obstructive regulatory and economic policies, and calls for a transformative development agenda.

II. DEBT RELIEF AND DISTRIBUTIVE JUSTICE

After years of painful struggle, the international community, in particular the G8, finally responded with positive gestures to Africa’s debt problem. Until recently, the G8 had stuck relentlessly to an unchanging line even in radically changed circumstances. It is reasonable to assume that the grinding and embarrassing poverty in SSA, arising from the debt burden and other exogenous and endogenous factors, probably prized the G8 to finally shift ground. This Part examines the dialectics of Africa’s debt problem and the silver lining that now appears in the hitherto dark clouds. Its central thesis is that debt relief should not be seen as an act of mercy but as a response to the demands of distributive justice.

A. Poverty, Debts, and the International Economic System

Why is Africa so poor? Is there a chance that the continent will meet the Millennium Development Goals (MDG)? How has the current international economic order (IEO)—including the asymmetrical world economic and trading system—affected Africa’s efforts at sustainable development and the reduction of poverty? What, especially, is the nexus between debt burden and poverty?

thereport/english/11-03-05_cr_report.pdf [hereinafter *Our Common Interest*].

15. *Id.* at 14.

1. *A Rich Continent Buffeted by Poverty*

Africa is a huge paradox. The continent has immense wealth, potential, market and culture. Twenty percent of its total area is made up of forests, making it “the planet’s second lifeline with fabulous bio-diversity (flora and fauna).”¹⁶ Africa is endowed with immense mineral and energy resources such as petroleum, gas, uranium, and hydroelectric basins. Its mineral reserves account for about 30 percent of global mineral resources.¹⁷ Yet, the New Partnership for Africa’s Development (NEPAD) has announced that, “Africa remains the poorest continent despite being one of the most richly endowed regions of the world.”¹⁸ The defunct Organization of African Unity (OAU) had earlier reflected on the continent’s plight in these sobering words: “We have noted, at the close of the 20th century, that of all the regions of the world, Africa is indeed the most backward in terms of development from whatever angle it is viewed and the most vulnerable as far as peace, security and stability are concerned.”¹⁹

Since the “Four Freedoms” speech of Franklin D. Roosevelt, in which he spoke, *inter alia*, of “freedom from want,”²⁰ a frontier of freedom has grown across the world. The final decades of the 20th century were a glorious period for the majority of mankind, with the number of people

16. Commission of the Afr. Union (AUC), *Our Common Destiny: Guideline Document 5* (May 2004) [hereinafter *Our Common Destiny*].

17. *See id.*

18. NEPAD, *supra* note 13, ¶ 19.

19. Yaoundé Declaration, Org. Afr. Unity, 32d Ord. Sess., ¶ 2, O.A.U. Doc. AHG/Decl.3 (XXXII) (July 8–10, 1996), available at http://www.africa-union.org/Official_documents/Heads%20of%20State%20Summits/hog/6HoGAssembly1996.pdf [hereinafter Yaoundé Declaration]; cf. HENRY KISSINGER, DOES AMERICA NEED A FOREIGN POLICY? TOWARD A DIPLOMACY FOR THE TWENTY-FIRST CENTURY 201 (2002) (noting the pervasiveness of poverty in Africa and stressing that the Continent has the lowest economic growth rate of any continent and has lagged far behind in modernization).

20. Franklin D. Roosevelt said,

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms . . . The third is the freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants everywhere in the world.

Franklin D. Roosevelt, Four Freedoms Speech (Jan. 6, 1941), in FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS 361–62 (1990); cf. President Harry Truman’s 1949 “Fair Deal,” aimed at improving the lives of people inhabiting the underdeveloped areas of the globe. In his famous Point IV Program, Truman declared: “More than half the people of the world are living in conditions approaching misery. Their food is inadequate, they are victims of disease. Their economic life is primitive and stagnant. Their poverty is a handicap and a threat both to them and to more prosperous areas.” *Quoted in* ARTURO ESCOBAR, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD 3 (1995).

living in extreme poverty reduced to one billion, from one and a half billion.²¹ However, behind the frontier of freedom are millions of Africans who live without the freedom to better their lives. SSA has not shared in the glow of the past decades; for it, they have been decades of despair. A few examples of the severe and pervasive poverty in SSA are warranted,²² but many are not. Stein Ringen believes that Europeans are, on average, about 20 times better off today than Africans.²³ Although Ringen's claim is slightly over-stated, there is no denying that, in certain communities in some parts of the globe, a privileged group of persons collectively have vastly more than they need to maintain an adequate standard of living. On the other hand, massive poverty, unemployment, crime, homelessness and other pathologies plague SSA and show no signs of abating.

HIV/AIDS, malaria, tuberculosis (TB), and other communicable but preventable diseases have further ravaged many African countries; the AIDS pandemic, in particular, is largely a poverty disease.²⁴ Like poverty, Africa's share in these diseases is disproportionate and ought to revolt the human conscience. Whereas less than 2 million persons live with HIV/AIDS in Latin America and less than 1 million in Western Europe, between 25 and 28 million Africans are infected, representing about 70 percent of worldwide infections.²⁵ Of the 5 million people infected with HIV/AIDS globally in 2003, 3 million, or 60 percent were Africans, compared to 30,000, or 6 percent in Western Europe.²⁶ Africa has so far lost over 22 million persons to HIV/AIDS. The death toll from other regions put together is less than 3 million.²⁷

The MDG has become the standard for identifying and measuring global development objectives in the period up to 2015. Elaborated by

21. Stein Ringen, *Band of Hope*, TIMES LITERARY SUPPLEMENT, June 24, 2005, at 3-4.

22. See generally World Bank, *Some Interesting Facts About Sub-Saharan Africa* (2005), available at <http://www.worldbank.org> (on file with author) (last visited Aug. 10, 2005).

23. See Ringen, *supra* note 21, at 3.

24. See Bill Clinton, *The Struggle for the Soul of the 21st Century*, Richard Dimpleby Lecture (Dec. 14, 2001), available at <http://www.australianpolitics.com/news/2001/01-12-14.shtml>.

25. See U.N. AIDS & World Health Organization, *Aids Epidemic Update* 5-13 (Dec., 2003), available at <http://www.unaids.org/Unaids/EN/Resources/Publications/Corporate+publications/AIDS+epidemic+update+-+December+2003.asp> [hereinafter *Aids Epidemic Update* 2003].

26. See *id.*

27. See *id.*

the United Nations (U.N.) Secretariat in collaboration with the World Bank, IMF, and the Organization for Economic Cooperation and Development (OECD), the MDG seeks to harmonize reporting on the development goals set forth in the U.N. Millennium Declaration of 2000.²⁸ It calls for international cooperation to eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; and develop global partnerships for development for the attainment of a more peaceful, just and prosperous world.

Many countries are on track to achieve at least some of the MDGs by the magic year 2015; but SSA remains steeply behind and is presently the only continent not on track to meet any of these goals. The MDG Report for 2005 estimates that there were 815 million hungry people in the developing world in 2002—9 million less than in 1990; but that the number has increased by tens of millions in SSA.²⁹ Between 1990 and 2003, the number of underweight children in SSA also increased from 29 million to 37 million.³⁰ The actual statistics may not be known, particularly as some of the so-called “AIDS victims” may be victims of malnutrition. In Niger, the world’s second poorest country after Sierra Leone, about 3.5 million people are facing extreme hunger and malnutrition. According to James Morris, Executive Director of U.N. World Food Program (WFP), “Whole families are suffering [in Niger] because of a desperate shortage of food, which has forced them to eat just one meal a day of maize, leaves or wild fruits.”³¹

About \$3,050 billion will be needed to achieve the MDG goals; and at the current rate of development, many African states are unlikely to meet this target, due to lack of resources. SSA has witnessed two decades of negative per capita income growth. Its per capita growth rate was only 1.7 percent in 2003, “much too low to achieve the MDG for poverty reduction.”³² The growth rate needed to attain the MDG in Africa falls between 5.6 percent for North Africa and 8 percent for Central and East Africa. This translates into an investment/Gross Domestic Product (GDP)

28. G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 8, 2000) [hereinafter Millennium Declaration].

29. See U.N. Dev. Programme [UNDP], *The Millennium Development Goals Report 2005*, at 8 (2005) [hereinafter MDG REPORT 2005] (arguing that the main reasons for food shortages in Africa lie in growing populations and poor agricultural productivity).

30. See *id.*

31. *As Niger’s Hunger Crisis Worsens, U.N. Agencies Greatly Increase Emergency Appeal*, U.N. NEWS SERVICE, Aug. 3, 2005, <http://www.allafrica.com/stories/200508030291.html>.

32. U.N. Econ. Comm’n for Afr. [UNECA], *Economic Report on Africa 2004: Unlocking Africa’s Trade Potential*, at 2 (Sept. 2004) [hereinafter ERA 2004].

ratio of about 21 and 46 percent for the two regions, respectively.³³ The entire continent currently has an average of 3.5 percent economic growth, but twice this figure is necessary for Africa to halve extreme poverty by 2015.³⁴ The World Bank distressingly concludes that even if SSA were to achieve a projected growth rate of 1.6 percent per capita, it would still be at the low end of the developing-country growth spectrum, “inadequate to make much of a dent in poverty and other MDGs.”³⁵

2. Decades of Unequal Development

Poverty is not a new phenomenon³⁶ and its causes are varied.³⁷ The IMF lists the following causes: low levels of education, investment and savings; inadequate health care and nutrition; economic instability, including high inflation and currency volatility; high budget deficits that contribute to high interest rates; wars, coups, political instability, and corruption; lack of a strong, impartial judiciary and rule of law; inefficient, uncompetitive and corrupt financial systems; protectionist policies that discourage trade; and debts owed to foreign lenders that cannot be repaid.³⁸ As expected, the IMF classifies trade liberalization as a victim rather than a villain and confines the debt crisis to issues of good governance and economic reforms. Western countries and institutions often perceive Africa's problems as mainly consequences of some inscrutable force of nature, compounded by corruption.

The truth is that much, certainly not all, of Africa poverty results from the ‘winner-takes-all’ global economic system that is geared towards protecting the rich at the expense of the poor.³⁹ Decades of unequal

33. See *Our Common Destiny*, *supra* note 16, at 8 n.1.

34. See *id.*

35. World Bank, *Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda*, 43 (2003) [hereinafter *Global Economic Prospects 2004*].

36. See GARETH STEDMAN JONES, *AN END TO POVERTY? A HISTORICAL DEBATE* (2004) (tracing the history of debates on world poverty and relating them to current discussions and policies); see also JEFFREY SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* (2005) (reflecting on the problem of poverty and calling for the redistribution of wealth through development).

37. For an extensive discussion of the evidence and underlying causes of poverty and hunger, see JEAN DREZE & AMARTYA SEN, *HUNGER AND PUBLIC ACTION* (1989); see also CHRISTOPHER CLAPHAM, *AFRICA AND THE INTERNATIONAL SYSTEM: THE POLITICS OF STATE SURVIVAL* 161–86 (1996).

38. See *What Causes Poverty?*, WASH. TIMES, Apr. 13, 2002, at B11 (quoting the IMF).

39. See Susanna Mitchell, *Inequality and Poverty—A Spiral of Despair*, JUBILEE RESEARCH, <http://www.jubilee2000uk.org> (last visited Nov. 5, 2005) (arguing that such a system has shown itself inherently opposed to redistributive policies).

development and an unfair IEO have contributed to the stalled development of most developing countries and to poverty.⁴⁰ The race to the bottom fueled by globalization and liberalization has lowered wages in many countries, “[d]espite efficiency and productivity gains,” creating unprecedented income inequality and a decrease in the standard of living for millions of people.⁴¹

The current IEO was elaborated shortly before the end of World War II and is symbolized in the trio of the IMF, World Bank and—with the conclusion of the Uruguay Round in 1994⁴²—the World Trade Organization (WTO).⁴³ The WTO, in turn, succeeds the General Agreement on Tariffs and Trade (GATT).⁴⁴ The IEO was elaborated at a time when most of Africa, with the exception of Egypt, Ethiopia, and Liberia, was colonized by the then European powers—Belgium, Britain, France, Portugal, and Spain. It was the wealth of Africa and the sweat of Africans that developed Europe, in the same way that the IEO continues to effectively ensure Africa’s subjugation and neo-colonization. The so-called multilateral system is nothing but a projection of the “Washington Consensus,” with its insistence that “the market is the most rational way to do things correctly.”⁴⁵ As Joseph Stiglitz eloquently puts it,

40. See generally KUNIBERT RAFFER & H.W. SINGER, *THE ECONOMIC NORTH-SOUTH DIVIDE: SIX DECADES OF UNEQUAL DEVELOPMENT* (2001) (analyzing the ways in which global poverty and unequal development contribute to an increasing global rich-poor gap).

41. LORI WALLACH & PATRICK WOODALL, *WHOSE TRADE ORGANIZATION? A COMPREHENSIVE GUIDE TO THE WTO* 284 (New Press 2d ed. 2004) (“Hunger has increased during the era of the WTO, not from a lack of food but from a lack of purchasing power by the poor.”).

42. The Uruguay Round was launched in September 1986 in Punta del Este, Uruguay. It took four years to prepare and seven years to complete in 1994. See *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, Apr. 15, 1994, 33 I.L.M. 1125 (1994) [hereinafter *FINAL ACT*].

43. The WTO was established in 1995 to implement principles, rules, and disciplines of the Uruguay Round. See *Marrakesh Agreement Establishing the [WTO]*, Apr. 15, 1994, 33 I.L.M. 1125 (1994) [hereinafter *WTO Agreement*].

44. See *General Agreement on Tariffs and Trade (GATT)*, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter *GATT 1947*]. *GATT 1947* was provisionally established to expedite the start of international negotiations on tariff reductions and their implementation, pending ratification and entry into force of the Havana Charter and establishment of the International Trade Organization (ITO). As the Charter never entered into force, *GATT* “was pressed into service by default to fill an institutional vacuum.” Kevin Kennedy, *A Review of Globalization and Its Discontent*, 35 *GEO. WASH. INT’L L. REV.* 251, 252 (2003).

45. Denis O’Hearn, *Tigers and Transnational Corporations: Pathways from the Periphery?*, in *CRITICAL DEVELOPMENT THEORY: CONTRIBUTIONS TO A NEW PARADIGM* 117 (Ronaldo Munck & Denis O’Hearn eds., 1999).

the net effect of the policies set by the Washington Consensus has all too often been to benefit the few at the expense of the many, the well-off at the expense of the poor. In many cases, commercial interests and values have superseded concern for the environment, democracy, human rights, and social justice.⁴⁶

The campaign for a New International Economic Order (NIEO), which began in the early seventies of the twentieth century, led to the elaboration of the Declaration on the Establishment of a NIEO.⁴⁷ The NIEO had three goals: First, it sought to eliminate developing countries' economic dependence on developed countries. Second, it sought to accelerate the development of economies in developing countries based on the principle of self-reliance. Lastly, it sought to introduce appropriate institutional changes for the global management of world resources in the interest of mankind as a whole. In particular, the NIEO espoused an equitable approach to international trade and economic relations between developed and developing countries and advocated preferential trade and investment treatment for developing countries. It also called for debt relief and grants-based assistance, access to technology transfers, and the recognition of the right to development.⁴⁸

The campaign for a NIEO also led to the adoption of the Charter of Economic Rights and Duties of States in 1974 (Charter).⁴⁹ The Charter aimed to establish a new system of international economic relations based on equity, sovereign equality, and the interdependent interests of developed and developing countries.⁵⁰ Some doubts exist whether the Charter forms part of customary international law—since it was adopted as a U.N. General Assembly resolution and without universal acceptance.⁵¹ Nonetheless, the principles embodied in this and similar instruments, including the Program of Action on the Establishment of a NIEO,⁵²

46. JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 20 (2003).

47. G. A. Res. 3201 (S-VI), at 3–4, U.N. Doc. A/9559 (May 1, 1974) [hereinafter Declaration on NIEO].

48. See generally RUMU SARKAR, *DEVELOPMENT LAW AND INTERNATIONAL FINANCE* (2d ed. 2002) (chapter seven discussing whether or not there is a human right to development); Edwin P. Reubens, *An Overview of the NIEO*, in CHALLENGE OF THE NEW INTERNATIONAL ECONOMIC ORDER 1, 1 (Edwin P. Reubens ed., 1981).

