

NEPAD and the Rebirth of Development Theory and Praxis

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I. INTRODUCTION

THE BLACK MAN'S burden again has become the world's.¹ Not since the early part of the 1960s has the well-being of the Dark Continent attracted the level of attention that it is now generating. Spurred by a variety of motives, including humanitarianism and concerns over the potential of so-called failed states as safe harbours for transnational terrorism, the welfare of the continent has become the special concern of G8 summit meetings.² The United Nations Security Council now routinely adopts mandatory resolutions under Chapter VII that expressly and in fine detail regulate military, diplomatic, legal and even commercial interactions within the continent.³ Increasingly, the continent's problems are seen

¹ Compare Basil Davidson, *The Black Man's Burden: Africa and the Curse of the Nation-State* (New York, Times Books, 1992) (turning Kipling's famous cliché on its head by showing that contemporary African societies have been poorly served by reflexively adopting Western political institutions). See also William Easterly, *The White Man's Burden: Why the West's Effort to Aid the Rest Has Done So Much Ill and So Little Good* (New York, Penguin Press, 2006) (discussing shortcomings in the reliance on the top-down policies of international economic institutions to address issues of poverty and economic underperformance in poor societies such as those of tropical Africa).

² Africa's development has been featured prominently as an agenda item in the last five summits of G8 leaders in Italy, Canada, France, the US and the UK. Chosen African leaders have been offered the opportunity to address the G8 heads of government at these meetings; a platform offered to no other non-G8 leaders. And probably just as important have been popular and academic 'special pleadings' for treating Africa's poverty as uniquely a blight on the humanity and generosity of spirit of international society as a caring community. See eg Jeffrey Sachs, 'Developing Africa's Economy' (2004) *The Economist* (London), 20 May; Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York, Penguin Press, 2005) 188 ff, and foreword by Bono.

³ One gauge of this phenomenon is the increasing attention African issues are garnering at the UN Security Council. Of the 52 resolutions adopted by the Security Council in 2001, 19 related exclusively to Africa. In 2002, 26 of the 68 resolutions fell into this category. In 2003, of the 64 resolutions, 36 were exclusively about events in Africa. Indeed, in the latter year,

and portrayed as meriting distinctive attention and proposals for solution at otherwise global gatherings such as those involving trade, health⁴ and 'financing for development'.⁵ Policy entrepreneurs, acting in quasi-official and private capacities, have thrown themselves into the struggle. Applying his trademark crusader's zeal to the issue, British Prime Minister Tony Blair created a 'commission' of eminences and experts to provide solutions for Africa's problems.⁶ Rock-and-roll stars speak with authority and discernment on the poverty-prone precariousness of African lives, and software executives now contribute as much to resolving the continent's health problems as do many of its governments.

The New Partnership for African Development (NEPAD) has featured prominently in this renewed environment of interest in the welfare of African societies. For African academics and political leaders, it has become the exemplar of a re-invigorated philosophy of responsibility and accountability. For non-African politicians and entertainers, it has become a manifestation of the welcome emergence of a new and responsible African leadership with whom the 'international community' can do business. Whether at Davos, Gleneagles or Monterey, reference to NEPAD has been deployed by African leaders and foreign sympathisers alike to show the earnestness of the new commitment and to plead that this new wind of change is not forestalled prematurely. Against this backdrop, this chapter examines the extent to which NEPAD represents a dramatic shift in the fortunes of the continent. The chapter focuses on discussing the ways in which the ethos of development embodied by NEPAD fits within and contributes to the international legal order. In this regard, I explore the animating visions that underlie NEPAD and inquire into how responsive NEPAD, as an institution, is to those visions. In keeping with the overall theme of the collection of chapters in this volume, I highlight the intertwining relationship of NEPAD and the dominant neo-liberal order. In part II, I present a brief background to NEPAD and describe

events in the Democratic Republic of the Congo, Liberia, Côte d'Ivoire, and Ethiopia-Eritrea each attracted more Security Council resolutions than those relating to Iraq, 'terrorism', or the Israeli-Palestinian conflicts. And the trend continued in 2004 and 2005, with Sudan joining the list of countries subject to regulation under Chapter VII of the United Nations Charter.

⁴ Africa, of course, is notorious for being the fountain of human disasters; but it is difficult to imagine any that has commanded as much doomsday prognostication as that of the HIV/AIDS 'pandemic'. See eg Chris McGreal, 'Thabo Mbeki's Catastrophe' (2002) *Prospect* (London), 21 March <http://www.prospect-magazine.co.uk/article_details.php?id=4995&issue=445> (accessed 30 January 2006).

⁵ See eg 'On the Threshold: The United Nations and Global Governance in the New Millennium' (19–21 January 2000), conference held in Tokyo; and International Conference on Financing for Development (18–22 March 2002) held in Monterey, Mexico.

⁶ See Commission for Africa, *Our Common Interest: Report of the Commission for Africa* (London, Penguin, 2005).

its core ideas. Part III sets NEPAD against the backdrop of prior development ideologies in Africa. Part IV examines the reciprocal interactions of NEPAD and the global neo-liberal order within which it is firmly located. I then present some concluding thoughts on the search for an appropriate path to 'development' in Africa.