49. G.A. Res. 3281 (XXIX), at 50, U.N. Doc. A/9631 (Dec. 12, 1974) [hereinafter Charter of Economic Rights and Duties].

50. See ROBERT F. MEAGHER, *AN INTERNATIONAL REDISTRIBUTION OF WEALTH AND POWER: A STUDY OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES* 92–128 (1979).

51. The Charter was adopted with 99 votes in favor, 8 against, and 29 abstentions.

52. G.A. Res. 3202 (S-VI), at 5, U.N. Doc. A/9559 (May 1, 1974) [hereinafter

“represent an expansion of the movement for permanent sovereignty over natural resources, and continuation of the legal effort by Southern countries to find voice and to exercise more power over their political and economic destinies.”⁵³

The international community subsequently elaborated other initiatives—multilateral, bilateral, and private—all aimed at promoting SSA’s economic renaissance and alleviating poverty. Past multilateral initiatives include the U.N. Transport and Communications Decade in Africa,⁵⁴ the Industrial Development Decade for Africa,⁵⁵ and the Program of Action for African Economic Recovery and Development (PAAERD),⁵⁶ which led to the New Agenda for the Development of Africa (NADAF). These programs sought to invigorate African development and intensify global support for its economic reforms. The PAAERD and NADAF were particularly significant, targeting an average real growth rate of 6 percent of GDP and promoting a number of people-oriented objectives, such as promoting food production and developing agro-industries and human resources.

Whether the NIEO changed the development trajectory of international economic relations and, in particular, whether SSA made any meaningful gains from these campaigns and programs remains a matter of academic conjecture.⁵⁷ Clearly, these initiatives have not succeeded in establishing legal obligations for the West. Rather, international law has “reinforced and reproduced the [current] economic and political inequities.”⁵⁸ Some commentators take the view that the NIEO-based agenda has been partially successful in practical terms, citing the World Bank and other multilateral and bilateral institutions that are implementing large-scale debt relief.⁵⁹ Others point to the Bretton Woods institutions’ Poverty Reduction Strategy Papers (PRSPs), the World Bank’s Comprehensive Development Framework (CDF), and the Common Country Assessment

Program of Action on NIEO].

53. Ruth E. Gordon & Jon H. Sylvester, *Deconstructing Development*, 22 Wis. INT’L L.J. 1, 57 (2004) [hereinafter *Deconstructing Development*].

54. G.A. Res. 32/160, U.N. Doc. A/RES/32/160 (Dec. 19, 1977).

55. G.A. Res. 35/66B, U.N. Doc. A/35/592/Add.3 (Dec. 5, 1980).

56. G.A. Res. S-13/2, U.N. Doc. A/Res/S-13/2 (July 1, 1986) [hereinafter PAAERD].

57. See, e.g., N. S. Rembe, *Prospects for the Realisation of the New International Economic Order: An African Perspective*, 17 COMP. & INT’L L. J. SOUTH AFR. 322 (1984) (examining the NIEO initiative, its prospects, problems facing the realisation of an equitable and just international economic system, and options and responses of the African states).

58. See *Deconstructing Development*, *supra* note 53, at 7; see generally MOHAMMED BEDJAOUI, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (1979) (discussing the role of international law in shaping the IEO).

59. See World Bank, *The Enhanced Heavily Indebted Poor Countries Initiative* (2005), available at <http://www.worldbank.org> (on home page, follow topics—economic policy and debt—topics—HIPC).

and U.N. Development Assistance Framework (CCA/UNDAF), all of which “command the attention of decision makers, and make resources available for each country.”⁶⁰

Critics have questioned the international financial institutions [IFIs] so-called debt relief—even from a developing country’s perspective—arguably due to the implicit “moral hazard,” particularly if recipient nations appear to be not credit-worthy and unattractive to investors.⁶¹ Other critics argue that the NIEO is not serving the interests of Africa’s producers and exporters. The World Bank itself estimates that SSA lost half its market share in exports of primary products between 1970 and 1983.⁶² As an illustration, whereas a ton of African copper bought 115 barrels of oil in 1975, it bought only 58 barrels by 1980. Similarly, a ton of African cocoa could buy 148 barrels of oil in 1975 but only 63 barrels by 1980; and while a ton of African coffee could buy 148 barrels of oil in 1975, it could buy only 82 barrels by 1980.⁶³ The reason for fluctuations in Africa’s fortunes is that developed countries determine the price of their products as well as those of developing countries. Africa, says Cameron Duodu, “has been involuntarily locked into an earnings logjam on the international market, which keeps it poor when it sells to others, and poor when it buys from them.”⁶⁴

The Lagos Plan of Action (LPA), adopted in 1980 by the now defunct OAU,⁶⁵ also noted that the NIEO was flawed and biased against Africa. Its Preamble opened with the following scathing words:

The effect of unfulfilled promises of global development strategies has been more sharply felt in Africa than in the other continents of the world. Indeed, rather than result in an improvement in the economic situation of the continent, successive strategies have made it stagnate and become more susceptible than

60. Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 HARV. HUM. RTS. L.J. 137, 153 (2004).

61. See, e.g., Barbara Crossette, *Ex-Premier of Singapore Sees Pitfalls in Debt Relief*, N.Y. TIMES, Oct. 15, 2000, at 4; Rumu Sarkar, *Critical Essay: Theoretical Foundations in Development Law: A Reconciliation of Opposites?*, 33 DENV. J. INT’L L. & POL’Y 367, 373 (2005).

62. See World Bank, *Africa’s Adjustment and Growth in the 1980s*, at 2 (1989).

63. See BASIL DAVIDSON, *THE BLACK MAN’S BURDEN* 220 (1992).

64. See Cameron Duodu, *Africa: The Key is Economic Justice*, NEW AFRICAN, July 2005, at 14–15 (also calling on Africa to vertically integrate its industries; *id.*).

65. Org. Afr. Unity, *The Lagos Plan of Action for the Economic Development of Africa*, Apr. 28, 1980 [hereinafter LPA], available at http://www.uneca.org/itca/ariportal/docs/lagos_plan.pdf.

other regions to the economic and social crises suffered by the industrialised countries. Thus, Africa is unable to point to any significant growth rate, or satisfactory index of general well-being, in the past 20 years.⁶⁶

It is doubtful that Africa's situation has changed dramatically for the better since 1980, largely due to its debt burden.

3. *The Debt Burden*

The debt burden has remained one of the main obstacles to Africa's economic recovery⁶⁷ and has elicited repeated and common concerns in Africa. In 1990, the OAU adopted the famous Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World,⁶⁸ stressing: "The continuing plummeting of the prices of Africa's commodities, skyrocketing of prices of manufactured goods and the growing burden of external debt and the attendant reverse flow of resources constitutes external factors which severely constrain our efforts for economic recovery."⁶⁹ That same year, the OAU adopted a resolution on International Cooperation for African Economic and Social Recovery and Development,⁷⁰ which expressed serious concern about the effects of unfair international trade practices, reverse resource flows and external debts on Africa's development.⁷¹

External debts have become a Sword of Damocles hanging over SSA and preventing it from meeting the basic needs of its teeming population. Much of SSA's debt dates back to the 1970s and 1980s, when poor countries borrowed to fund domestic projects because of the commodity price boom, believing that high prices and export earnings would be sustained. About 90 percent of Africa's debt consisted of long-term loans or drawings from the IMF, though most—about 96 percent—was either

66. *Id.* pmbl.

67. For a discussion of the debt crisis in SSA, see generally Jon H. Sylvester, *Impracticability, Mutual Mistake and Related Contractual Bases for Equitably Adjusting the External Debt of Sub-Saharan Africa*, 13 NW. J. INT'L L. & BUS. 258 (1992); Barry Eichengreen, *Historical Research on International Lending and Debt*, 5 J. ECON. PERSP. 149 (1991); John A. Bohn, *Governmental Response to Third World Debt: The Role of the Export-Import Bank*, 21 STAN. J. INT'L L. 461 (1985).

68. Org. Afr. Unity, 26th Ord. Sess. O.A.U. Doc. AHG/Decl.1 (XXVI) (July 11, 1990) [hereinafter Declaration on the Socio-Economic Situation in Africa].

69. *Id.* ¶ 13.

70. Org. Afr. Unity, 26th Ord. Sess. O.A.U. Doc. AHG/Res. 196 (XXVI) (July 9–11, 1990) [hereinafter Resolution on International Cooperation].

71. *Id.* at pmbl; cf. Yaoundé Declaration, *supra* note 19, ¶ 10; Ouagadougou Declaration, Org. Afr. Unity, 34th Ord. Sess. & Afr. Econ. Community (AEC) 2d Ord. Sess., ¶ 2, O.A.U. Doc. AHG/OAU/AEC/Decl.1 (II) (June 10, 1998) [hereinafter Ouagadougou Declaration].

publicly contracted or publicly guaranteed.⁷² According to the IMF, the commodity terms of trade of SSA improved by 76 percent between 1970 and 1980.⁷³ This improvement was also partly a product of the great oil boom produced by what Okeke calls “the effective cartel strategy of the Organization of Petroleum Exporting Countries (OPEC).”⁷⁴

Trouble started for the borrowing nations when commodity prices failed to rise in proportion to rising interest rates, which was compounded by the oil price shocks that led to global recessions. Between 1980 and 1987, for example, SSA experienced a 32 percent decline in the commodity terms of trade.⁷⁵ The OAU confirmed these developments in 1991 when it declared:

The unprecedented collapse of the prices of Africa's commodities and the consequential deterioration in its terms of trade as well as the mounting protectionist measures in the markets of the developed countries against exports from Africa and restrictive business practices are among the major external causes of Africa's external debt.⁷⁶

Such outbursts were of little interest to the IFIs, which craftily induced the debtor states to give “preferred” status to loan re-payments. Korinna Horta captured the mindset of the IFIs: “Unlike commercial banks, the [World] Bank does not have to bear the consequences of loans for ill-conceived projects. Given its status as a preferred creditor, governments repay their World Bank loans irrespective of the success of the projects that were financed.”⁷⁷

Few countries recovered from the aftershocks; many did not. Africa's external debt stock continued to rise astronomically and uncontrollably, from about \$60 billion in 1980 to about \$257 billion by the end of 1989.⁷⁸ Africa “spends approximately \$13.5 billion per annum repaying

72. See Chris N. Okeke, *The Debt Burden: An African Perspective*, 35 INT'L LAW. 1489, 1490 n.7 (2001).

73. Joshua Greene, *The External Debt Problem of Sub-Saharan Africa* table 3 (International Monetary Fund Working Paper No. 89/23, 1989).

74. Okeke, *supra* note 72, at 1495 n.42 (noting that some of the surplus earned by OPEC members found its way to the industrialized market economies, whose banks began to have excess liquidity).

75. Douglas Rimmer, *External Debt and Structural Adjustment in Tropical Africa*, 89 AFR. AFFAIRS 283, 284 (1990).

76. Org. Afr. Unity, 27th Ord. Sess., ¶ 2, O.A.U. Doc. AHG/Decl.2 (XXVII) (June 3–5, 1991) [hereinafter Declaration on Uruguay Round].

77. Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, 15 HARV. HUM. RTS. J. 227, 241 (2002).

78. See Declaration on the Socio-Economic Situation in Africa, *supra* note 68, ¶ 6.

debts” to IFIs for past loans of questionable legitimacy.⁷⁹ These debts are paid in international currencies, earned largely through international trade. Africa earns very little international currency, because it earns very little from international trade. One reason for this downward spiral is that terms of trade are depressed, particularly for primary products such as minerals, other natural resources, agricultural products, and the like. A recent survey conducted by the U.N. Development Program (UNDP) reveals that “primary commodities account for more than two-thirds of exports in 16 of the 23 top or high priority Sub-Saharan countries with data.”⁸⁰ There has been a general decline in the share of agricultural products in global trade,⁸¹ due in part to poor policies fostered by enclave-dependent economies.

Today, about 85 percent of the Heavily Indebted Poor Countries (HIPC) are African.⁸² The World Bank and IMF launched the HIPC Initiative in 1996 to reduce the debts of the world’s most severely indebted countries to “sustainable” levels—ones that poor countries can afford to service. Some commentators have questioned the effectiveness of the HIPC initiative, “partly because of the major obstacles of its implementation. Even the criteria upon which certain African countries were dropped from the list of HIPCs have been seriously questioned.”⁸³ The World Bank’s definition of “sustainable” has also been criticized for failing to include new funds that debtors borrow to pay charges on “old” debts and to run their economies.

Africa has been so crippled in resources that only doses of aid and new loans have kept it from complete bankruptcy. Even these new resource inflows are used to repay old debts, leading to net capital outflows. The Economic Commission for Africa (ECA) reports that “roughly 80 cents on every dollar that flowed into Africa from foreign

79. *Third World Debt Undermines Development: Reality Check: The Need for Deeper Debt Cancellation*, GLOBAL ISSUES, Apr. 2001, <http://www.globalissues.org/TradeRelated/Debt/ExternalArticles/RealityCheck.asp>.

80. U.N. Development Program [UNDP], *Human Development Report 2004*, at 134 (2004).

81. World Trade Organization, *International Trade Statistics 2004*, at 5 (2004) (noting, “While the share of agricultural products was about the same as in the preceding two years, at 9 per cent, it remained 2 per cent below the average level recorded in the 1990s.”).

82. There are currently 38 countries under the HIPC initiative, 32 of them in SSA. See World Bank, *Heavily Indebted Poor Countries*, Aug. 19, 2005, <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/081905.pdf>. The African HIPC countries are Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d’Ivoire, DR Congo, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, and Zambia. *Id.*

83. Okeke, *supra* note 72, at 1501 (stressing, “The effect of HIPC debt relief is therefore far less clear in some countries that have benefited from the initiative than in others.”).

loans flowed out as capital flight in the same year.”⁸⁴ Debt repayment has also increased dependence in Africa, with food imports increasing considerably due to a general decline in domestic production. Africa is now a net importer of food and “currently the largest recipient of food aid in the world,”⁸⁵ which is scandalous for the continent most climatically suited for food production in the world.⁸⁶

B. Justice and Debt Relief

This segment examines the legal and moral imperatives of debt relief, the first fruits to result from that struggle, and the question of conditionality *vis-à-vis* debt relief.

1. The Historicity of Campaigns for Debt Relief

Like poverty, debt forgiveness is not a new concept, but an age-old answer to the injustice and inequality of capitalism. The Law of Moses, for example, “instituted a genuine social revolution aimed at preventing the accumulation of capital in the hands of a few.”⁸⁷ It called on Jews to cancel all debts owed them by other Jews every seven years and to redistribute their wealth every 49 years—Jubilee was the year of liberty or freedom for every Jew.⁸⁸

If one of your countrymen becomes poor and sells some of his property, his nearest relative is to come and redeem what his countryman has sold. . . . But if he does not acquire the means to repay him, what he sold will remain in the possession of the buyer until the Year of Jubilee. It will be returned in the Jubilee, and he can then go back to his property.⁸⁹

84. U.N. Econ. Comm’n for Afr. [UNECA], *Economic Report on Africa 2003: Accelerating the Pace of Development*, at 2 (2003) [hereinafter ERA 2003].

85. Declaration on Agriculture and Food Security in Africa, Afr. Union, 2d Ord. Sess., pmb., A.U. Doc. Assembly/AU/Decl.7 (II) (July 10–12, 2003) [hereinafter Declaration on Agriculture & Food Security].

86. *See id.*

87. ANDRÉ TROCMÉ, JESUS AND THE NONVIOLENT REVOLUTION 14 (Charles E. Moore ed., Orbis Books exp. ed. 2004) (offering a Christ-centered social ethic and arguing that Jesus inaugurated the kingdom of God based on the Jubilee principles which called for a political, economic, and spiritual revolution in response to human need).

88. *Cf. Ezekiel 46:17* (New Int’l Version) (“If, however, he makes a gift from his inheritance to one of his servants, the servant may keep it until the year of freedom; then it will revert to the prince. His inheritance belongs to his sons only; it is theirs.”).

89. *Leviticus 25:25, 28* (New Int’l Version).

Jesus also made these Jubilee commandments a cornerstone of his teachings. In the famous *Lord's Prayer*, Jesus described a rigorous equation between practicing the Jubilee and the grace of God: "Forgive us our debts, as we also have forgiven our debtors."⁹⁰ The parables of the unmerciful servant and the unjust steward further clarify Jesus's thought on this point; the former expresses the strict "equation" of the Lord's Prayer: no mercy for him who has none.⁹¹ "By proclaiming the Jubilee," says André Trocmé, "Jesus wanted to bring about a total social transformation, with an eye to the future, yet based on the vision of justice God had already set forth in the past."⁹²

The initial phase of Africa's struggle with the debt question focused on favorable debt-servicing programs as opposed to outright debt cancellation. It is difficult to determine the exact time frame when the struggle began; but in July 1987, the OAU at its 23rd Ordinary Session in Addis Ababa, Ethiopia, adopted a Declaration on Africa's External Indebtedness.⁹³ The Declaration examined Africa's mounting debt burden "in depth"⁹⁴ and its adverse consequences for the implementation of Africa's recovery program.⁹⁵ It stressed the international community's responsibility to contribute to the improvements of African economies "in order to enable . . . Member States to service their debts."⁹⁶ It also called for an international conference on Africa's external debt for creditors and borrowers to discuss and arrive at "appropriate emergency, short, medium and long-term solutions to alleviate the debt burden."⁹⁷ The OAU directed the Permanent Steering Committee (PSC) to analyze in detail the issue of African external indebtedness⁹⁸ and urged its members "to provide to the PSC (Technical Committee) all relevant data and information on their national and regional debts so as to facilitate the formulation and adoption of an African common position."⁹⁹ Then, "the PSC will formulate concrete proposals for an African Common position on the issue."¹⁰⁰

90. *Matthew* 6:12 (New Int'l Version): "For if you forgive men when they sin against you, your heavenly Father will also forgive you. But if you do not forgive men their sins, your Father will not forgive your sins." See *id.* at 14–15.

91. See *Matthew* 18:21–35 (New Int'l Version).

92. TROCMÉ, *supra* note 87, at 14.

93. Org. Afr. Unity, 23rd Ord. Sess., O.A.U. Doc. AHG/Decl.3. (XXIII) (July 27–29, 1987) [hereinafter Declaration on Africa's External Indebtedness].

94. Africa's total debt at the end of 1987, including arrears of payments due, was about \$141 billion. See Rimmer, *supra* note 75, at 283 (citing PERCY S. MISTRY, AFRICAN DEBT: THE CASE FOR RELIEF FOR SUB-SAHARAN AFRICA (1988)).

95. Declaration on Africa's External Indebtedness, *supra* note 93, at pmb1.

96. *Id.*

97. *Id.*

98. See *id.* ¶ i.

99. *Id.* ¶ iv.

100. *Id.* ¶ v.

African states promised to reconvene in an extraordinary session in the future "to formulate an African common position on the issue."¹⁰¹ In 1989, the OAU passed another resolution renewing its call for an international conference on Africa's external indebtedness¹⁰² and appealing to the international community, especially the creditor countries, to provide meaningful reductions in Africa's debt stock and debt service burdens and significant new resource inflows to Africa.¹⁰³ The impact of the international conference on Africa's debt is questionable. Still, at its 25th Ordinary Session in 1989, the OAU adopted a Resolution for an Enduring Alleviation of Africa's Debt Problems.¹⁰⁴ The OAU adopted the resolution because of concerns with the worsening economic situation in Africa, due, in part, to "the excruciating debt burden, which has stunted growth and development and engendered political instability in some African Countries."¹⁰⁵ The resolution, for the first time, revealed and welcomed "the various debt initiatives, especially the recent debt cancellation offers by President François Mitterand of France and President George Bush of the United States."¹⁰⁶ The resolution did not give specifics on these "debt cancellation offers" but it stressed that "much more debt relief has to be granted to the debt-distressed countries in Africa."¹⁰⁷

The resolution called on the international community "to urgently evolve a more comprehensive strategy to address all aspects of Africa's debt problems, both official and commercial loans, on an enduring basis."¹⁰⁸ It urged creditor countries, in particular, to write-off the official debt of African countries, "in view of their generalized poverty and the attendant economic structures that are fragile and obsolete together with the low per capita incomes which now make them qualify as low-income or

101. *Id.* at pmbl.

102. See Resolution of the Work of the Contact Group of the Current Chairman on Africa's External Debt Crisis, Org. Afr. Unity, 25th Ord. Sess., ¶ 3, AHG/Res. 181 (XXV) (July 24–26, 1989). The OAU recalled another of its resolution—O.A.U. Doc. AHG/Res. 175 (XXIV) (May 25–28, 1988)—and the mandate given to the Chairman of that Session regarding the convening of an international conference on Africa's external indebtedness. *Id.* pmbl.

103. *Id.* ¶ 4.

104. Org. Afr. Unity, 25th Ord. Sess. O.A.U. Doc. AHG/Res. 185 (XXV) (July 24–26, 1989) [hereinafter Resolution for an Enduring Alleviation of Africa's Debt Problems].

105. *Id.* at pmbl.

106. *Id.* ¶ 1.

107. *Id.* ¶ 2.

108. *Id.* ¶ 3.

debt distressed countries.”¹⁰⁹ The resolution made some specific recommendations,¹¹⁰ including “the establishment of an international debt purchasing institution or agency, under the aegis of the IMF and the World Bank to purchase the existing commercial bank debt of African countries at substantial discounts reflecting market rates, while the discounts so realized should be passed on to the obligators.”¹¹¹

In 1996, Africa again called for a “practical and durable solution to the debt crisis . . . through a systematic re-appraisal and review of all measures intended for its servicing and through a concerted search for new, appropriate solutions commensurate with an equitable promotion of economic and social progress in all parts of the world.”¹¹² The avalanche of these soft laws evidences a continent in desperation. NEPAD sums up Africa’s arguments for debt relief thus: “Credit has led to the debt deadlock, which, from installments to rescheduling, still exists and hinders the growth of African countries. The limits of this option have been reached.”¹¹³

It was the Jubilee 2000 Movement—an international civil society campaign—that brought great pressure to bear on the then G8 leaders to cancel the unpayable debts of the poorest countries by the year 2000, under a fair and transparent process. The Movement mobilized enormous international support, including churches throughout the developing world,¹¹⁴ by arguing that debt relief is a moral imperative reflecting the basic principles of economic justice.¹¹⁵ Its activities radically shifted the paradigm from favorable debt-servicing conditions to debt relief and even outright cancellation. In 2001, Chris Okeke argued that “[t]he debt burden of Africa is so great and the capacity to repay so limited that it is increasingly necessary to think not in terms of servicing, but in terms of the idea of complete debt forgiveness.”¹¹⁶ Africa also began making strident calls for outright debt cancellation. As recently as January 2005, the A.U. Assembly called on the G8 to cancel Africa’s debt and to take practical steps to urgently implement such cancellation.¹¹⁷

109. *Id.* ¶ 4.

110. *See generally id.* ¶¶ 5–8.

111. *Id.* ¶ 8(a).

112. Yaoundé Declaration, *supra* note 19, ¶ 12.

113. NEPAD, *supra* note 13, ¶ 3.

114. STIGLITZ, *supra* note 46, at 243.

115. *See id.*; *see also* Jeff M. Sellers, *How to Spell Debt Relief*, CHRISTIANITY TODAY, May 21, 2001, at 64 (describing the Jubilee 2000 Movement’s arguments for debt cancellation).

116. Okeke, *supra* note 72, at 1501.

117. Decision on the Report of Heads of State and Government Implementation Committee on NEPAD, Assembly of Afr. Union, 5th Ord. Sess., ¶ 3, A.U. Doc. Assembly/AU/Dec.70 (IV) (Jan. 30–31, 2005) [hereinafter Decision on NEPAD].

2. *The Legal and Moral Arguments for Debt Relief*

Scholars and other commentators have explicated both legal and moral arguments for debt relief, though voices of dissent have also been audible. As Okeke puts it, “[i]f there are but only good moral arguments by the South for debt forgiveness unsupported by sound and indisputable legal case, the whole matter becomes problematic.”¹¹⁸ In examining the “legitimacy and legality of debt forgiveness under international law,”¹¹⁹ Okeke advances the odiousness of debt as a legal argument for its relief. Citing Alexander Sack, an eminent scholar on the odious debt doctrine,¹²⁰ he posits: “If a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress the population that fights against it, etc., this debt is odious for the population of all the State.”¹²¹ The specific elements of the odious debt doctrine are: (1) the people did not consent to the borrowing; (2) the proceeds did not benefit the people; and (3) the creditor knew (1) and (2) when lending.¹²²

Other scholars believe that the odious debt doctrine is not a part of international law. According to Emily Mancina, the doctrine is unsupported by both treaty law and state practice.¹²³ She even argues that the integration of the odious debt doctrine into international law would harm third world countries by increasing the power of IFIs over the debtor countries and allowing the West to judge and dictate conditions to these countries.¹²⁴ She further asserts that “the international legal system should reject the odious debt doctrine because it ultimately undermines state sovereignty

118. Okeke, *supra* note 72, at 1501.

119. *Id.* at 1502.

120. See generally A. N. SACK, LES EFFETS DES TRANSFORMATIONS DES ETATS SUR LEURS DETTES PUBLIQUES ET AUTRES OBLIGATIONS FINANCIERES 157–84 (1927), available at http://www.odiousdebts.org/odiousdebts/publications/dettes_publicques.html.

121. Okeke, *supra* note 72, at 1503 (quoting PATRICIA ADAMS, ODIIOUS DEBTS: LOOSE LENDING, CORRUPTION, AND THE THIRD WORLD’S ENVIRONMENTAL LEGACY (1991)).

122. See *Advancing the Odious Debt Doctrine 1* (Centre for Int’l Sustainable Dev. Law, Working Paper, 2003) (defining odious debts as those “contracted against the interests of the population of the state, without its consent, and with the full awareness of the creditor”); see also Anna Gelpern, *What Iraq and Argentina Might Learn from Each Other*, 6 CHI. J. INT’L L. 391, 403 (2005); Anupam Chander, *Odious Securitization*, 53 EMORY L.J. 923 (2004).

123. Emily F. Mancina, *Sinners in the Hands of an Angry God: Resurrecting the Odious Debt Doctrine in International Law* 36 GEO. WASH. INT’L L. REV. 1239, 1252 (2004).

124. *Id.* at 1256–57 (drawing a parallel between the moral assessments involved in the odious debt doctrine and the problems entailed by high-conditionality lending).

and absolves states of liability for the actual human misery triggered by loans to odious state regimes.”¹²⁵ She further argues that “Western ‘moral’ considerations include a fear of undermining accountability and, as a corollary, a fear of undermining institutional stability.”¹²⁶

Mancina’s arguments appear logical, though there is nothing as ugly as orthodoxy without compassion. Of course, general international law recognizes that internal forms of government do not affect legal rights and responsibilities of states. As the Arbitrator in *Costa Rica v. Great Britain (Tinoco Arbitration)*¹²⁷ stated, “though the government changes, the nation remains, with rights and obligations unimpaired.”¹²⁸ The Arbitrator also held in that case that “when debt transfers from a previous, recognized regime, the debt becomes the obligation of the new government.”¹²⁹ He rejected the Tinoco regime’s non-democratic status as grounds for nullifying the debt, but nonetheless nullified it because “the bank knew that this money was to be used by the retiring president, F. Tinoco, for his personal support after he had taken refuge in a foreign country.”¹³⁰

Mancina downplays the obvious fact that political changes may lead to circumstances sufficient to alter particular types of treaty relations and that the Vienna Convention on the Law of Treaties¹³¹ allows a party to terminate treaty obligations for various reasons, including impossibility of performance¹³² and fundamental changes in circumstances.¹³³ Changes frustrating an agreement, apart from creating actual impossibility of performance, may also justify termination of the contract, based on the doctrine of *rebus sic stantibus*. As Hubert Beemelmans writes: “If a successor State or its treaty partners think that a certain treaty is no more adequate to changed circumstances they can renegotiate it. . . . The Vienna Convention . . . gives all the necessary remedies. Debts can be renegotiated, rescheduled, etc.”¹³⁴

125. *Id.* at 1242–43.

126. *Id.* at 1254.

127. Tinoco Arbitration (Gr. Brit. v. Costa Rica), 1 R.Int’l Arb. Awards 375 (1923).

128. *Id.* at 377 (internal citation omitted); see also IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 80 (6th ed. 2003).

129. Tinoco Arbitration, *supra* note 127, at 377.

130. ANNUAL DIGEST OF PUBLIC INTERNATIONAL LAW CASES 176 (H. Lauterpacht ed., 1933).

131. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, 339 [hereinafter Vienna Convention].

132. *Id.* art. 61, para. 1.

133. *Id.* art. 62, para 1(b) (permitting termination only if “the effect of the change is radically to transform the extent of the obligations still to be performed under the treaty”).

134. Hubert Beemelmans, *State Succession in International Law: Remarks on recent Theory and State Praxis*, 15 B.U. INT’L L.J. 71, 123 (1997).

With Okeke, and contrary to Mancina, the present writer emphatically embraces the odious debt doctrine and submits that Africa's debts fall into the class of "impossibility of performance." Much of Africa's debts accrued during periods of military dictatorships and under the authority of crazy men "who hear voices in the air."¹³⁵ Most Western countries and IFIs knew that African dictators never intended to use these loans to advance economic development. As Joseph Stiglitz justly argued:

When the IMF and World Bank lent money to the Democratic Republic of Congo's notorious ruler Mobutu, they knew (or should have known) that most of the money would not go to help that country's poor people, but rather would be used to enrich Mobutu. It was money paid to ensure that this corrupt leader would keep his country aligned with the West.¹³⁶

Although the sense of injustice might be a capricious sentiment, the present writer agrees with Stiglitz that it is unfair to call on ordinary taxpayers in countries ruled by corrupt governments to repay loans made to leaders who did not represent these payers.¹³⁷ Transparent and accountable governance is an integral part of sustainable development and international cooperation, and the West increasingly asserts these values in its dealings with developing countries.¹³⁸ It is a mockery of the human rights rhetoric and good governance for the West to both approbate and reprobate. Why, it may be asked, did Western creditors not take "Western 'moral' considerations" into account before advancing loans to many corrupt governments in Africa? Why did they naïvely assume that "[a]

135. JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST, AND MONEY* 383 (1964).

136. STIGLITZ, *supra* note 46, at 244; cf. Ann-Louise Colgan, *Africa's Debt—Africa Action Position Paper*, AFR. ACTION, July, 2001, <http://php.africaaction.org/action/debtpos.htm> ("Many of these loans were made to retain the loyalty of corrupt regimes, and much of the money went into the hands of unrepresentative and repressive governments.").

137. See STIGLITZ, *supra* note 46, at 244.

138. See, e.g., Partnership Agreement Between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, June 23, 2000, art. 9(1), 2000 O.J. (L 317) 3 [hereinafter Cotonou Agreement]. The agreement states that

cooperation shall be directed towards sustainable development centered on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights. Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development).

Id.

country does not go bankrupt”¹³⁹ and, thus, fail to adequately assess the risk before advancing loans?

International law does not operate in a vacuum, and, given that much of Africa’s debts will never be repaid, the most reasonable action creditors can take is to write off the debts and save succeeding generations of Africans from economic slavery. History shows that “the international system tacitly accepted widespread default in the similar economic conditions of the 1930s.”¹⁴⁰ The problem, as Cheryl Payer notes, is not just a generational one: “The real problem is that those who have to bear the heavy cost of repaying the loans with interest are not the same people who benefited from the loans, and are not even the children of those who benefited in most cases.”¹⁴¹

The debt question is a human rights question. Human dignity is often held as the basis of human rights. According to Jack Donnelly, “We have human rights not to the requisites for health but to those things ‘needed’ for a life of dignity, for a life *worthy* of a human being, a life that cannot be enjoyed without these rights.”¹⁴² In adopting the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁴³ the international community was responding to the ideal that all human beings could be free “from fear and want.”¹⁴⁴ The ICESCR declares that socio-economic rights are based on the inherent dignity of all human beings.¹⁴⁵ These ideals were the presuppositions, explicit and implicit, underlying every article in the Covenant. Thus, the ICESCR guarantees everyone the right to “an adequate standard of living . . . including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁴⁶ It guarantees “the right of everyone to the enjoyment of

139. Walter Wriston, *quoted in New Tricks to Learn: Survey of International Banking*, THE ECONOMIST, Apr. 10, 1993, at 1.