II. INSTITUTIONAL FRAMEWORK

In October 2001, African leaders meeting in Abuja, Nigeria, signed an agreement for the co-ordination of economic policies across the continent. This 'New Partnership' constituted the institutionalisation of an idea that has been traced back to as early as 1997. Initially articulated by Thabo Mbeki, it came to be embraced by a diverse group of African leaders, ranging from Olusegun Obasanjo of Nigeria to Abdoulaye Wade of Senegal, Abdelaziz Bouteflika of Algeria and Hosni Mubaraq of Egypt. Aside from the obvious criss-crossing of the continent, what united these leaders was their embrace of the neo-liberal order (embodied in what had become symbolically referred to as the 'Washington Consensus') with its concomitant desire for respect in the corridors of the powerful political and economic institutions that were shaping 'globalisation'. With varying degrees of plausibility, each of these leaders laid claim to a new heritage of economic liberalism and political democratisation. NEPAD thus was intended to convey the crystallisation and confirmation of a complete break with the decay of the immediate post-independent Africa of coup d'états, economic stagnation and internecine civil wars.

A prolific African academic captured the euphoria felt by many over the formation of NEPAD, saying: "It is a heroic understatement to say that Africa is poised for positive transformation or regeneration in this millennium—or, at least, this century".⁷

Appropriately enough, the theme of a rejuvenated Africa willing to play by the rules of the neo-liberal order were first conveyed to the global community by President Thabo Mbeki of South Africa. In a speech at the World Conference (of leaders) in Davos, Switzerland, in January 2001, he unveiled the 'Millennium Africa Recovery (or Renaissance) Plan'. Africans, he told the assembled economic, political and media elites, needed and were ready to take charge of their future. They had learned

⁷ See eg Nsongurua J. Udombana 'How Should We Then Live? Globalization and the New Partnership for Africa's Development' (2002) 20 *Boston University International Law Journal* 293, 294. Udombana went on to argue that the formation of NEPAD and the reconstitution of the OAU into the AU (African Union) collectively represented a singular cause for 'palpable optimism.' See also Henning Melber, Richard Cornwell, Jephthah Gathaka, and Smokin Wanjala, *The New Partnership for Africa's Development (NEPAD)—African Perspectives* (Uppsala, Nordika Afrikainstitutet, 2002) <<http://130.238.24.99/webbshop/epubl/dp/dp016.pdf>> accessed 30 Jan. 2006.

the lessons of misrule and mismanagement, and had come to understand that governments must be made accountable to the people and that economic well-being depended on the initiatives and institutions of market arrangements rather than those of centralised planning. With these lessons in mind, Africans desired to work collaboratively with non-Africans to rejuvenate the welfare of the continent.⁸ Mbeki and President Obasanjo reiterated these views to Western leaders of the G7 at their Genoa conference later that year. African leaders were then mobilised to endorse these views at the inaugural meeting of the African Union, the successor to the widely reviled Organization of African Unity (OAU).⁹

That NEPAD represented a new way of doing business in Africa is readily conveyed in the rhetoric and style of its founding document, which lacks the usual legal formalism commonly associated with a foundational document. It is framed neither as a treaty nor a charter, but is simply referred to as a 'framework' document. It reads as a pastiche of draft ideas, occasional analysis, frequent statements of objectives and proposed courses of action.¹⁰ And as for substance, the 'framework' document follows in the line of the neo-liberal development theory and analysis that have become conventional since a pessimistic World Bank Report on Africa that was issued in 1989.¹¹

⁸ See Thabo Mbeki, 'Briefing at the World Economic Forum Meeting—Millennium Africa Renaissance Program—Implementation Issues' (Davos, Switzerland, 28 January 2001) <<http://www.anc.org.za/ancdocs/history/mbeki/2001/tm0128.html>> (accessed 30 January 2006). Mbeki had espoused the idea at least as early as June 1997. See Tom Lodge, *Politics in South Africa: From Mandela to Mbeki*, 2nd edn (Bloomington, IN, Indiana University Press, 2003) 227. According to the *Financial Mail*, the concept can be traced even farther back, to 1994: see J Malala, 'High on Ideals, Low on Substance: African Renaissance' (1998) *Financial Mail* (South Africa), 9 October, 41.

⁹ See 'The New Partnership for Africa's Development' (NEPAD) (Abuja, Nigeria, October 2001) <<http://www.nepad.org/2005/files/documents/inbrief.pdf>> (accessed 30 January 2006), at paras 45, 46 (hereinafter 'NEPAD Doc').

¹⁰ Indeed, the rhetorical flourishes replete in the document might make for an interesting anthropological or literary case study. Typical is para 27:

The *New Partnership for Africa's Development* seeks to build on and celebrate the achievements of the past, as well as reflect on the lessons learned through painful experience, so as to establish a partnership that is both credible and capable of implementation. In doing so, the challenge is for the peoples and governments of Africa to understand that development is a process of empowerment and self reliance. Accordingly, Africans must not be wards of benevolent guardians; rather they must be the architects of their own sustained upliftment.

(*Ibid.*)

¹¹ See Ismail Serageldin, *Poverty, Adjustment, and Growth in Africa* (Washington, DC, World Bank, 1989). Perhaps not so coincidentally, the seminal statement of the 'Washington Consensus', while addressed primarily to 'Development Economists' concerned with Latin America, was published a year later, in 1990, and addressed many of the same concerns of economic underperformance confronted in the 1989 Africa Report. See generally John Williamson, 'What Should the World Bank Think about the Washington Consensus?' *World Bank Research Observer* 15, no 2 (Washington, DC, International Bank for Reconstruction and Development, August 2000) 251–64 (reviewing the controversies over the meaning and reach of 'the Washington Consensus').

Prefaced by the assertion that '[t]he poverty and backwardness of Africa stand in stark contrast to the prosperity of the developed world',¹² catalogues of the economic infirmities and privations of Africa vis-à-vis the rest of the world are then laid bare.¹³ In sector after sector, the shortfalls of the continent are identified. More than in any other continent, violent political strife and civil warfare have become routine aspects of daily existence.¹⁴ The direct accountability of the rulers to the ruled is less likely to exist in Africa than in virtually any other region of the world. The institutions for economic management and for delivering social services are weak or non-existent. Infrastructural needs, ranging from health and education to transportation, telecommunications, water and electricity, are met, if at all, at sub-par levels. In short, there is, as succinctly framed in another report on Africa's plight, a twin deficit of 'accountability' and 'capacity'.¹⁵

To address these extensively documented shortcomings, NEPAD adopts two quite distinctive approaches. On one hand, it enunciates in quite general terms principles of governance and state-building. On the other, it identifies particular structural economic issues for which it prescribes quite specific curative measures. As to the former, principles of 'good governance', 'democratic accountability', the promotion of 'human rights' and the 'rule of law' are invoked and referred to,¹⁶ but the extent to which these go beyond being ritualised incantations is far from clear. Precisely what constitutes 'good governance' or 'the rule of law' is nowhere spelled out,¹⁷ and the definition of 'true democracy' is advanced with

¹² NEPAD Doc, n 9 above, at para 2.

¹³ Thus, we are informed that:

In Africa, 340 million people, or half the population, live on less than US \$1 per day. The mortality rate of children under 5 years of age is 140 per 1000, and life expectancy at birth is only 54 years. Only 58 per cent of the population have access to safe water. The rate of illiteracy for people over 15 is 41 per cent. There are only 18 mainline telephones per 1000 people in Africa, compared with 146 for the world as a whole and 567 for high-income countries.

(*Ibid* at para 4.)

¹⁴ At any given time over the last decade and a half, it would have taken up less space to list those African countries that are internally at peace than it would have taken to list those driven by conflict; and the countries that have experienced no significant political or economic strife throughout the last two decades can be confined to fewer than five.

¹⁵ Commission for Africa, n 6 above, at 16 (the Commission for Africa was launched by UK Prime Minister Tony Blair).

¹⁶ See eg NEPAD Doc, n 9 above, at paras 80, 81.

¹⁷ In comparison, international institutions when wrestling with development issues have had little difficulty giving concrete definitions to these terms: see eg International Monetary Fund, 'Good Governance: The IMF's Role' (Washington, DC, International Monetary Fund, August 1997); World Bank, 'Ghana Poverty Reduction Strategy: An Agenda for growth and Prosperity, 2003–2005' (Washington, DC, World Bank, 19 February 2003) 119–43. The institutionalisation of 'democracy', respect for human rights and the rule of law may be markers of 'good governance', as may be the efficient delivery of public services, but so also are such criteria as transparency of policy-making, the decentralisation and debureaucratisation of policy implementation, and, of course, the combating of bribery and corruption.

only slightly more specificity.¹⁸ Strikingly, 'corruption', that *bête noire* of African governance, is referred to only in passing,¹⁹ and receives no attention in the otherwise finely tuned dissections of Africa's ills and proposed remedies. The commitment of the leaders to a new mode of association with their citizens is one of the more dramatic features of NEPAD.²⁰ This commitment is framed in the neo-liberal syntax of the necessity for 'good governance', 'true democracy', 'peace', 'stability' and 'respect for human rights' as elements of 'development'.²¹ The one potentially transformative innovation offered up by NEPAD is the institutionalisation of the periodic monitoring and assessment of the 'progress made by African countries in meeting their commitment towards achieving good governance and social reforms'.²² This so-called peer review commitment, although voluntary, has proven to be one of the more interesting features of NEPAD. But even this feature does not transform an essentially top-down institution into a populist one.

In contrast to the lack of specificity in the articulation of the place and role of the African people in the 'new partnership', NEPAD extensively discusses the roles of African governments and of foreign government donors, international financiers and investors in the restructuring and rejuvenation of the moribund African economies. Notably, the document reiterates the classic approach by post-independence African leaders to the integration of the continent into the world order; that is, depending upon who is telling the story, the superficial or the sophisticated attempt at creating a workable cultural and economic hybrid from a melange of competing (and not infrequently conflicting) traditional values and modern interests.²³ Since Africa won its political independence, much of the continent's energy has been devoted to governmental planning for the economy, and particularly to the identification and adoption of policies that ostensibly would implement the goals allotted to foreign investment

¹⁸ See NEPAD Doc, n 9 above, at para 79.

¹⁹ See *ibid* at paras 52 and 83.

²⁰ The provisions of NEPAD said to constitute 'an appeal' to the people from their leaders (paras 51–8), are remarkable for their vacuousness. They lack substantive demands for or programmes of action. Illustrative are paras 56–7:

56. We are, therefore, asking the African peoples to take up the challenge of mobilising in support of the implementation of this initiative by setting up, at all levels, structures for organisation, mobilisation and action.

57. The leaders of the continent are aware of the fact that the true genius of a people is measured by its capacity for bold and imaginative thinking, and its determination in support of its own development.

²¹ See generally *ibid* at paras 79–84.

²² See *ibid* at para 85.

²³ I explored this approach to policy-making in Maxwell O Chibundu, 'Law in Development: On Tapping, Gourding, and Serving Palm-Wine' (1997) 29 *Case Western Reserve Journal of International Law* 167.

within the economy.²⁴ Almost always, the proposed answer is closer interaction among African governments, their foreign counterparts, multilateral financial institutions and foreign private investors. This answer has not always worked out, but NEPAD's contribution is to suggest explanations for the past failures and explain why, unlike the past, these new efforts will yield desirable results.