140. DAVID K. LEONARD & SCOTT STRAUS, AFRICA’S STALLED DEVELOPMENT: INTERNATIONAL CURSES AND CURES 22 (2003) (arguing that the levels of debts in Africa are not repayable).

141. CHERYL PAYER, LENT AND LOST: FOREIGN CREDIT AND THIRD WORLD DEVELOPMENT 124 (1991); cf. David O. Friedrichs & Jessica Friedrichs, *The World Bank and Crimes of Globalization: A Case Study*, 29 SOC. JUST. 13, 16 (2002) (“While Third World political elites reaped the immediate benefits of the loan money, the largely impoverished populations of Third World states were subsequently compelled to assume the responsibility for repayment.”).

142. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 17 (1989); see also Arthur Chaskalson, *Human Dignity as a Foundational Value of Our Constitutional Order*, 16 S. AFR. J. HUM. RTS. 193, 197–98 (2000); Alan Gewirth, *Human Dignity as the Basis of Rights*, in THE CONSTITUTION OF RIGHTS 10 (Michael J. Meyer & William A. Parent eds., 1992).

143. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

144. *Id.* at pmbl.

145. *Id.*

146. *Id.* art. 11, para. 1. Compare the Universal Declaration of Human Rights, which states,

the highest attainable standard of physical and mental health”¹⁴⁷ and the right to education, which “shall be directed to the full development of the human personality and the sense of its dignity.”¹⁴⁸

The ICESCR obligates each State Party “to take steps, individually and through international assistance and co-operation . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized [therein],”¹⁴⁹ a provision that has “a dynamic relationship with all of the other provisions of the Covenant.”¹⁵⁰ The Committee on Economic, Social and Cultural Rights (CESCR) states that taking step should not be “qualified or limited by other considerations” and that “[s]uch steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”¹⁵¹ It maintains that the phrase “to the maximum of its available resources” is “intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.”¹⁵² The CESCR stresses, finally, that international cooperation for development and the realization of economic, social and cultural rights is an obligation of all states.¹⁵³ This

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

G.A. Res. 217A(III), art. 25, para. 1, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

147. ICESCR, *supra* note 143, art. 12, para. 1.

148. *Id.* art. 13, para. 1; *cf.* UDHR, *supra* note 146, art. 26, para. 1–2.

149. ICESCR, *supra* note 143, art. 2, para. 1.

150. *General Comment No. 3—The nature of State parties’ obligations (art. 2, para. 1, of the Covenant)*, in COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS ADOPTED BY HUMAN RIGHTS TREATY BODIES 18, ¶ 1 (2001) [hereinafter *General Comment 3*].

151. *Id.* ¶ 2.

152. *Id.* ¶ 13 (stressing that the essential role of international cooperation in facilitating the full realization of socio-economic rights is further underlined by the specific provisions in ICESCR, including articles 11, 15, 22, and 23. Article 23, in particular, specifically identifies “the furnishing of technical assistance” and other activities as being among the means of “international action for the achievement of the rights recognized.”).

153. *Id.* ¶ 14; *cf.* G.A. Res. 41/128, art. 4, para. 2, U.N. Doc. A/RES/41/128 (Dec. 4, 1986) [hereinafter Declaration on the Right to Development] (noting, *inter alia*, that sustained action is required to promote development in developing countries and calling on states to co-operate for this purpose). On the nature of third state obligations under the ICESCR, see MAGDALENE SEPULVEDA, *THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (2003); Rolf

entails both negative and positive obligations—to respect, protect, promote, and fulfill human rights.¹⁵⁴

The U.N. Charter also provides a normative basis for debt relief, based on obligations of states assumed therein. The purposes of international economic and social cooperation, as outlined in the Charter, include promoting “higher standards of living, full employment, and conditions of economic and social progress”¹⁵⁵ and finding solutions to “international economic, social, health, and related problems.”¹⁵⁶ Africa is part of the international community, and if the term “international community” has any meaning, then it surely encompasses “the one continent in which a genuinely global political, economic, and social program merges practical and moral considerations.”¹⁵⁷ Like the U.N. Charter, the UDHR provides that everyone is entitled to a social and international order that promotes the full realization of human rights.¹⁵⁸

The notion of equal dignity and respect to all people is meaningless unless genuine steps are taken to limit the imbalance between advantaged and disadvantaged persons.¹⁵⁹ Alan Gewirth has justly argued that a government “violates human rights when its hands-off policy lets the most vulnerable members of its society suffer harms and injuries like poverty, disease, illiteracy, or unemployment when it can take measures to prevent or alleviate such ills and when the persons affected cannot ward them off by their own efforts.”¹⁶⁰ *A fortiori*, the international community

Kunnemann, *Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 201 (Fons Coomans & Menno T. Kamminga eds., 2004); Sigrun Skogly, *The Obligation of International Assistance and Cooperation in the International Covenant on Economic, Social and Cultural Rights*, in HUMAN RIGHTS AND CRIMINAL JUSTICE FOR THE DOWNTRODDEN: ESSAYS IN HONOUR OF ASBJORN EIDE 403 (Morten Bergsmo ed., 2003); Philip Alston & Gerald Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 186 (1987).

154. For a discussion of the typology of obligations in relation to human rights, see African Commission on Human & Peoples' Rights, in *Soc. & Econ. Rights Action Ctr. v. Nigeria*, Comm. No. 155/96, 2001–2002 AFRICAN ANNUAL ACTIVITY REPORT, Annex V; see generally Nsongurua J. Udombana, *Between Promise and Performance: Revisiting States' Obligations under the African Human Rights Charter*, 40 STAN. J. INT'L L. 105 (2004); Henry Shue, *The Interdependence of Duties*, in THE RIGHT TO FOOD 83 (Philip Alston & K. Tomasevski eds., 1984).

155. U.N. Charter, art. 55, para. a.

156. *Id.* art. 55, para. b.

157. See KISSINGER, *supra* note 19, at 209.

158. See UDHR, *supra* note 146, art. 28.

159. See Mitchell, *supra* note 39 (“Grossly to exploit a person’s relative weakness is not to treat her with respect; to watch her live, and often die, hungry, afraid, sick and oppressed is precisely to deny her human dignity.”).

160. ALAN GEWIRTH, THE COMMUNITY OF RIGHTS 4 (1996).

is complicit in the wide-scale violation of human rights when it insists that poor states use their scarce resources to service debts.¹⁶¹

Debt repayments exacerbate human rights violations, because they "divert money directly from basic human needs such as health care and education, and fundamentally undermine African governments' fight against the AIDS pandemic and their efforts to promote sustainable development."¹⁶² According to Eric Friedman, debts owed by one country to another country or institution are resources that do not form part of "the maximum of its available resources" that must be used to ensure the full realization of socio-economic rights.¹⁶³ The logical but ugly implication is that "States have a greater duty to meet their obligations with respect to debts than they have to meet their obligations with respect to the very lives of their people."¹⁶⁴

A contrario, debt relief will make it possible, though by no means certain, for African governments to channel resources into human development objectives, to redirect resources towards raising the level of production and services, and to create more job opportunities. It will enable African governments to revive the failed educational systems, acquire learning facilities, and hire new teachers. It will enable governments to develop infrastructures, including roads and electricity, and to satisfy the A.U. goal of generally raising the living standards of Africans.¹⁶⁵ It will enable governments to establish hospitals and to open many clinics that have been padlocked and unused across Africa, thereby fulfilling the A.U. goal of working with relevant international partners to eradicate preventable disease and promote good health on the continent.¹⁶⁶ Of course, all of this is based on the assumption that the resources will be well managed and not diverted into "supporting airports at villages of presidents in Africa, or buying executive jets."¹⁶⁷

161. See Eric A. Friedman, *Debt Relief in 1999: Only One Step on a Long Journey*, 3 YALE HUM. RTS. & DEV. L.J. 191, 192 (2000).

162. Colgan, *supra* note 136.

163. See Friedman, *supra* note 161, at 198.

164. *Id.*

165. See Constitutive Act of the African Union art. 3, para. k, July 11, 2000, OAU Doc. CAB/LEG/23.15 (as amended by the Protocol on Amendments to the Constitutive Act of the AU, July 11, 2003) available at http://www.au2002.gov.za/docs/key_oau/au_act.pdf [hereinafter AU Act].

166. See *id.* art. 3, para. n.

167. Nii K. Bentsi-Enchill, *Some Sensitive Issues of Deeper Debt Relief*, June 1, 1999, available at <http://www.odiousdebts.org/odiousdebts/print.cfm?ContentID=2415> (quoting Callisto Madavo, World Bank Vice President for Africa).

Some commentators have argued that there is no right to food, because it is *unallocated*, or lacks specific duty-bearers.¹⁶⁸ According to Onora O'Neill, "it is uphill work to show that there is a universal right to be fed."¹⁶⁹ Her argument is that no one can truly claim to have a right without specifying from whom or against whom she claims it. Revisiting the Kantian categorical imperative, O'Neill argues that the maxim "I will ensure that all human beings have enough to eat" does not pass the test of universality, since no person can have an obligation to provide food for *all* others.¹⁷⁰ The present writer disagrees with O'Neill because the need for mutuality among all members of a society constitutes that society's legal and moral structure. Such a structure warrants a serious and active collaborative effort to advance the freedom and well being of all humans as "productive agents" and to relieve extreme deprivation.¹⁷¹

Since the desire for betterment is universal, it stands to reason that squalor of any kind is incompatible with civilization, even if the latter is not concerned solely with utility.¹⁷² Degrading inequalities represent a violation of the notion of justice as fairness—an essential element in most theories of justice, from Plato's to John Rawls's. Each person, says Rawls, has a right to the most extensive basic liberty compatible with the like liberty for others. Inequalities in the distribution of wealth and power are just to the extent that they can be reasonably expected to work to the advantage of those who are worse off.¹⁷³ Indifference to gross inequalities makes human beings mere foam on the waves of globalization and denies the fundamental importance of human dignity.¹⁷⁴ Even Immanuel Kant, whom O'Neill re-interprets, wrote that every human being should be treated as an end, not as a means; respect for the intrinsic worth of every person means that individuals are not to be perceived or treated merely as instruments or objects of the will of others.¹⁷⁵

The problem with the postmodern view of development is that it encourages affluent societies to avoid assisting those in poor societies who live in absolute poverty.¹⁷⁶ Such indifference leaves the poor to their

168. ONORA O'NEILL, *FACES OF HUNGER: AN ESSAY ON POVERTY, JUSTICE, AND DEVELOPMENT* (1986).

169. *Id.* at 288.

170. *Id.* at 101–02.

171. See GEWIRTH, *supra* note 160, at 4.

172. See FREUD, *supra* note 5, at 38–39.

173. See generally JOHN RAWLS, *A THEORY OF JUSTICE* (2d ed. 1999) (1971) (positing a theory of "justice as fairness." Justice, for Rawls, does not require equality in social position; but it does require that people share one another's fate.).

174. See HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 119 (2d ed. 1996).

175. See IMMANUEL KANT, *POLITICAL WRITINGS* 23 (Hans Reiss ed., 1991).

176. David Simon, *Development Revisited*, in *DEVELOPMENT AS THEORY AND PRACTICE: CURRENT PERSPECTIVES ON DEVELOPMENT AND DEVELOPMENT CO-OPERATION* 17 (David

own devices, and that cannot be right. The problem of poverty in any part of the world cannot be resolved by indifference in other parts of the world. If we believe that life has a purpose and is worth living, and that individuals everywhere have a right to dignity, then those who are in a position to do something about global poverty must respond not only out of compassion but also out of a "categorical imperative."¹⁷⁷ They should work to remove the evils, structural and otherwise, that constitute violations of human rights. Human beings are a part of the whole that we call the universe. Our task is to free ourselves from the illusion of separateness and widen our circle of compassion to embrace all persons of all nations.¹⁷⁸

Poverty may not be a new phenomenon, but it is the greatest moral challenge of this age.¹⁷⁹ Africa's grinding poverty, in particular, is a challenge to a world that aspires to build a global order.¹⁸⁰ It is a reminder to the international community that an increasing share of the populace has been left behind, despite the technological successes of the 20th century and the increasing wealth in the world. It reflects an increasing inequality in the distribution of wealth¹⁸¹ and signifies the moral bankruptcy of the current IEO.¹⁸² The international community must respond with urgency to Africa's plight;¹⁸³ extreme poverty harms not only those who suffer but also those who fail to act to reduce, if not eliminate it. Africa's continued marginalization is a threat to global stability.

The enterprise of meeting human security and reducing or eradicating poverty will remain a mirage for as long as African governments are

Simon & Anders Närman eds., 1999).

177. See MAURICE CRANSTON, *WHAT ARE HUMAN RIGHTS?* 66 (1973) (arguing that positive obligation or duty attaches to those who are able to prevent or relieve starvation or deprivation by giving aid).

178. *Our Common Interest*, *supra* note 14, at 83–84 (observing that, "Africa is part of our world community and the world must show solidarity with the people of Africa. Common humanity and solidarity demand that we all work together to overcome poverty, despair and death in Africa.").

179. *Id.* at 83 (stating that, "African poverty and stagnation is the greatest tragedy of our time.").

180. See KISSINGER, *supra* note 19, at 201.

181. See Mitchell, *supra* note 39.

182. See Nsongurua J. Udombana, *Back to Basics: The ACP-EU Cotonou Trade Agreement and Challenges for the Africa Union*, 40 TEX. INT'L L.J. 59, 110 (2004) [hereinafter *Back to Basics*].

183. See *Our Common Interest*, *supra* note 14, at 84 (warning that, "The risks from delay far outweigh the risks from acting strongly and swiftly. What is required is no less than re-casting of the relationship between Africa and the rich world, in which both, as partners, have responsibilities to discharge in the interests of real and long-lasting change.").

laden with the heavy yokes of debts. Of course, misrule and political corruption has made the case for debt relief less attractive; but rich nations must look beyond some corrupt African leaders to individuals, who are the ultimate units of moral concern. As Chris Brown notes, "what is crucial to a cosmopolitan attitude is the refusal to regard existing political structures as the source of ultimate value."¹⁸⁴

3. *A Rising Hope*

The struggle for debt relief has for years been like a voice crying in the wilderness; but the G8, with its recent summits and commitments to Africa, now seems to be responding to the cry. The campaign for debt relief started yielding a dividend during the Cologne Summit of 1999, when the G8 launched the enhanced HIPC initiative. This was just one step in a long journey;¹⁸⁵ but it was a vital step, because it helped to increase social expenditure in 27 (mostly African) countries by around \$4 billion per year, with 14 of these countries enjoying some debt cancellation.¹⁸⁶ The G8 and the IFIs, however, should have responded more generously. Thus, at the Okinawa Summit in 2000, the Group invited African leaders to participate in outreach dialogue for the first time. This dialogue culminated in the establishment of the Global Fund for AIDS, TB and Malaria in Genoa in 2001.¹⁸⁷ At the Genoa 2001 Summit, the G8 also recognized the need to respond to NEPAD through the Genoa Plan for Action and appointed Africa Personal Representatives to recommend specific actions.¹⁸⁸

The Kananaskis 2002 Summit launched the Africa Action Plan (AAP) that inaugurated the new partnership between the G8 and A.U. According to its architects, the AAP was intended to ensure that no country committed to poverty reduction, good governance and economic reform would be unable to achieve the MDG due to lack of finance.¹⁸⁹ At the Evian Summit in 2003, the G8 announced specific measures to accelerate the AAP, including a new G8/Africa plan to enhance African capacity to undertake peace support operations. It also created the Africa Partnership Forum

184. CHRIS BROWN, *INTERNATIONAL RELATIONS THEORY: NEW NORMATIVE APPROACHES* 24 (1992).

185. See Friedman, *supra* note 161, at 191–92 (arguing that the 1999 debt relief program for the HIPC was too modest and calling for an earnest debt relief plan that should focus on eliminating debt service payments and connected to increasing social spending and creating effective democratic institutions).