III. PAST AS PROLOGUE

NEPAD's obvious objective is to promote African development. Just as obvious is that this is no new project.²⁵ While acknowledging the failures of prior development programmes, NEPAD glosses over that past as if it were irrelevant to the new undertaking.²⁶ The appropriate focus, as NEPAD's framers see it, is the complete integration of contemporary African economies and values into a global system that marches resolutely forward to the drumbeat of neo-liberalism and which would do so with or without Africa:

[T]here is today a new set of circumstances, which lend themselves to integrated practical implementation. The new phase of globalisation coincided with the reshaping of international relations in the aftermath of the Cold War. This is associated with the emergence of new concepts of security and self-interest, which encompass the right to development and the eradication of poverty. Democracy and state legitimacy have been redefined to include accountable government, a culture of human rights and popular participation as central elements.²⁷

The core ideologies of NEPAD thus may be summarised in this way:

1. Africa's development metrics lag well behind those of much of the globe.
2. Correcting the disparities requires Africa to be more actively engaged in the globalisation process.

²⁴ For an insider's account of the early practices involved in government planning in a post-independent African economy, see WF Stolper, in Clive S Gray (ed), *Inside Independent Nigeria: Diaries of Wolfgang Stolper 1960-1962* (Aldershot, Ashgate, 2003).

²⁵ See eg Gino J. Naldi and Konstantinos D. Magliveras, 'The African Economic Community: Emancipation for African States or Yet Another Glorious Failure?' (1999) 24 *North Carolina Journal of International Law and Commercial Regulation* 601; Chibundu, n 24 above; Oladele Q. Akinla II, 'Economic Reform in Sub-Saharan Africa: The Changing Business and Legal Environment' (1987) 7 *Boston College Third World Law Journal* 19.

²⁶ Past programmes are cursorily dismissed as follows: 'For a variety of reasons, both internal and external, including questionable leadership and ownership by Africans themselves, these [previous efforts] have been less than successful': NEPAD Doc, n 9 above, at para 42.

²⁷ *Ibid* at paras 42-3.

3. Such active engagement demands both internal and external reforms.
4. African leaders must spearhead these reforms by adopting and promoting, internally, liberal political institutions, and, externally, liberal economic practices.
5. African leaders should co-operate with each other, and they should mobilise the citizenry in the process.
6. Reforms must embrace democratic principles, respect for human rights, good governance and the rule of law.
7. Reform requires promoting the participation of foreign donors, multilateral financial institutions and foreign investors in the economic development of the continent.
8. African governments must also adopt flexible economic policies with regard to trade and investment, including participation in World Bank-prescribed poverty reduction strategies, and adoption of 'public-private partnerships'.
9. The affluent members of the international society have an obligation to assist Africa in its development objectives, and African leaders appeal to them to meet this obligation.
10. Progress in the implementation of these NEPAD objectives should be reviewed periodically by ad hoc gatherings of technocrats and heads of state.

These ideologies argue for a pragmatic approach to development; that is, a process that accepts and reflects contemporary thinking and power distribution. The framers of NEPAD eschewed interminable philosophical debates as to what constitutes 'development' in favour of practices that are dictated by what is doable. Arguably, this approach has yielded results. As indicated at the outset of this chapter, concern over and the desire to meet Africa's needs again are becoming universalised.²⁸ Recent data coming out of the international financial institutions tout improved gross domestic product growth, with the continent taken as a single entity.²⁹ Occasionally a particular business success story is vaunted as the product of NEPAD.³⁰

But it remains far too early to assign success to NEPAD, even on its own terms. Expressions of desire do not necessarily translate to resource

²⁸ See nn 1-6 above and accompanying text.

²⁹ See eg Trevor A Manuel, 'Africa and the Washington Consensus: Finding the Right Path' *Finance and Development* (Washington, DC, September 2003) 18 (asserting that average 'economic growth' in Africa over the last year was 3.1% and projecting 4.2% growth in the subsequent year).

³⁰ See eg Carlos Tejada, 'Textile Giant Learns Downside of Globalisation' (2003) *Wall Street Journal* (New York), 14 August, A1; KJ Kelley, 'Trade Tensions emerge as AGOA Praised in New York' (2003) *The Nation* (Nairobi), 10 December.

transfers. Recent data on foreign investments in Africa, for example, indicate continued relative underperformance.³¹ Indeed, if one excludes from foreign investment flows those directed to the extraction of primary products, the shortfall is glaring. Nor is there any demonstrable correlation between the list of foreign investment recipients and that of countries which ostensibly promote 'democratic practices', 'human rights' or 'good governance'. Indeed, the most obvious correlation one can establish for foreign investment inflows is their inexorable direction to the economies and countries that are dominated by the extraction of primary resources, especially crude oil.³² Further, for every story of an alleged business success due to NEPAD, there is also a story blaming NEPAD for failure.³³ And it is surely not irrelevant to point out that Latin American countries, after 20 years of putting their faith in the neo-liberal miracles of globalisation and foreign investment, have begun to question the creed.³⁴

This is not, however, a chapter on the physical or material results that NEPAD has produced. As previously noted, the dominant focus of this chapter is to discuss the ways in which the ethos of development exemplified by NEPAD fits within and contributes to the international legal order. Meaningfully discharging this task demands some elucidation of the structure of the flow of ideas (and their institutionalisation) between the centres and peripheries of the global society. In the standard division of knowledge that has come to be characteristic of the framework that shapes intellectual discussion, so-called peripheral societies such as those in Africa are viewed primarily as generating the intellectual puzzle to be solved. They do so by posing the existential practical problem of poverty and survival. The provision of solutions is generally seen as the function of scholars who are steeped in the rational discourse of post-scientific

³¹ See eg United Nations Conference on Trade and Development, *World Investment Report, 2003—FDI Policies for Development: National and International Perspectives* (New York and Geneva, United Nations, 2003) 34; United Nations Conference on Trade and Development, *Economic Development in Africa: Rethinking the Role of Foreign Direct Investment* (New York and Geneva, United Nations, 2005) Table 1 (Africa now accounts for 2%–3% of global flows of foreign direct investment, as compared with 6% in the mid-1970s, and 9% of 'developing' countries flows, as compared with 28% in 1976) (hereinafter 'UNCTAD, *Rethinking FDI*').

³² See UNCTAD, *Rethinking FDI*, n 31 above, at 2–3. The 24 countries classified by the World Bank as 'oil and mineral dependent' over the last two decades have accounted for three-quarters of inflows of foreign capital into Africa. In its 2003 annual report to the Congress, the Office of the US Trade Representative explained that a 5.8% increase in US foreign investment in Africa in 2001 was driven largely by investments in the petroleum sector. See Office of the US Trade Representative, *2003 Comprehensive Report on US Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act* (2003).

³³ See eg S Ojo, '83,000 Jobs Lost on Account of WTO Membership' (2003) *Daily Trust* (Abuja), 5 September.

³⁴ This is generally taken to be the lesson of sweeping 'left-wing' victories in post-2000 national elections in such varied Latin American countries as Argentina, Bolivia, Chile, Peru, Uruguay and Venezuela.

liberal thought; that is, those trained in the 'open-minded' and 'rigorous' habits of inquiry: theorising, modelling validation or falsification through close interrogation of evidence. Much of the process of abstraction and distillation of theories and models on which efficacious solutions are seen to depend occurs within a well-worn framework of essentialised 'objective scientific' methodology that presumes as universal those relationships of cause and effect that have been observed and replicated within discrete societies, notably those that have been most minutely studied: the industrial societies of the West.³⁵ My task here, then, is to apply this methodology to evaluate the causal relationship of Africa's new-found partnership for development and the embrace of African leaders and their project under international law.

NEPAD's most significant contribution to the international order may well be the challenge that it poses to the standard text of the 'colonialisation of knowledge' that has just been described. African leaders, ignoring structural and post-structural critiques of the neo-liberal world order, fully embraced that order and sought to make it work for their societies. NEPAD was bred and nurtured in the bosoms of African academics and leaders. Admittedly borrowing exhaustively from the dominant language of neo-liberalism, it nonetheless seeks to address 'African conditions' as seen through African eyes. Moreover, as envisaged in the transcendent thesis that seeks to hold together the chapters in this volume, NEPAD may represent a reverse of the traditional North-South flow of knowledge. Certainly, international politicians and other friends of Africa have invoked this attribute of NEPAD in selling it to others. Typically, NEPAD has been portrayed as indicative of the emergence of a new responsible and accountable African leadership. As empowering as the claim may be—indeed, precisely because it constitutes a radical departure from long-standing global experience—it demands close contextual examination. In articulating and making sense of the embrace of NEPAD, it is worth asking and evaluating the extent to which it is part of the continuity of development ideology and the extent to which it breaks from that ideology. With regard to the latter, it is equally important to explore the foundations of the break and, therefore, the extent to which NEPAD offers new frameworks for those seeking alternative avenues to development. More directly put, does the simultaneous teleological and practical embrace of the dominant global ideology represent a more fruitful course for development than the dialectical approach of concurrent ideological criticism but practical acceptance of the seemingly inevitable? Is a 'third way' possible?

³⁵ For an elucidation and critique of this worldview as applied to economic development issues, see eg Frederique Apffel-Marglin and Stephen A Marglin (eds), *Decolonizing Knowledge: From Development to Dialogue* (London, Oxford University Press, 1996).

A. Accounting for Development

NEPAD is a 'development' project. As such, it falls within a genealogy of government-inspired and government-promoted undertakings that date back at least to the birth of the post-colonial African state and, in many instances, farther back.³⁶ Although NEPAD resolutely avoids engaging with that history, the plan of action that it proposes cannot be that readily de-linked from the continent's past experience.

NEPAD takes a catholic approach to the concept of development. Although it never attempts to define the term, it is apparent that its proponents seek to cover as many aspects of 'society' as they can conceive. Their analyses and proposals thus run the gamut from the need to engage in the social and political mobilisation of the population, to issues related to culture, agriculture, education, health, trade, investment and economics generally. This approach undoubtedly is intended as a response to a quite common criticism of development theory that was dominant prior to the 1990s: namely, that it focused too exclusively on economic issues.³⁷

A second contribution of NEPAD, then, is to demonstrate that, contrary to popular belief, African leaders are neither oblivious nor insensitive to academic or intellectual criticism. If NEPAD represents anything, it is the transparent responsiveness of those leaders to the changed intellectual and political climates of the last two decades from reflexive nationalism to accommodative neo-liberalism. But it may be asked whether the pendulum has not swung from one extreme to another, and particularly so when the idea is expressed in terms of governmental involvement.

To be sure, 'development' is not a fixed or static concept. Yet putting the term in service of all aspects of human existence vitiates its force as an explanatory or mobilising tool. In the particular context of the immediate aftermath of decolonisation, it is abundantly clear that the issues, the improvement of which governments were primarily concerned with, related to the material well-being of the population. These concerns were readily framed in economic terms. First and foremost, societies were confronted with a paucity of fungible resources. Such resources might consist of tangible assets or readily tradable intangibles, such as intellectual know-how; they might be available for immediate disposal, or might simply be available on call. What is important is that a society's needs and desires for consumables can be met either by direct consumption or by transfer. Liberal economics is founded on the quantification of this form of wealth; its most hallowed indicator is a society's per capita income. So defined, development for post-colonial African societies has

³⁶ See eg 'Editor's Introduction' in Stolper, n 25 above, pointing out the existence of a Federal Ministry of Economic Development in Nigeria prior to its independence.