186. See, e.g., *Clean Slate*, *THE ECONOMIST*, Oct. 2, 2004, at 73.

187. See *Highlights of the G8 Communiqué on Africa, Annex I*, DIRECT GOV, <http://www.number-10.gov.uk/output/Page7880.asp> (last visited Nov. 6, 2005) [hereinafter *Highlights Annex I*].

188. See *id.*

189. See *id.*

(APF) for dialogue between Africans and development partners beyond the G8.¹⁹⁰ At the Sea Island Summit in 2004, the G8 agreed on further measures to tackle the HIV and polio epidemics, enhance the role of the private sector in development, promote transparency and fight corruption, and to take additional steps to enhance productivity.¹⁹¹

As noted earlier, the 2005 Gleneagles Summit has also resulted in promised debt relief to 18 heavily indebted countries. The sum involved—\$40bn or £22bn—will cost rich countries \$1.2bn a year for the next three years. This is the equivalent to an expenditure of 1.5 pence per person per week in developed countries and represents about 5 pence per head to the populations of the 18 beneficial countries.¹⁹² It also represents less than 1 percent of the annual shortfall from the 0.7 percent of Gross National Income (GNI) for development aid promised by rich countries to the developing world.¹⁹³ This clearly shows that there is still a long way to go in making poverty history in Africa.

Additionally, the G8 has promised to work towards establishing effective mechanisms for asset recovery, including those stolen by corrupt leaders and government officials, and to return such assets to their legitimate owners.¹⁹⁴ The Group has also encouraged all countries to promulgate rules denying entry and safe haven to officials and individuals found guilty of public corruption, including those who corrupt these individuals.¹⁹⁵

190. *See id.*

191. *See id.*

192. *See G8 Debt Relief Proposals: A First Step in the Right Direction—and a Long Way to Go*, JUBILEE RESEARCH, <http://www.jubilee2000uk.org/> (last visited Nov. 8, 2005) [hereinafter *G8 Debt Relief Proposals*].

193. *Id.*

194. *See* GLENEAGLES COMMUNIQUÉ, *supra* note 10.

195. *See id.*; cf. Africa Union Convention on Preventing and Combating Corruption, Afr. Union, 2d Ord. Sess., art. 6 (July 11, 2003), available at <http://www.africa-union.org/home/Welcome.htm> (follow “Official Documents” hyperlink; then follow “Treaties, Conventions & Protocols” hyperlink). This document directs States Parties to adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action;
- (b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences; and

Certainly, there is a need to prevent public officials in third world countries from laundering “dirty money” to the West. As the Blair Commission Report succinctly summarizes:

Money and state assets stolen from the people of Africa by corrupt leaders must be repatriated. Foreign banks must be obliged by law to inform on suspicious accounts. Those who give bribes should be dealt with too; and foreign companies involved in oil, minerals and other extractive industries must make their payments much more open to public scrutiny. Firms who bribe should be refused export credits.¹⁹⁶

The G8 itself has shown leadership in this area. A few years earlier, the G8 had established, in collaboration with the President of the European Commission, the Financial Action Task Force (FATF). The FATF is charged with responsibility for developing and promoting policies to combat money laundering and its 40 Recommendations have grown to become the international best practices on anti-money laundering measures.¹⁹⁷ A lot of work, however, remains to be done to tackle the problem of money laundering, which continues to oxidize Africa’s ability to promote sustainable development.

At a minimum, the G8’s numerous initiatives and promises indicate a paradigm shift from the rich nations’ hitherto hostile opposition to the notion of a right to development.¹⁹⁸ When the U.N. adopted the Declaration on the Right to Development (DRD) in 1986,¹⁹⁹ the U.S. was the only country to vote against it, arguing that the document tended to dilute and confuse the human rights agenda.²⁰⁰ Other rich countries abstained from voting for spurious reasons. The Federal Republic of Germany, for example, maintained that the DRD would lead to the erosion of individual rights.²⁰¹ Japan argued that the right to development might be invoked to legitimize violations of citizens’ rights, while Australia maintained that the DRD failed to draw a distinction between peoples’ rights and individual rights.²⁰² The United Kingdom (U.K.) maintained that the DRD provided an over-

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- (c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences.

Id. For a commentary, see Nsongurua J. Udombana, *Fighting Corruption Seriously? Africa’s Anti-corruption Convention*, 7 SING. J. INT’L & COMP. L. 447, 467 (2003).

196. *Our Common Interest*, *supra* note 14, at 14.

197. See Financial Action Task Force on Money Laundering [FATF], *The Forty Recommendations* (June 20, 2003), available at <http://www.fatf-gafi.org/dataoecd/42/43/33628117.PDF>.

198. See, e.g., Marks, *supra* note 60, at 141–52 (examining, *inter alia*, the politicization of the right to development discourse in the U.N.).

199. See Declaration on the Right to Development, *supra* note 153.

200. See Nsongurua J. Udombana, *The Third World and the Right to Development: Agenda for the Next Millennium*, 22 HUM. RTS. Q. 753, 766 nn.84–85 (2000).

201. See *id.* at 766 n.84.

202. See *id.*

simplified view of the complex relationship between disarmament, security and development, and that it provided a mistaken link between the promotion of human right and the establishment of a NIEO.²⁰³

The current paradigm shift signals that rich nations now recognize what Rhoda Howard calls "the legitimate rights claims of poor nations."²⁰⁴ The present writer hopes that the G8 will make good on its promise, so that Africa can channel resources towards fighting the crushing and humiliating poverty of its people. The rising economic status of Africans will embolden governments to undertake complementary internal political and economic reforms for sustainable growth. Conversely, increasing poverty and decreasing incomes undermine support for reforms.²⁰⁵ Lastly, the G8 must revisit the debt question regularly, realizing that the struggle to liberate mankind from poverty will be difficult and long. According to the U.N. Millennium Project,²⁰⁶ "[a]ggregate debt service payments will need to be reduced by an estimated \$7 billion in 2006, falling to \$1 billion by 2015, to ensure that all countries can finance MDG investments."²⁰⁷ This means that with regard to the debt question, the last card has not yet been played.

4. Debt Relief and Conditionality

Some have argued that debt relief should be conditional, since it has the potential to foster imprudent future policies. Conditionality will ensure the economic transparency, accountability and sound macro-economic policies that could lead the economies of debtor nations towards sustainable development. Thus, the G8 could link debt relief to effective domestic policies, legal reforms, and tackling of corruption. Countries that have embarked on such reforms should be encouraged to continue to do so. Ordinarily, he who pays the piper has the right to dictate the tune of the music. Similarly, rich countries have a right to monitor the economic policies of poor but debt free countries to prevent them from plunging into future debts.

The real question is how far conditionality can go before debt relief begins to meddle in the domestic affairs of foreign states and inflicts

203. See *id.*

204. Rhoda E. Howard, *Human Rights, Development and Foreign Policy*, in HUMAN RIGHTS AND DEVELOPMENT: INTERNATIONAL VIEWS 215, 215 (1989).

205. See STIGLITZ, *supra* note 46, at 167.

206. U.N. Dev. Programme [UNDP], U.N. Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (2005), available at <http://www.unmillenniumproject.org/documents/MainReportComplete-lowres.pdf> [hereinafter *Investing in Development*].

207. *Id.* at 297.

another form of servitude. Larry Diamond has argued that debt relief should be matched with high-conditionality for more-accountable government practices.²⁰⁸ However, high-conditionality has its downside. As the present writer has noted elsewhere, “[t]he increasing tendency to impose conditionalities of a political nature for development assistance to Africa has had unintended but negative consequences.”²⁰⁹ Conditioning new loans on borrowing countries’ credit-worthiness has proven to be impractical in the past, especially when the countries applying for these loans already face debt crises. In addition, problems involving debt overhang preclude any success in high-conditionality lending.²¹⁰

A movement is already underway to dilute the recent promised debt relief. Willy Kiekens, the Belgian representative on the IMF’s executive board, has proposed that the IMF have the right to approve key economic policies in the 18 countries to which it offered debt relief.²¹¹ There are also indications that the U.S. and U.K. plan to allow multinational corporations to manage relief offered by them.²¹² The G8 must avoid creating a relationship of dependence with recipient states. If the IMF or multinational corporations become the handmaidens of creditors, the West’s priorities will be imposed on a people who have more urgent concerns. Often, what the IFIs mean by reforms is nothing but measures that will ensure and secure free markets, free trade, and free access to Third World natural resources. Debt relief with “high-conditionality” could make a terrible situation worse; it could, in the words of Colgan, be “another means by which rich country creditors retain control of African economies, and it is an inappropriate intervention in the process by which these countries govern themselves.”²¹³ Many of Africa’s economic woes originate in the activities of the IFIs and multinational corporations. As George Monbiot argues: “The history of corporate involvement in Africa is one of forced

208. See Larry Diamond, *Developing Democracy in Africa: African and International Imperatives*, 14 CAMBRIDGE REV. INT’L AFF. 191 (2001). Jeffrey Sachs defines “high-conditionality,” in relation to lending, as “the process in which international institutions make loans based on the promise of the borrowing countries to pursue a specified set of policies.” Jeffrey Sachs, *Conditionality, Debt Relief and the Developing Country Debt Crisis*, in *DEVELOPING COUNTRY DEBT AND THE WORLD ECONOMY* 275 (Jeffrey Sachs, ed., 1989) [hereinafter Sachs, *Conditionality & Debt Relief*].

209. *Back to Basics*, *supra* note 182, at 100 (arguing that the provision in the ACP-EU Cotonou Agreement that allows for the use of resources for debt relief initiatives should not be obstructed by unnecessary political conditionalities).

210. See Sachs, *Conditionality & Debt Relief*, *supra* note 208, at 275–77.

211. See Nicholas Watt, *Move to Dilute G8 Debt Deal*, *GUARDIAN WKLY.* [U.K.], July 22–28, 2005, at 4.

212. See George Monbiot, *Africa’s New Best Friends*, *GUARDIAN WKLY.* [U.K.], July 15–21, 2005, at 13 (fearing that multinational corporations will become the primary instruments of G8 policies in Africa and arguing that investment by many of these multinationals has not enriched Africa and its people but impoverished them).

213. Colgan, *supra* note 136.

labour, evictions, murders, wars, the under-cutting of resources, tax evasion and collusion with dictators.”²¹⁴

While donor nations have the right to monitor the expenditure of money they give to poor nations, it is more important that donor nations assist Africa in developing and using its resources, with “an effective implementation of the sense of personal responsibility.”²¹⁵ African states, for their part, must not see debt relief as a means to access more free foreign funds. These newly debt-free countries could be tempted to borrow rashly, and some private-sector lenders might foolishly lend to countries with dismal credit histories,²¹⁶ thereby leading governments to abdicate their primary responsibilities for sustainable economic development.²¹⁷ It will be tragic for Africa to mistake this particular remedy of debt relief as the elixir of life.

III. BEYOND DEBT RELIEF

The cancellation of all of Africa’s debt will not resolve its development crisis for the simple reason that Africa’s problems go beyond debt relief. As the MDG Report 2005 points out, “[d]ebt relief, while welcome, often goes to countries that have ceased debt repayments, and does not necessarily provide new finance for social services or poverty reduction.”²¹⁸ Aid and trade top the current development discourse, but aid is not the real solution—from an external vantage point. Since the best way to solve a problem is to remove its cause rather than treat its effects, the present writer believes that open access to international trade is the most potentially beneficial measure for Africa.²¹⁹ The first segment examines the aid question; the second examines the trade question.

214. Monbiot, *supra* note 212, at 13.

215. GEWIRTH, *supra* note 160, at 58; *cf. Our Common Interest*, *supra* note 14, at 86 (“Better governance must be at the heart of the African resurgence and it must be managed by Africans”).

216. See *Clean Slate*, *supra* note 186, at 74.

217. See Jerry Rawlings, *Africa Needs People Power*, THE GUARDIAN [U.K.], July 14, 2005, available at <http://www.guardian.co.uk/hearafrica05/> (scroll down to comment section) (arguing that no funds are coming from external sources and that debt relief is merely the removal of debtors’ obligations to transfer financial resources to creditors).

218. MDG REPORT 2005, *supra* note 29, at 37.

219. *Cf. G8 Debt Relief Proposals*, *supra* note 192 (“Until a fundamental reform of international finance and trade is undertaken, debt cancellation—though necessary in the short term—can only address the symptoms and not the cause of chronic poverty in the developing world.”).

A. Examining the Aid Question

Orthodox approaches to development emphasize aid, loans, and other forms of resource transfers. Development haulers believe that breathing more aid air into Africa's paralytic lungs will resuscitate and prolong its economic growth. Is aid the answer or part of the problem? This segment argues that aid is merely a powerful distraction that allows Africans to make light of their miseries.

1. Reviving Aid

Africa has received historically unprecedented amounts of foreign aid from the North. In the 1960s, when central planning was in fashion, the West poured money into massive irrigation and industrialization projects in Africa. These avant-garde approaches soon unraveled and sustainable development became the next big idea. When sustainability failed, experts advocated community participation in planning. Nicolas Van De Walle also notes that Africa's relationship with the international economy in the early 1990s was almost entirely mediated by resource transfers, due to the decline in the continent's share of international trade and foreign direct investment.²²⁰ Statistics have shown that aid to Africa in the 1990s reached an average of \$35 per capita,²²¹ reaching "staggering levels" in some countries.²²²

There is renewed focus on aid as a panacea to speed Africa's development. At its 2005 Abuja Summit, the A.U. Assembly called on the G8 to transfer resources to Africa.²²³ Tony Blair hinged his G8 and European Union (E.U.) Presidencies on an African recharge agenda that will make an additional \$25 billion in aid available to a continent he once described as "a scar on the conscience of the world."²²⁴ The Blair Commission Report has also brought the issue of aid to the forefront of global politics. The Report reflects its authors' belief that Africa is stuck in a "poverty trap" from which it cannot escape without a so-called "big

220. See NICOLAS VAN DE WALLE, *AFRICAN ECONOMIES AND THE POLITICS OF PERMANENT CRISIS, 1979–1999*, at 189 (2001) (discussing the crisis of foreign aid in Africa).

221. See chapter 1, in *AID AND REFORM IN AFRICA: LESSONS FROM TEN CASE STUDIES* (Shantayanan Devarajan, David Dollar & Torgny Holmgren eds., 2000).

222. LEONARD & STRAUS, *supra* note 140, at 11 (noting that "for five African states, aid represented at least one-fifth of gross national product at some point in the 1990s, and in one year it stood at 42 percent for Mozambique").

223. Decision on NEPAD, *supra* note 117, ¶ 3.

224. Ewen MacAskill, *Blair Scorns the Cynics—Out of Africa PM Attempts to Set New Partnership Agenda for West*, THE GUARDIAN [U.K.], Feb. 8, 2002, at 1 (quoting Tony Blair).

push.” “The big-push approach,” according to the Report, “is the only one that can address Africa’s challenges with the urgency and effectiveness required.”²²⁵

The Blair Commission Report states that successful development is unlikely in Africa “[w]ithout simultaneous and effective action on several priority fronts.”²²⁶ It argues that aid has, so far, been dribbled out in small measures, in a manner analogous to sending a single fire-fighter to save an entire block of flats engulfed in flames. To douse the flames of debt, the Report recommends a package of dramatically larger aid flows, complete debt relief, improved governance, and fundamental changes to the rules of aid and trade. It calls for an extra \$25 billion a year in aid to Africa by 2010, another \$25 billion a year by 2015 and recommends “‘aid for trade’ to help meet the economic and social costs of adjusting to a new global trading environment.”²²⁷

In January 2005, the U.N. unveiled the Report of its Millennium Project, which states that “tropical Africa, even in well governed parts, is stuck in a poverty trap—too poor to achieve robust and high levels of economic growth, and in many places simply too poor to grow at all.”²²⁸ The continent, according to the Report, is uniquely burdened with disease, accounting for 85 percent of malaria’s global annual death toll of 1.2 million and 75 percent of the 3.1 million deaths from AIDS in 2004.²²⁹ Africa is also geographically disadvantaged, as less than a quarter of Sub-Saharan Africans live within 100 km of the coast, so that the continent can attract and amass too little capital to support a growing population. Africa’s gross national savings in 2003 was a mere 16 percent of GDP, compared to East Asia’s 42 percent.²³⁰ Without sufficient savings, the Report notes, Africa cannot overcome its shortage of capital.