³⁷ See eg Chibundu, n 24 above.

hued closely to policies that are intended to increase aggregate material wealth. Foreign aid and foreign investment—the risking of capital by foreigners—have always appeared to be sources of a free lunch in furtherance of this objective. In emphasising the accumulation of wealth through foreign participation in African economies, NEPAD has added its voice and blessing to the strong neo-liberal creed in the efficacy of foreign direct investment and trade flows as promoters of the development process. Of course, NEPAD adds wrinkles that at first blush might appear novel: it expresses a strong preference for ‘public-private partnerships’ and for a strong role for the market. But even these novelties, on closer inspection, may not be quite as fresh as they seem.³⁸

It is now equally well settled that ‘development’, even when viewed solely in economic terms, embraces more than wealth accumulation. Although there may be disagreements about what more may be called for, three additional elements have come to influence conceptions of development: (1) fairness in distribution; (2) diversification of sources of wealth and (3) sustainable growth. While these elements of development, in varying degrees, are to be found in NEPAD, they do not receive the same sort of sustained attention that wealth accumulation does. In this sense, NEPAD is a remarkably orthodox—if not neolithic—project.

The recognition that integral to the evaluation of the success of economic development policies is an assessment of the fairness of wealth distribution within a society dates back to at least the 1970s. At about that time, liberal economists, relying primarily upon evidence from East Asia, began to argue and to demonstrate that there existed a positive correlation between the relative equality of wealth distribution within a society and the economic performance of that society.³⁹ Given the ubiquity of the ideological conflict between the communist and capitalist camps, this observation could not be readily translated into a prescription for egalitarian policies. Economists in Western-dominated financial institutions such as the World Bank did the next best thing. They argued for social policies that were aimed at improving the lot of the most vulnerable members of society. Out of this prescription emerged such concepts as the obligation of a developing society to provide its population with a ‘minimum caloric intake’ or the satisfaction of ‘basic needs’.⁴⁰ These policies, far from threatening the stability of the capitalist order, were readily reconcilable

³⁸ See n 56 below and accompanying text (discussing the ‘marketing board’ as an early case of the ‘public-private partnership’ concept).

³⁹ For a succinct summary of the debate, see Gustav Ranis, ‘The Evolution of Development Thinking: Theory and Policy’, Yale Economic Growth Center Working Paper no 886 (prepared for the World Bank Annual Conference on Development Economics, May 2004) 12–15 <<http://ssrn.com/abstract=551645>> (accessed 30 January 2006).

⁴⁰ *Ibid.*

with the liberal welfare state that had become the dominant organising philosophy in the industrialised West. In more recent years, this groping for the appropriate linkage between fair distribution and wealth maximisation has been manifested in the popularity of 'micro-credit lending'.⁴¹

Despite this rich history, an institution that is ostensibly committed to a 'partnership' between African rulers and the African population pays remarkably little attention to issues of economic distribution. There is very little discussion in NEPAD's wide-ranging document of issues of income or wealth distribution, or of a special place for the concerns of the especially vulnerable. Women, for example, are identified as a vulnerable group, but less so in economic than in socio-political terms.⁴² Rural populations, more than any group in African societies, represent the most vulnerable segment of the population. Yet, to the extent that NEPAD explicitly addresses the particular needs of this group, it is in its generalised treatment of agriculture.⁴³ Women and the rural population might be expected to benefit, of course, from any general improvement in the accumulation of wealth within African societies, but the contention of proponents of the fairer distribution of wealth is that particularised policies intended to bring about this outcome should be adopted because they promote economic growth. But NEPAD's omission is hardly surprising. As I shall show later, de-emphasising this aspect of economic growth is consistent with prior African practice. Thus it helps to show that, whatever its merits may be, NEPAD remains mired in a particular conception of development, a conception that may be traced all the way back to the early years of post-independence, African government-led development planning.⁴⁴

A distinctive feature of virtually all African economies is their overwhelming dependence upon one or two primary products. For a handful of countries, national wealth is generated almost entirely by the extraction and export of such raw materials as crude oil, copper, gold and diamonds. For a few others, natural wealth is derived from the cultivation and export of 'cash crops' such as cotton, cocoa, coffee, groundnuts and tea. In all cases, the well-being of the national economy is determined by the caprice

⁴¹ For one of the few efforts to link micro-credit financing with structural issues in development economics, see Katherine Spengler, 'Expansion of Third World Women's Empowerment: The Emergence of Sustainable Development and the Evolution of International Economic Strategy' (2001) 12 *Colorado Journal of International Environmental Law and Policy* 303. On micro-credit financing as a strategy of development, see eg Isobel Coleman, 'Defending Microfinance' (2005) 29 *Fletcher Forum of World Affairs* 181; Kenneth Anderson, 'Microcredit: Fulfilling or Belying the Universalist Morality of Globalising Markets?' (2002) 5 *Yale Human Rights and Development Journal* 85.

⁴² See eg NEPAD Doc, n 9 above, at paras 49, 118, 157.

⁴³ See *ibid* at paras 135, 136, 157.

⁴⁴ See III.B below.

and cyclicity of foreign demand. In such a context, 'development' mandates did not simply increase production but, more importantly, diversification. The focus of that diversification has been away from raw materials and towards industrialisation. NEPAD endorses and seeks to perpetuate this policy orientation. Among other things, NEPAD wholeheartedly embraces international agreements such as those between the European Union (EU) and the Afro-Caribbean and Pacific (ACP) countries⁴⁵ and the US-sponsored African Growth and Opportunities Act.⁴⁶ These arrangements enshrine trade as being fundamental to development. Within this framework, assisting African countries to diversify their economies by moving from reliance upon extractive to industrial production is seen as an advancement over prior policies.⁴⁷ Moreover, to a greater extent than in previous phases of African development,⁴⁸ NEPAD seeks to integrate the acquisition of knowledge, scientific know-how and managerial skills as elements of the development process.⁴⁹ This latter emphasis reflects in large measure the emergence—and, indeed, convergence—of technology and of globalisation as driving forces in the development arena.

A less well-developed content of the idea of development is the presence of what might be referred to as internally generated self-sustaining growth. The idea is allied to that of diversification, and originates from the observation that certain economies, regardless of their aggregate wealth, are better equipped to deal with temporary shocks than are others. What makes Australia, one might ask, better able to adjust to changing patterns of trade and investment flows than Argentina? The openness or integration of the economy within the international system, its mix of products, the entrepreneurial bent of the population, the availability of reserves and the confidence in the economy are all doubtless factors, but none of them, singly or in combination with others, sufficiently explains the observed disparity between the capacity of some economies to bounce back easily from temporary shocks and the tendency of others to linger for prolonged periods in a funk. Whatever may be the explanation, it is the case that a gauge of development is the extent to which an economy's resilience assures that temporary shocks remain precisely that, and that government policies will operate effectively to limit the duration of such shocks.

⁴⁵ This agreement, popularly referred to as 'the Lomé agreement', is now in its fifth iteration and serves as a framework for facilitating 'aid' from the EU as well as trade between it and the ACP countries. See generally Nsongurua J. Udombana, 'Back to Basics: The ACP-EU Cotonou Trade Agreement and Challenges for the African Union' (2004) 40 *Texas International Law Journal* 59.

⁴⁶ See African Growth and Opportunity Act of 2000, Pub L No 106-200, 114 Stat 252 (18 May 2000) (codified at 19 USC s 3701 *et seq*).

⁴⁷ See NEPAD Doc, above n 9, at paras 19, 20, 156.

⁴⁸ See III.B below.

⁴⁹ See NEPAD Doc, n 9 above, at para 124.

The ability confidently to rely upon the responsiveness of the economy to policy prescriptions is a measure of development. NEPAD does not explicitly address this component of the development project, but some of its prescriptions may well promote this objective. The repeated emphasis on 'state capacity' building, for example, may be understood in this light.⁵⁰ Similarly, confidence in the actual practice of the 'rule of law' as a controlling principle of governance is likely to help embed this component of development.

Beyond these classical gauges, our post-industrial age has focused on yet another measure of development: sustainable growth. This criterion should be distinguished from the previous factor because its focus is on the conservation of resources. Promoted primarily by the 'environmental movement', the thrust of the philosophy of sustainable growth is that development, as traditionally conceived, privileges consumption over conservation. In the quest for the short-term accumulation of material wealth, societies in development ignore the destructive effects of unconstrained growth. Although initially articulated in the 1970s, the criterion of sustainable growth as an element of development gained prominence in the 1990s. Specifically, it has been endorsed by, and has become a central platform of, the international environmental movement.

In keeping with NEPAD's overall emphasis on Africa's complete integration into the global community, sustainable growth is readily embraced.⁵¹ Less obviously explained, however, are the means for implementing this objective. Nor is this omission, upon closer reflection, surprising. Conservation is a good that, in the abstract, surely is desired by all. By insisting upon the optimal allocation of resources to their most productive uses, 'efficiency', that ubiquitous locomotive of economics, already embraces conservation. What is distinctive about sustainable growth, therefore, is not its embrace of conservation, but that it encourages forgoing consumption in the here and now in order to preserve the resources for the future. This approach is, at a minimum, in tension with the self-regarding rational choice model that is at the heart of traditional economic growth theory. To the extent that orthodox development theory is built upon the current consumption of resources—surely an unavoidable conclusion in industrialisation-led projects—proponents of development, in the African world, are in fact arguing for increased consumption. For conventional development theory, then, conservation is an element of the efficient utilisation of limited resources, while for sustainable growth theorists, it is an end, in and of itself. NEPAD does nothing to reconcile these different pulls of the protagonist positions that it takes both with

⁵⁰ See *ibid* at paras 86–7.

⁵¹ *Ibid* at paras 138, 139, 140, 141, 142.

regard to orthodox development theory and to sustainable growth. In view of the more substantial specificity that there is in its articulation of the means for realising the former, one can only conclude that its invocation of sustainable growth, like those of 'good governance', 'human rights' and the 'rule of law,' should be viewed more in terms of their rhetorical and mobilising force than as a clearly laid path to a particular prescriptive policy objective.

The conclusion that seems inescapable is that while NEPAD has sought to update African leaders' conception of development to include, among other ideas, the relevance of social institutions and longer-term perspectives, prescribed policies continue to be centred around the need for capital accumulation. This approach, which might be termed the accumulation-plus syndrome, would seem to distinguish NEPAD from prior development approaches that were centred almost exclusively on capital accumulation alone. By focusing upon the elements of the 'plus', Africa's current elites, whether civil service bureaucrats, presidential advisers, international institutions' technocrats and/or university professors, have sought to portray NEPAD as an approach to development that is distinct from previous futile efforts.⁵² This new approach, we are assured, is more likely to succeed because Africans have agreed to be enfolded in the protective cocoon of globalisation. To appreciate the strengths and flaws of this argument, it is worth exploring the prior approaches that post-independent African societies adopted towards their development, with the object of seeking to understand why those efforts have proven to be ineffective. Against the backdrop of this understanding, it becomes possible to explore with nuance and realism the extent to which NEPAD, which symbolises the full embrace of neo-liberalism by African stakeholders, is contributing meaningfully to our contemporary international order.