Africa’s unique circumstances require a “big push,” that is, a “[s]ubstantial co-financing” through Overseas Development Assistance (ODA), in order “to scale up the needed investments in infrastructure, human capital, and public administration.”²³¹ The Millennium Report

225. *Our Common Interest*, *supra* note 14, at 87.

226. *Id.* at 85.

227. *Id.* at 247.

228. *Investing in Development*, *supra* note 206, at 148.

229. *See id.* at 150.

230. *See id.* at 37.

231. *Id.* at 204 (noting that even a significant increase in domestic resource mobilization will not be enough to enable well governed countries caught in a poverty trap to achieve the MDG).

calls for fast-tracking “well-governed poverty trap countries” in 2005, by basing aid on a true MDG-needs assessment and ensuring that such aid “is not the binding constraint to scaling up.”²³²

2. *The Problem with Aid*

The first problem with the new aid initiatives is that they have not convincingly established the correlation between aid and economic growth. Aid has never been a solution to Africa’s development plight.²³³ The reason is simple: Providing aid is like scratching an unremitting itch, which brings little respite but leaves lasting scars. Even if aid were the sure route to sustainable development in Africa, a contention this author refutes,²³⁴ Africa has not been so lucky with ODA, the technical name for aid. Overall, aid has been a double-edged sword, “initially helping but eventually weakening a country’s economic performance.”²³⁵

Aid initially ensured “a relatively peaceful transfer of power to independent governments at the end of colonialism and oversaw their entrance into the international community of states.”²³⁶ However, aid eventually became positively inimical to economic growth in Africa, because much of the aid project was poorly targeted and managed, and the North often attached political and commercial strings to such grants.²³⁷ Besides strengthening the hand of predatory governments against claims from competing constituencies,²³⁸ aid has sustained old policies, slowed reform and exacerbated neo-patrimonial tendencies in decision-making.²³⁹

Aid has led to the establishment of parallel systems of procurement and recruitment for expending project funds in Africa, thereby posing substantial burdens on already weak local managerial systems. In Tanzania, for example, donors were reportedly implementing more than 15 stand-

232. *Id.*

233. See generally Carol Lancaster, *Aid Effectiveness in Africa: The Unfinished Agenda*, 8 J. AFR. ECON. 487 (1999) (calling for honest debates on the effectiveness of aid in Africa); JAMES MORTON, *THE POVERTY OF NATIONS: THE AID DILEMMA AT THE HEART OF AFRICA* (1994).

234. Nsongurua J. Udombana, *How Should We Then Live? Globalization and the New Partnership for Africa’s Development*, 20 B.U. INT’L L.J. 293, 325 (2002) (arguing that aid, at best, “is like a birthday card: it is only a greeting, not the real gift”).

235. ERA 2003, *supra* note 84, at 7.

236. DE WALLE, *supra* note 220, at 189.

237. See *Back to Basics*, *supra* note 182, at 100 (arguing: “The increasing tendency to impose conditionalities of a political nature for development assistance to Africa has had unintended but negative consequences.”).

238. See, e.g., Claude Ake, *Rethinking African Democracy*, in *THE GLOBAL RESURGENCE OF DEMOCRACY* 70 (Larry Diamond & Marc Plattner eds., 1993).

239. See DE WALLE, *supra* note 220, at 190.

alone projects in the health sector in the early 1990s,²⁴⁰ and in Malawi, there were 44 distinct projects in the agricultural sector.²⁴¹ The U.S. used aid during the Cold War as a political strategy; bringing "progress" to the Third World was necessary to prevent "communist subversion."²⁴² Such a strategy explained why the U.S. wasted resources in propping up economically illiterate kleptocrats like Mobutu Sese Seko of then Zaire (now the Democratic Republic of Congo),²⁴³ a practice Yoweri Museveni calls "a life-support system for brain-dead regimes."²⁴⁴

The aid regime was particularly punitive during the era of the Structural Adjustment Programs (SAPs) of the 1980s, arguably because both SAPs and aid were based on asymmetrical power relationships rather than partnerships. The Bretton Woods sisters—the World Bank and IMF—forced SAPs on African states, compelling them to liberalize their trade sector, eliminate distortions in prices, devalue their currencies, remove government subsidies, reduce the budget deficit and size of the public sector, and privatize government parastatals.²⁴⁵ SAPs made the implementation of such policies a pre-condition for debt re-scheduling, new loan facilities, and other concessions. These interventions were rationalized on the ideological but illogical grounds of economic neo-liberalism.²⁴⁶

SAPs provided only a partial solution to Africa's economic problems, promoting reforms that tended to remove serious price distortions, but devoting inadequate attention to social services. They failed to take into

240. See MBOYA BAGACHWA ET AL., A STUDY OF DANISH AID EFFECTIVENESS IN TANZANIA (1996).

241. ELLIOT J. BERG, RETHINKING TECHNICAL COOPERATION 132 (1993); see also DE WALLE, *supra* note 220, at 203 n.32.

242. See Pierre de Senarclens, *How the United Nations Promotes Development Through Technical Assistance*, in THE POST-DEVELOPMENT READER 190 (Majid Rahnema & Victoria Bawtree eds., 1997) (noting that just as the Marshall Plan was to contain the communist threat in Europe, economic aid became part of American political strategy during the Cold War.).

243. See James Gathii, *A Critical Appraisal of the NEPAD Agenda in Light of Africa's Place in the World Trade Regime in an Era of Market Centered Development*, 13 TRANSNAT'L L. & CONTEMP. PROBS. 179, 192 (2003) (arguing, "increased flows of capital and aid to Africa have acted as perverse incentives supporting regimes and economic policies that did not contribute either to growth or poverty reduction").

244. Quoted in Douglas Rimmer, Book Review, 98 AFR. AFF. 589, 590 (1999) (reviewing CAROL LANCASTER, AID TO AFRICA: SO MUCH TO DO, SO LITTLE DONE (1999)).

245. See LIMITS OF ADJUSTMENT IN AFRICA: THE EFFECTS OF ECONOMIC LIBERALIZATION, 1986-94, at ix, 7 (Poul Engberg-Pedersen et al. eds., 1996).

246. RICHARD FALK, PREDATORY GLOBALIZATION: A CRITIQUE 1 (1999).

consideration the specific needs of individual countries, thereby prescribing one medication for different ailments. “As a consequence,” says NEPAD, “only a few countries managed to achieve sustainable higher growth under these programs.”²⁴⁷ SAPs reinforced authoritarianism in Africa, as most governments were intolerant of opposition to adjustment measures. Even Ghana, the World Bank’s showpiece of adjustment in Africa, repressed the demands of significant sections of civil societies.²⁴⁸ SAPs failed because privatization without the necessary institutional infrastructure leads to asset stripping rather than wealth creation, and privatizing monopolies without regulation leads to consumer exploitation.²⁴⁹

The economically obstructive policies of African governments have generally undermined the effectiveness of aid. Aid works where sound institutions and effective governments manage it. Good governance has been, and continues to be, a scarce commodity in Africa. If good governance means “the responsible use of political authority to manage a nation’s affairs,”²⁵⁰ then the U.N. Millennium Report is wrong when it flatters Africa, stating that “many parts of Africa are well governed.”²⁵¹ The NEPAD itself implicitly acknowledges that governance is still a problem in Africa:

The resources, including capital, technology and human skills, that are required to launch a global war on poverty and underdevelopment exist in abundance [in Africa], and are within our reach. *What is required to mobilise these resources and to use them properly, is bold and imaginative leadership that is genuinely committed to a sustained human development effort and poverty eradication.*²⁵²

If the yardsticks for measuring good governance are effective leadership, technical policy competence, and administrative efficiency,²⁵³ then only very few African governments, probably Botswana’s, Ghana’s, Senegal’s, and South Africa’s, pass the test—few good apples amid a barrel of bad ones. Besides the visible examples of “profoundly poor governance” that the Millennium Report cites, including Zimbabwe, Angola, Liberia, Sierra

247. NEPAD, *supra* note 13, ¶ 24.

248. See generally P. THANDIKA MKANDAWIRE & ADEBAYO OLUKOSHI, BETWEEN LIBERALISATION AND OPPRESSION: THE POLITICS OF STRUCTURAL ADJUSTMENT IN AFRICA 226 (1995).

249. See STIGLITZ, *supra* note 46, at 220 (arguing, “privatisation accompanied by regulation, corporate restructuring, and strong corporate governance has led to higher growth.”).

250. CLARENCE J. DIAS & DAVID GILLIES, HUMAN RIGHTS, DEMOCRACY, & DEVELOPMENT 4 (1993).

251. *Investing in Development*, *supra* note 206, at 146 (“there is no evidence that Africa’s governance, on average, is worse than elsewhere once we control for Africa’s very low income.”).

252. NEPAD, *supra* note 13, ¶ 6 (italics supplied).

253. See Nsongurua J. Udombana, *Articulating the Right to Democratic Governance in Africa*, 24 MICH. J. INT’L L. 1209, 1231 (2003).

Leone, Sudan, and the misleadingly renamed Democratic Republic (DR) of Congo,²⁵⁴ bad governance and mismanagement of public resources still afflict more than a dozen other African states. Most governments, past and present, have invested huge sums of public revenue into white elephant projects that undermine their ability to fulfill their primary responsibilities to their people. For example, Felix Houphouët-Boigny of Cote d'Ivoire not only moved his country's capital to his hometown of Yamoussoukro but also built the world's largest church there in 1989—the Basilica of Our Lady of Peace. A few years after his death, peace has eluded this country that was once the bastion of stability in SSA

Some governments, like Nigeria's, have spent staggering sums of money building stadiums and thereafter lobbying to host international sporting events—Olympics, World Cup, *etcetera*—in a continent where most workers are forced to strike before receiving their monthly salaries, and where pensioners are habitually forgotten. Although Nigeria's President Obasanjo is seemingly fighting corruption²⁵⁵ and preaching rectitude and accountability by public office holders, his sermons and his actions are incongruous. The Nigerian leader frequently seeks legislative approval to add new jets to his presidential fleet.²⁵⁶ Yet, in Nigeria, the minimum wage for civil servants is ₦5,500 (less than \$50) per month;²⁵⁷ facilities needed for qualitative basic education are almost non-existent; and "per capita spending on health is shockingly \$3."²⁵⁸ Such contradictions explain why critics are not convinced about the sincerity of his "war on

254. *Id.*

255. In June 2000, the Obasanjo Government enacted legislation that prescribes punishment for and prohibits corrupt practices and other related offenses. The Corrupt Practices and Other Related Offences Act, (2000) Cap. 5, §§ 8–26 (Nigeria) [hereinafter Corrupt Practices Act], available at <http://www.nigeria-law.org.LFNMainPage.htm>. For commentary, see Paul D. Ocheje, *Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000*, 45 J. AFR. L. 173 (2001).

256. See, e.g., D. S. Dauda, *Misplaced Priorities and Claptrap Policies*, AMANA ONLINE, June 25, 2003, http://www.amanaonline.com/Articles/art_391.htm (writing on the squandering of Nigeria's resources on wasteful and diversionary projects, like procurement of presidential jets).

257. See National Minimum Wage (Amendment) Act No. 1 (2000), § 2 (Nigeria), available at <http://www.nigeria-law.org/LFN-2000.htm> (providing, "as from the commencement of this Act, it shall be the duty of every employer (except as provided for under this Act) to pay a wage not less than National Minimum Wage of ₦5,500.00 per month to every worker under his establishment").

258. Okeke, *supra* note 72, at 1496 n.51 (noting also that "[o]nly 38% of children are immunized against measles").

corruption,”²⁵⁹ since the preacher gains few proselytes through teachings that his own behavior contradicts.

3. *Making Marginal Gains from Aid*

Aid can arguably promote good governance, “since good governance requires resources for wages, training, information systems,” *etcetera*.²⁶⁰ Assuming, *arguendo*, that aid can help resolve Africa’s development crisis, how may its beneficial impacts be realized? The answer lies in ensuring that future resources go directly to beneficiaries rather than through official bureaucracies that engender corruption. Donors should channel their monies directly to HIV/AIDS prevention and combating malaria and other deadly diseases by opening and funding independent research centers in Africa for these and related projects. They should work through relevant U.N. or A.U. agencies to procure laboratory, scientific and technological equipment, and provide these directly to African universities to enhance research. They should identify farmers’ cooperative societies and provide direct assistance in procuring fertilizers. They should locate credible civil society institutions, like the media, and strengthen them through training and the provision of modern equipment. These measures, in turn, will strengthen good governance in Africa.

B. *Examining the Trade Question*

Trade is arguably the engine of economic growth. If the G8 is serious about integrating Africa into the international economic system, it should remove trade barriers and open its markets to African goods. Changes in the rule structure of international trade would help Africa more than all the aid provided by the North.²⁶¹ This segment explicates why trade matters to Africa, and how the continent can be integrated into the global trading system to achieve an equitable IEO.

259. See Peter Ezech, *War on Corruption Yet to Convince*, NEW AFRICAN, July 2005, at 28 (reporting that, six years into his presidency, Obasanjo’s war on corruption has been met with a degree of uncertainty in some quarters).

260. Cf. *Investing in Development*, *supra* note 206, at 146 (“Controlling for income is necessary in evaluating governance since good governance requires resources for wages, training, information systems, and so forth, and thus improves systematically with income levels.”).

261. See Udombana, *How Should We Then Live?*, *supra* note 234, at 326 (arguing that if the industrial countries should open up their markets, “then African countries could increase their exports and earn much more income than what has been coming to them by way of aid”).

1. Why Trade Matters to Africa

Trade matters to Africa because the continent is presently the weakest member of the world trading community.²⁶² Improved trade performance means access to new markets, increased competition, and productivity, all of which will accelerate growth in per capita income and reduce poverty. Improved access to industrial countries' markets for products in which Africa has a comparative advantage will "[o]pen, predictable and geographically diversified market access for exports from Africa."²⁶³ Even before the Uruguay Round, Africa had raised the "market access conditions for products of interest to African countries and the inadequate treatment of the development dimension in the new areas of trade related aspects of intellectual property rights (TRIPS), trade related investment measures (TRIMS) and trade in Services."²⁶⁴

Nothing has changed for the better in Africa since the Uruguay Round concluded in 1994. Lopsided implementation by the WTO continues to undermine Africa's contribution to global trade, causing real-life devastation and a growing social and political backlash.²⁶⁵ As Lori Wallach and Patrick Woodall put it: "In the era of the WTO, and corporate-led globalization, the world has been buffeted by unprecedented financial crises which have shattered the lives of millions and unraveled decades of development. . . ."²⁶⁶ Africa's report card on global trade has been dismal: "Africa in 20 years," says the Blair Commission Report, "saw its share in world trade fall from six to two percent; just one percentage point of that fall represents more than \$70 billion in foregone revenues annually."²⁶⁷

In his forward to the Economic Report on Africa 2004, the Executive Secretary of the Economic Commission for Africa (ECA) lamented:

262. Declaration on Uruguay Round, *supra* note 76, ¶ 9.

263. NEPAD, *supra* note 13, ¶ 170.

264. Declaration on Uruguay Round, *supra* note 76, ¶ 4.

265. See generally Nsongurua J. Udombana, *A Question of Justice: The WTO, Africa, and Countermeasures for Breaches of International Trade Obligations*, 38 J. MARSHALL L. REV. (forthcoming 2005) (exploring some of the legal and developmental issues arising from the WTO trade regime, particularly as they affect Africa, and urging Africa to adopt unilateral measures to counterpoise breaches of international trade rules and strengthen its domestic economy and bargaining power in global trade negotiations, particularly as WTO remedies offer little prospects of effectiveness). For a defense of the liberal trade regime, see BRIAN McDONALD, *THE WORLD TRADING SYSTEM: THE URUGUAY ROUND AND BEYOND* (1998).

266. See WALLACH & WOODALL, *supra* note 41, at 283–84.

267. *Our Common Interest*, *supra* note 14, at 87.

Trade is one of the main drivers of growth and development; yet Africa's trade performance is weak. The region's share in world merchandise exports fell from 6.3% in 1980 to 2.5% in 2000 in value terms. It recorded a meager 1.1% average annual growth over the 1980-2000 period, compared to 5.9% in Latin America and 7.1% in Asia. Further, while about 70% of developing countries' exports are manufactures, Africa has hardly benefited from the boom in these exports. Overall on the continent, and particularly in sub-Saharan Africa, progress on export diversification has been slow.²⁶⁸

African farmers have been squeezed to the point of starvation as global grain traders use WTO rules to manipulate markets and dump²⁶⁹ goods in the continent. Tariff walls and finicky rules-of-origin and health-and-safety standards continue to obstruct Africa's efforts to participate meaningfully in the trading system. In 2001 alone, Mali lost \$43 million as a result of large subsidies to U.S. and E.U. producers, which lowered the price of cotton—one of Mali's main exports.²⁷⁰

Such unceasing unfair trade practices led the A.U. Assembly at its 2005 Abuja Summit to call on the G8 to complete the Doha Round of trade negotiations as early as possible.²⁷¹ The Doha Round, which fell apart in September 2003 in Cancun, Mexico,²⁷² was expected to provide Africa with free, non-reciprocal access to industrial countries' markets and eliminate export subsidies for agricultural products.²⁷³ Africa is partially justified in its expectation that the conclusion of the Doha Round will boost its sustainable development. Millennium Project participants also believe that a successful conclusion of the Doha Round will increase Africa's access to rich world markets and bring benefits to middle-income countries.²⁷⁴

The problem is that the G8 does not think Africa is benefiting its members by opening up its economy; and one who does not think he receives a favor from another is unlikely to acknowledge or repay it. This probably explains why fair trade did not feature prominently at the G8 Gleneagles Summit; their communiqué was weak on subsidies—comforting words, but little real agreement or commitment to substantial action. Given the rat race that underpins world trade, it is unlikely that market access will soon become a reality, either through G8 summits, or through talks at the tranquil shores of Lake Geneva.

268. K.Y. Amoako, *Foreword to ERA 2004*, *supra* note 32, at xi.

269. Dumping is the selling of products below cost.

270. ERA 2004, *supra* note 32, at 5.

271. Decision on NEPAD, *supra* note 117, ¶ 3.

272. See generally FATOUMATA JAWARA & AILEEN KWA, BEHIND THE SCENES AT THE WTO: THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS—THE LESSONS OF CUNCUN (2004) (for an analysis of the multilateral politics and North-South relations as played out in the WTO).

273. See generally *Global Economic Prospects 2004*, *supra* note 35.

274. *Investing in Development*, *supra* note 206, at 204.

2. Towards a More Credible Multilateral Trading System

The G8 carries the greatest responsibility to promote “the fuller integration of developing countries into the global trading system.”²⁷⁵ It must take trade with Africa seriously if it is sincere about meeting the continent’s development challenge. As President George W. Bush justly puts it, “Developed nations have a duty not only to share [their] wealth, but also to encourage sources that produce wealth: economic freedom, political liberty, the rule of law and human rights.”²⁷⁶ Development and economic freedom are the most important issues facing SSA at the moment.²⁷⁷ Africa needs help kick-starting development and the freedom and opportunity to create wealth and end poverty.

As a starting point, the G8 should provide free trade status for Africa in the global market, which means “giving African countries the opportunity not only to sell agricultural products in rich-country and world markets on fair terms, but also to diversify beyond traditional exports into new exports of manufactures and services.”²⁷⁸ Industrial countries should tear down trade walls that keep African goods out of these countries’ markets. They should end agricultural subsidies that “distort and depress the global commodity markets upon which African economies are dependent.”²⁷⁹ As the ECA also advised:

275. Cf. *id.* at 197 (quoting Rodrigo de Rato Figadero, IMF Managing Director); cf. Declaration on the Socio-Economic Situation in Africa, *supra* note 68, ¶ 13 (announcing: “The developed countries bear a major responsibility for the transformation of the present inequitable international system.”).

276. President George W. Bush, Remarks at the International Conference on Financing for Development in Monterrey, Mexico (Mar. 22, 2002), <http://www.un.org/ffd/statements/usaE.htm>.

277. See *Deconstructing Development*, *supra* note 53, at 2–3 (“For the Third World, however, development is the most important concept in the international system, for it is development that defines and locates the Third World within the international community.”).

278. *Our Common Interest*, *supra* note 14, at 87.

279. Gathii, *supra* note 243, at 181 (noting that such practices are “inconsistent with the capitalist vision of market-centered development that industrialized countries and the multilateral economic institutions they control require African economies to adopt.”); cf. MDG REPORT 2005, *supra* note 29, at 38 (“If developing countries are to realize the potential of international trade to enhance economic growth, the main barriers to their exports need to be removed. These include tariffs (taxes) imposed by developed countries on imports from developing countries and the subsidies that developed countries provide to domestic agricultural producers.”).

The industrialized countries must commit themselves to the development principles of the WTO's Doha Round, by widening market access for developing country exports and providing more trade-related assistance to poor countries. Such assistance is necessary, both to bear the heavy costs associated with trade liberalization and to help countries exploit the opportunities arising from a more integrated global economy.²⁸⁰

International economic cooperation must be "based on mutual interest, shared commitments and binding agreements"²⁸¹ and should aim to promote sustainable development, contribute to poverty eradication and facilitate the smooth integration of African countries into the global economy. The revived Doha Round must be sensitive to Africa's development policy objectives, including questions of technology transfer and national capacity building in all sectors critical to Africa's development process. The credibility of the multilateral trading system rests upon the reduction of trade barriers and the integration of marginalized nations into the international trading system.²⁸²

The international community must find acceptable common ground for working with Africa to secure a level playing field in global trade and achieving development-friendly rules. The right to development demands a form of globalization that is both ethical and sympathetic.²⁸³ As Mohammed Bedjaoui correctly argues, "the international dimension of the right to development is nothing more than an equitable distribution with regard to global social and economic well being."²⁸⁴ Human rights, democracy, and the rule of law thrive only in an economically empowered society. Weak economic societies are unlikely to become strong democratic societies.²⁸⁵

280. ERA 2004, *supra* note 32, at 1.

281. NEPAD, *supra* note 13, ¶ 205; *cf.* Algiers Declaration, *supra* note 13, at 8 (calling for "a mutually beneficial and genuine international partnership; a partnership based on a balance of interests and mutual respect. . .").

282. Declaration on Uruguay Round, *supra* note 76, ¶ 8 (stressing that the durability of the multilateral trading system depends on its ability to provide benefits to all its partners).

283. Flavia Piovesan, *Social, Economic and Cultural Rights and Civil and Political Rights*, 1 SUR INT'L J. HUM. RTS. 21, 27 (2004), available at <http://www.surjournal.org/index.php?ed=1>.

284. Mohammed Bedjaoui, *The Right to Development*, in INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 1182 (Mohammed Bedjaoui ed., 1991).

285. See Udombana, *The Third World and the Right to Development*, *supra* note 200, at 785 ("The West must recognize that underdeveloped societies are not likely to become democratic. Democracy will not thrive in instability. The West cannot simultaneously demand democracy and deny development. It cannot expect people to cherish the ballots when their stomachs are empty.").

IV. REINVIGORATING AFRICA'S REGULATORY AND ECONOMIC POLICIES FOR SUSTAINABLE DEVELOPMENT

It is naïve to assume that all of Africa's failures and asymmetries are externally induced. Most countries in Africa have not positively exploited the political and economic goodwill that have beckoned at their sovereign doorsteps over the years. The reasons for these failures include Africa's economically obstructive policies; African states have not always adopted the right policy mix and strategies for sustainable economic development. Political and economic failures have, according to NEPAD, "impede[d] the effective mobilisation and utilisation of scarce resources into productive areas of activity in order to attract and facilitate domestic and foreign investment."²⁸⁶ The result, says the A.U. Commission, is that, "[a]t this dawn of the 21st Century, Africa portrays the image of a *Continent that has taken very little advantage of the economic globalisation* which has been gathering pace since the 80s and is evidenced by tremendous wealth creation."²⁸⁷

For Africa to stay afloat in the ocean of corporate-led globalization, it must reinvigorate its regulatory and economic policies. As the A.U. Commission again hints: "It has therefore become increasingly and absolutely necessary to undertake major changes by addressing the root causes of the structural deficiencies in Africa's economies, if we are to promote endogenous development."²⁸⁸

A. Renovating Weak Political and Institutional Structures

The renovation of African economies must start with political transformation, which requires building an effective state that can create an environment that allows economic activity and entrepreneurship to flourish.²⁸⁹ Weak post-colonial structures and institutions continue to pull Africa backward with "shoestring" budgets, compromises, and external sources of power. Many African states possess juridical statehood without

286. NEPAD, *supra* note 13, ¶ 34; *cf.* Declaration on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution, Org. Afr. Unity, 29th Ord. Sess., ¶ 8, O.A.U. Doc. AHG/Decl.3 (XXIX) (June 28–30, 1993) (admitting: "We do recognize, however, that there have also been certain internal human factors and policies which have negatively contributed to the present state of affairs on the Continent.").

287. *Our Common Destiny*, *supra* note 16, at 7 (emphasis added).

288. *Id.* at 8.

289. *See Our Common Interest*, *supra* note 14, at 87.

the empirical attributes, like control over the legitimate exercise of coercion within boundaries, financial self-sufficiency, leadership of national political communities, and provision of basic services.²⁹⁰ Neo-colonialism continues to pose a problem for Africa, as many of these states, especially Francophone ones, remain tied to the apron strings of their former colonial overlords.

The typical post-colonial state evolved as a synthesis between the thesis of colonialism and the anti-thesis of nationalism, producing what Basil Davidson calls a “nation-statism [that] looked like a liberation.”²⁹¹ Colonialism was “the cradle of contemporary forms of fragmentation in Africa,” though, as Obiora Okafor pointedly observes, the colonial state weaved the “forms of fragmentation from the material that the pre-existing, pre-colonial sets of identities and relationships” provided.²⁹² Nonetheless, the transfer of power to African rulers did not change the basis of statehood, which continues to derive primarily from the international system—bilateral Western donors and international organizations—with domestic sources of statehood remaining secondary.²⁹³

Weak states have allowed dictatorship to thrive in Africa in the past. Raw assertions of personal power become a form of legitimacy where the institutional concept of legitimacy is absent.²⁹⁴ Even presently, the monster of dictatorship is rearing its head again in some parts of Africa. On August 1, 2005, some “semi-illiterate soldiers,” led by one Mr. Vall, staged a coup in Mauritania—one of the projected beneficiaries of the G8 debt relief—ousting Maaouya Ould Taya.²⁹⁵ Taya himself was a despot who came to power as a result of a coup in 1984. Like most other so-called modern “democrats,” (Togo’s Eyadema, Sudan’s El-Bashir, Libya’s Gaddafi, Gambia’s Jammeh, and Uganda’s Museveni are just a few of the “new political leaders” in Africa²⁹⁶) Taya seized power under the guise of saving his country, only to subsequently conduct sham

290. See ROBERT H. JACKSON, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS, AND THE THIRD WORLD* 21 (1990) (arguing that African states were “not authorized and empowered domestically”); see also Robert H. Jackson & Carl G. Rosberg, *Why Africa’s Weak States Persist: The Empirical and the Juridical in Statehood*, 35 *WORLD POL.* 1 (1982).

291. DAVIDSON, *supra* note 63, at 10.

292. OBIORA CHINEDU OKAFOR, *RE-DEFINING LEGITIMATE STATEHOOD: INTERNATIONAL LAW AND STATE FRAGMENTATION IN AFRICA* 98 (2000).

293. LEONARD & STRAUS, *supra* note 140, at 10–11.

294. See KISSINGER, *supra* note 19, at 204.

295. See *Mauritania: Army Says Has Seized Power to End Totalitarian Days*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Aug. 3, 2005, <http://www.allafrica.com/stories/200508030836.html> (subscription service required).

296. *Our Common Interest*, *supra* note 14, at 84 (asserting that, “Democracy has spread in Africa and the continent has new political leaders. . .”).

elections and stay on to become ever more corrupt and ruthless.²⁹⁷ Most African rulers bathe in the same ambience of power: they came to power through treachery and cruelty and continue to exploit the noble motions of their victims for purely selfish ends. Of all tyrannies, that which is purportedly exercised for the good of its victims may be the most oppressive.

Africa persists in intoning the mantra of democracy, but its practice of this concept is alien to rational thought. Most of Africa's governments continue to work against all known democratic principles, including the rule law, which is democracy's lifeblood. Hardly anyone, except the political class, can speak confidently about the integrity of the electoral process in most of Africa. The A.U. itself is largely a cheerleader and, despite its numerous resolutions and declarations on democratic governance, it has not been able to implement a program that ensures the credibility of the electoral process in its Member States.²⁹⁸ Uganda's Yoweri Museveni, following in the disgraceful footsteps of Guinea's Lansana Conteh and Zimbabwe's Robert Mugabe, recently bribed his parliamentarians to eliminate term limits in the Constitution in order to remain president indefinitely, if not for life.²⁹⁹ Uganda has operated a strange political system since Museveni came to power 19 years ago. In his desperate consolidation of power, he has restricted the opposition parties severely: Political parties are allowed to exist, but candidates for office must run as individuals, not as representatives of their parties.³⁰⁰ In Cameroon, Paul Biya has spent 23 years in office but his supporters are clamoring for an

297. See Baba Galleh Jallow, *Mauritania: An All Too Familiar Story*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Aug. 9, 2005, <http://www.allafrica.com/stories/200508090298.html> (arguing that the current scenario in Mauritania is all too familiar to observers of African politics).

298. See, e.g., Declaration on the Principles Governing Democratic Elections in Africa, Org. Afr. Unity/Afr. Union, 38th Ord. Sess., A.U. Doc. AHG/Decl.1(XXXVIII) (July 8, 2002), (laying down principles for the conduct of democratic elections in Africa). Elections, according to the Declaration, should be conducted "freely and fairly and under democratic constitutions and in compliance with supportive legal instruments." *Id.* at II(4); see generally Udombana, *Articulating the Right to Democratic Governance in Africa*, *supra* note 253, at 1253-70 (discussing Africa's regional instruments and action plans on democratic governance).

299. See *MPs Back Museveni Re-election Bid*, BBC NEWS WORLD EDITION, June 28, 2005, <http://news.bbc.co.uk/2/hi/africa/4630209.stm> (reporting that Ugandan members of parliament have voted overwhelmingly in favor of a constitutional amendment allowing President Museveni to seek further terms in office).

300. See *Uganda Reveals Democracy Question*, BBC NEWS WORLD EDITION, June 9, 2005, <http://news.bbc.co.uk/2/hi/africa/4078168.stm>.

amendment to the Cameroonian Constitution to allow him serve a third seven-year term.³⁰¹ The rest of the democratic world can only marvel at the steepness of Africa's learning curve.

Africa must embark on internal political and institutional transformations if only because of the interdependence between good governance and economic development; neither is possible without the other. "Economic development stalls when governments do not uphold the rule of law," and "upholding the rule of law requires institutions for government accountability."³⁰² Africa must also work to overcome corruption and conflict, which continue to undermine any external support. "Without progress in governance," says the Blair Commission Report, "all other reforms will have limited impact."³⁰³

B. Reinvigorating Africa's Economic and Regulatory Frameworks

African states must restructure and reinvigorate their regulatory and economic policies in order to reduce their marginalization, speed up their integration into the globalization process, combat poverty, and achieve the MDG. Trade policies should "promote macroeconomic stability and higher growth and . . . improve the delivery of social services."³⁰⁴ The private sector, both local and international, can only meaningfully contribute to Africa's development effort if conditions, such as peace and political stability, are present to promote investment.³⁰⁵ Any outside support will fail as long as Africa fails to create the right conditions for development.³⁰⁶ The temptation always exists to conclude that market access is the whole development story, but it is not; having the chance is not equal having the ability. The present writer agrees with the World Bank that even if:

301. See Tansa Musa, *Third Term for Biya?*, NEW AFRICAN, July 2005, at 31 (reporting on the opposition to the third term bid for Paul Biya).

302. *Investing in Development*, *supra* note 206, at 31.

303. *Our Common Interest*, *supra* note 14, at 14.

304. U.N. Econ. Comm'n for Afr. [UNECA], *Economic Report on Africa 2002: Tracking Performance and Progress*, 40 (June 2002) [hereinafter ERA 2002].

305. Nsongurua J. Udombana, *A Harmony or a Cacophony? The Music of Integration in the African Union Treaty and the New Partnership for Africa's Development*, 13 IND. INT'L & COMP. L. 185, 223 (2002); cf. Yaoundé Declaration, *supra* note 19, ¶ 24.

306. See, e.g., Declaration of International Economic Cooperation, G.A. Res. S-18/3, ¶ 23, U.N. GAOR, 18th Spec. Sess., Supp. No. 2, at 6, U.N. Doc. A/S-18/15 (May 1, 1990) (urging developing nations to achieve "favourable conditions for domestic and foreign investment"); cf. AU Act, *supra* note 165, at pmb. (stressing that the promotion of peace, security and stability is "a prerequisite for the implementation of our development and integration agenda"); Declaration on a Code of Conduct for Inter-African Relations, Org. Afr. Unity, 30th Ord. Sess., pmb., O.A.U. Doc. AHG/Decl.2 (XXX) (June 13–15, 1994) (noting that "every co-operation effort is doomed to failure in an environment devoid of stability, trust and security").

developing countries succeed in obtaining access to new markets, they will have to adopt complementary policies—removing obstacles to private investment, improving public investment in infrastructure, and providing education—to ensure that domestic firms respond to new opportunities associated with greater integration, and that the benefits of integration are transmitted to the poor.³⁰⁷

African states must take mutually reinforcing actions to accelerate growth and end years of aid dependency. As a starting point, they should streamline and strengthen their domestic legal frameworks for doing business, mindful that legal uncertainties discourage investors and that a weak legal system undercuts efforts to develop a modern, market-oriented economy. Many of the laws regulating business transactions in Africa are not just outdated but antediluvian. To register a business in Ethiopia, “a would-be entrepreneur must deposit the equivalent of 18 years’ average income in a bank account, which is then frozen,”³⁰⁸ yet experience in several rich countries shows that such capital requirements are unnecessary.³⁰⁹ In Nigeria, multiple procedures are required to record or register a property transaction,³¹⁰ and about \$6,621 is needed to start a business in Angola.³¹¹ A continent that is in dire need of boosting FDIs to compete favorably in the global market cannot afford the luxury of retaining archaic and retrogressive business laws and regulations. As *The Economist* wisely counsels, “there is probably much more to gain from slashing red tape than from begging for more aid.”³¹²

A major achievement of the MDG is in galvanizing unprecedented efforts to meet the needs of the world’s poorest people.³¹³ It also has largely succeeded in making governments frame their policies around specific intended outcomes rather than policy inputs. Allocations of aid, targets for budget deficits and other policy settings are increasingly being tested against the final goals.³¹⁴ African leaders, in particular, have adopted several policies and action plans—at the country, regional, and continental levels—towards tackling underdevelopment and poverty. In 2000, Kenya launched two poverty reduction strategies—the short-term Poverty

307. *Global Economic Prospects 2004*, *supra* note 35, at xv–xvi.

308. *Measure First, Then Cut*, THE ECONOMIST, Sept. 11, 2004, at 71 (reviewing a World Bank study showing that bad regulations are a huge brake on global growth).

309. *See id.*

310. *See id.* (noting, rather sweepingly, that land is useless as a collateral in Nigeria because “[i]ts owners typically cannot prove, legally, that they own it”).

311. *Some Interesting Facts About Sub-Saharan Africa*, *supra* note 22.

312. *Measure First, Then Cut*, *supra* note 308, at 71.

313. *See* Kofi Annan, *Foreword*, in MDG REPORT 2005, *supra* note 29, at 3.

314. *Recasting the Case for Aid*, THE ECONOMIST, Jan. 22, 2005, at 67.

Reduction Strategy Paper and the long-term National Poverty Eradication Plan.³¹⁵ The strategy seeks to reduce poverty by 50 percent by 2015; empower the poor to earn income; reduce most major forms of inequalities; and increase productivity through human capital development by investing in education and health.³¹⁶

Clearly, more urgent action is needed to translate the MDG into reality in Africa. The real question, as *The Economist* correctly notes, is the kind of policy input that will be required to hit the targets set by the MDG.³¹⁷ The heterogeneity of African economies in terms of size and resource endowments evidently limits choices available to African states. Nonetheless, these states should reform their agricultural policies, since agriculture is the dominant sector of the continent's economy. They should subsidize agriculture and make fertilizers available and affordable to rural farmers. Most farmers in Africa farm in soil that is increasingly depleted of nutrients, and cannot afford much fertilizer because of high transportation costs.³¹⁸ Yet, growth in agriculture has a disproportionately positive effect on poverty reduction, especially as more than half of Africa's population lives in rural areas, where poverty is highest.³¹⁹ Agricultural reform will ensure food security for Africa's growing population, provide industrial raw materials, employment with income that is sufficient to ensure decent living standards, and much needed foreign exchange earnings.

African states should also adopt policies that promote export diversification favoring higher value-added industrial and service sectors. They should develop new industries and upgrade existing ones, particularly in areas where they have comparative advantages, including agro-based industries, energy and mineral resource-based industries.³²⁰ They should increase investment in infrastructure, health, human resource development and education. States that do not have industrial development policies and strategies should formulate them in collaboration with the private sector, which is the engine of economic growth. Finally, African countries should form cartels to control their commodity exports. They should set aside resources as a way to add value to their raw materials

315. See Government of Kenya, *Kenya: Interim Poverty Reduction Strategy Paper 2000–2003*, July 13, 2000, INTERNATIONAL MONETARY FUND, <http://www.imf.org/external/NP/prsp/2000/ken/01/kenya.pdf>.

316. *Id.* at 13.

317. *Recasting the Case for Aid*, *supra* note 314, at 67.

318. See *Investing in Development*, *supra* note 206, at 150.

319. ERA 2003, *supra* note 84, at 5 (noting that poverty is more severe in rural Africa because, “[h]ouseholds in remote areas, living on fragile lands, would be expected to have fewer opportunities and face greater risks and vulnerability than households in better-endowed areas.”).

320. NEPAD, *supra* note 13, ¶ 162.

before exporting them.³²¹ “Even if Africa cannot control the prices of its exports, but can only influence them,” says Cameron Duodu, “the continent wouldn’t need anyone’s assistance to end its poverty.”³²²

Clearly, Africa’s development is the primary responsibility of Africa, a point that has been repeatedly stressed both by the U.N.³²³ and the extinct OAU.³²⁴ The present writer agrees wholeheartedly with the Blair Commission Report, which unambiguously stated:

It is for Africa to create the conditions where the entrepreneurship and creativity of its people can flourish and drive growth. It is for Africa to take the lead in creating health and education systems which can deliver investment in its people. It is for Africa to take the lead in creating the peace and security without which no development can happen.³²⁵

C. Entrenching the Human Dimension in Development Policies

Since every action and pursuit must aim at some good, it is imperative for Africa to entrench the human dimension in all development policies. Humanity must be the objective and supreme beneficiary of development, otherwise development becomes a meaningless vanity and vexation of the spirit. As the U.N. Economic and Social Council (ECOSOC) maintained:

[C]omprehensive development cannot be fully achieved until the impoverished have gained access to the essential attributes of dignity; a goal that can be achieved only by combating all forms of destitution and marginalization and

321. See Duodu, *supra* note 64, at 15.

322. *Id.*

323. See, e.g., G.A. Res. 2542, U.N. GAOR, 24th Sess., Supp. No. 30, U.N. Doc. A/7630 (Dec. 11, 1969) (noting that “the primary responsibility for the development of the developing countries rests on those countries themselves”); U.N. Secretary General, *Report of the Secretary-General on the Work of the Organization*, ¶ 189, U.N. Doc. A/56/1 (2001) (“While international support remains essential, ultimately African countries themselves are best placed to overcome the pressing challenges that confront the continent . . .”).

324. See, e.g., Declaration on the Economic Situation in Africa, Org. Afr. Unity, 21st Ord. Sess., ¶ 6, O.A.U. Doc. AHG/Decl.1 (XXI) (July 18–20, 1985), available at http://www.africa-union.org/Official_documents/Heads%20of%20State%20Summits/hog/uHoGAssembly1985.pdf (“We re-affirm that the development of our continent is the primary responsibility of our Governments and people.”); Declaration on the Socio-Economic Situation in Africa, *supra* note 68, ¶ 8 (“We reaffirm that Africa’s development is the responsibility of our governments and peoples.”); NEPAD, *supra* note 13, ¶ 203 (“In proposing the partnership, Africa recognises that it holds the key to its own development.”).

325. *Our Common Interest*, *supra* note 14, at 89 (stressing, “If Africa fails to do all this, the international community will find it far more difficult to discharge its responsibilities, act in solidarity with Africa and deliver effective support.”).

making enhanced solidarity among all members of the national community an essential basis for all the reforms introduced.³²⁶

The now defunct OAU expressed the same sentiment in its 1996 Yaoundé Declaration: "Sustainable development aims primarily at ensuring a better standard of living for present and future generations. . . . [It] is founded on democracy, human rights, good governance, human resource promotion, economic and social development, environmental protection, all with the human being, as the focal point."³²⁷ Africa should translate such rhetoric into reality by uniting economic and social policies to spread protection against poverty to everyone. Governance, says Shedrack Agbakwa, "ceases to be meaningful when the majority of the people is [sic] put in a situation where it cannot appreciate the value of life, let alone enjoy its benefits."³²⁸

Many Africans are not particularly enthused by their leaders' annual rendezvous with the G8 when they gather to discuss generalities and inanities. After more than four decades of independence, Africans no longer expect their leaders to behave like patients newly released from an intensive care unit. It is sheer hype to hope that the G8, IFIs, WTO, African Growth and Opportunity Act (AGOA)³²⁹ or any other Western contraption will "make poverty history" in Africa. The simple reason, as Duodu proverbially expresses, is that "it is not very sensible, if you are drowning in a river to expect a crocodile to offer you its tail to ferry you safely ashore."³³⁰ Besides, fighting poverty and adopting compensatory policies are, in the words of Jack Donnelly, "functions of the state and not of the market. These are demands related to justice, rights and obligations, and not to efficiency. . . . Markets are simply unable to deal with them . . . because they have no vocation for this."³³¹

326. U.N. Econ. & Soc. Council [ECOSOC], *Implementation of the International Covenant on Economic, Social and Cultural Rights: Second Periodic Reports Submitted by States Parties under Articles 16 and 17 of the Covenant*, ¶ 5, U.N. Doc. E/1990/6/Add. 14 (Oct. 8, 1996), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.1990.6.Add.14.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.1990.6.Add.14.En?Opendocument).

327. Yaoundé Declaration, *supra* note 19, ¶ 19.

328. Shedrack C. Agbakwa, *Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights*, 5 YALE HUM. RTS. & DEV. L.J. 177, 181 (2002).

329. The AGOA was enacted into law in the U.S. as part of the Trade and Development Act of 2000 (African Trade Bill), 19 U.S.C. §§ 3702(1), (4), (5) (2000), 2001 O.J. (L60). It is a part of the "post-Cold War constructive re-engagement" in Africa and is based on the philosophy that trade, not aid is the chief tool for promoting economic development. See Jeffery M. Brown, *Black Internationalism: Embracing an Economic Paradigm*, 23 MICH. J. INT'L L. 807, 862 (2002).

330. Duodu, *supra* note 64, at 15.

331. Jack Donnelly, *Ethics and International Human Rights*, in ETHICS AND INTERNATIONAL AFFAIRS 153 (2001); cf. JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 160 (1998) (noting: "Markets seek efficiency and not social justice or human

The A.U., which carries the heavy burden of history, must urge its Members States to take tangible measures that will deliver basic needs to its citizens. These include nutritional food, affordable housing, clean drinking water, effective and affordable drugs, reliable electricity and telecommunications, functional educational systems, and efficient transportation networks. Unless the A.U. works to translate the noble goals of the A.U. Act into reality, it risks being dismissed as another mutual adoration club, like the OAU. Basic needs are not unattainable, really, and the sacrifice is not so great as it seems. Citizens of other less endowed but better managed societies take these things for granted, while also enjoying “milk and butter, very fresh flowers in front of the window, [and] a few beautiful trees in front of the door.”³³² In most of Africa, the idea of meeting basic needs has remained a forlorn and frozen hope, with citizens left on their own, as it were, to shovel “snow in zero weather . . . just to put food in [their] belly.”³³³ A country that cannot feed its population should have no claim to any kind of sovereignty.

V. THE SUMMER HAS ENDED. . .

The assertion that Africa has found the elusive Golden Fleece of sustainable development and prosperity cannot be made with confidence, despite the debt relief promised by the G8 at its 2005 Summer Summit. The average African has become cynical *a propos* these gestures, given the history of failed declarations, summits, conferences, commissions, and action plans. Even actual development assistance has failed to produce growth and prosperity, obstructed by conflicts, corruption, and endemic mismanagement compounded by what Kenneth Karl calls the “shifting power play on the world’s geopolitical chessboard, coupled with the demands of galloping globalisation.”³³⁴ All of this explains why the summer of great expectations is giving way to another winter of depression and despair. Unnecessary destitution still persists in Africa because, to borrow Ringen’s words, “the will to end it comes not from our hearts, where we

rights for all”); GEWIRTH, *supra* note 160, at 59 (arguing that markets cannot guarantee sufficient funds to meet basic goods and opportunities, which “must be securely provided as needed” and, therefore, that “the state, as a community of rights, should be the primary, even if not the only, respondent of these rights”).

332. FREUD, *supra* note 5, at 59 (citing Heine).

333. JAMES BALDWIN, *EARLY NOVELS AND SHORT STORIES* 21 (1998).

334. Kenneth Karl, *From Georgetown to Cotonou: The ACP Group Faces Up to New Challenges*, ACP-EU COURIER, Sept. 2000, at 20, 23, available at http://europa.eu.int/comm/development/body/publications/courier/courier_acp/en/en_020.pdf.

are all pure, but from our collective opinions and actions, where we are not.”³³⁵

Some think that Africa is predestined to be poor, that some long-lost ancient curses are causing its failures and poverty. These troubling, reckless, and irritating assertions have contributed to Africa’s inadequate self-image in the comity of nations. Those who make these claims fail to acknowledge that Africa was the cradle of civilization³³⁶ and that ancient Egypt provided the first reliable system of irrigation known to mankind, besides its skills in architecture, writing and painting.³³⁷ Understanding and appreciating Africa’s contribution to human existence is a part of the process of reconstructing the identity and self-confidence of its peoples.³³⁸ Africa’s poverty is not a strand in the tapestry of primordial causation; many of the difficulties the continent is currently facing are home-made and, from a universal perspective, wholly unnecessary. It is the lack of visionary leadership or the pursuit of an alien vision that accounts for Africa’s inability to harness its abundant human and natural resources to lift its citizens out of economic scarcity.

The poverty of leadership in Africa has persisted largely due to the poverty of the constituency. Until recently, Africans were so accustomed to the diffused darkness of dictatorship and tyranny that they found it difficult to raise themselves up to the penetrating lights of democracy, human rights and good governance. When one lives everyday in the midst of absurdity, it becomes far too easy to behave respectfully to it. The current challenge for all Africans, both at home and in the Diaspora, is to engage their leaders constructively and to work with them to reconstruct and transform the continent. The human entity is endowed with intelligence and vision to regulate its conduct and constantly recreate its existence. Africa is no exception. Although sorrow always longs for someone to blame, it is no longer reasonable to keep blaming the North for much of Africa’s woes. A people cannot escape the judgment of history by seeking to transfer their own share of guilt to scapegoat international institutions or rich nation clubs.

335. Ringen, *supra* note 21, at 3.

336. *Our Common Destiny*, *supra* note 16, at 3 (“Africa was the birthplace and source of civilization for the longest period in the history of humanity, a period that people persist in describing wrongly, as “Prehistoric” using one sole criterion—“lack of written records.”); see also NEPAD, *supra* note 13, ¶ 14 (“Modern science recognizes Africa as the cradle of humankind . . . Africa’s status as the birthplace of humanity should be cherished by the whole world as the origin of all its peoples.”).

337. See generally GEORGE GUEST, *THE MARCH OF CIVILIZATION* (1974).

338. See NEPAD, *supra* note 13, ¶ 14.