B. Prior Development Practices

By my count, in the four decades of political independence that preceded NEPAD, at least four distinct phases (or strategies) of development can be identified. Each phase was an experiment in integrating Africa into the global order. Each subsequent phase was an acknowledgement of the failure of the preceding experiment and optimistically promised a different and better outcome.

⁵² See Udombana, n 7 above. Compare Committee on International Relations, 'A New Partnership for Africa's Development: An African Initiative', Hearing Before the Subcommittee on Africa, US House of Representatives (18 September 2002) 107 Cong, 2d Sess (statements of several participants).

i. Development by Central Planning

As a prelude to, and in the immediate aftermath of, independence, emerging post-colonial African governments viewed as central to their identity the transformation of their societies from predominantly rural and agrarian to urban and industrial. This desire simply reflected the received wisdom that wealth was to be found in modern cities and industrial plants, a belief that doubtless grew out in part from the seemingly obvious comparison of the powerful metropolitan country to the weak and impoverished colony. Development, often framed as a move from the latter to the former,⁵³ consisted therefore in co-ordinated planning, usually of the indicative type,⁵⁴ which would facilitate the realisation of these objectives.

Two aspects of the planning process were especially noteworthy. First, the government sought to 'mobilise' domestic resources by bringing under its control the extractive industries that generated the surpluses on which development plans were grounded. Where the products were sub-soil or offshore (for example, coal, copper, crude oil, diamonds or gold), the government could exercise, under the inherited laws of the departing European colonisers, direct ownership and control of the surplus. Where the surplus was generated by the production of cash crops, however, governmental control could be exercised only indirectly. Here, again, the departing colonial state left behind a very serviceable edifice, the 'marketing board'.⁵⁵

The marketing board can be viewed as a prototype of the now highly popular concept of a 'public-private partnership', the embrace of which by NEPAD is unequivocal. A statutory entity, the marketing board mediated the interaction of the domestic producer with the ultimate foreign consumer by purchasing produce at a more or less predetermined price and selling the product at the market-determined price. In its benign form, it smoothed out for the producer the inevitable large cyclical swings in price to which agricultural products are especially prone. When properly used, therefore, the resulting stability of price could serve the ends of

⁵³ The classic statement is Walt Whitman Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (New York, Cambridge University Press, 1960).

⁵⁴ Compare Stolper, n 25 above (discussing the putting together of Nigeria's first five-year development plan. Nigeria was to have four more of these before the practice went out of fashion. 'Indicative planning', popularised by France, should be distinguished from Soviet-style centralised planning. While both sought to take inventory of available resources, the former flexibly assigned or projected the uses of those resources over a specified period, while the latter sought to allocate those resources within a much more rigid formula. Furthermore, indicative planning did not attempt the level of centralised command control over resources that was attempted under Soviet-style planning).

⁵⁵ See generally PT Bauer, *Reality and Rhetoric: Studies in the Economics of Development* (Cambridge, MA, Harvard University Press, 1984).

development by removing a potential bottleneck to production, namely the disincentive of price uncertainty. But its use was rarely limited to its end. A less benign end was its use as a means of appropriating for the government as much of the surplus generated by cash crops as the government could get away with. The marketing board did this by consistently paying producers at a predetermined rate that had little or no relation whatever to market prices, and that was sometimes quite arbitrarily fixed on the spot, without prior notice. Because this form of taxation was often easier to administer, and its results for government coffers more predictable than income or excise taxes, the use of the marketing board as a revenue source for development became quite popular. And it was also a favourite source for corruption.

Consequently, the resources appropriated by the government, whether through direct ownership or via the marketing board, ostensibly were to be ploughed back into the economy through 'development corporations'. These were entities that controlled vast national resources, prioritised national needs and had direct responsibility for co-ordinating available resources and needs.⁵⁶ In time, these institutions became the embryos for 'parastatals', which were to dominate the next phase of Africa's development strategy.

The second element of development planning in the first phase essentially was regulatory. The thrust here was on promoting industrialisation by facilitating foreign investment in the economy. Subscribing to the then-popular theory of economic growth through import substitution-led industrialisation,⁵⁷ African governments followed their Asian and Latin American counterparts in adopting a variety of incentive-based policies that were aimed at attracting foreign investment into the manufacturing sectors of their economies. Among such policies were the use of tax holidays in the so-called pioneer sectors⁵⁸ and the building of industrial parks and of 'processing zones'. Finally, it was not uncommon for these governments to use ad hoc regulatory measures, such as temporary increases in tariffs, and outright quantitative restrictions on imports as means to achieving specific trade goals.

ii. *Indigenisation as Development*

By the close of the 1960s, the worldwide economic boom for which the decade has become famous was beginning to fray.⁵⁹ The relative

⁵⁶ See eg Stolper, n 25 above. I use the word 'national' here in quite a loose sense. In federal societies, regional or state bodies may substitute for national ones.

⁵⁷ See eg Ranis, n 40 above.

⁵⁸ *Ibid.*

⁵⁹ Compare Robert Brenner, *The Boom and the Bubble: The U.S. and the World Economy* (New York, Verso, 2002) (presenting an economic history of international economic developments in the post-World War II period).

prosperity of the early years of independence had generated hopes that, by the end of the decade, were souring into disappointment. A regime of unimpeded industrialisation was becoming a mirage. Political stability proved to be elusive as civil wars and military coups d'état were becoming the rule rather than the exception. Even outside of Africa, much of the world seemed in ferment. The West was swept by a 'counterculture' revolution, and in the communist world, political dissent was becoming increasingly visible.

This was the setting for a phenomenal rise in the price of commodities, a phenomenon that had quite contradictory consequences for Africa's development policies. For those few countries whose products were in high demand—notably the producers of crude oil, copper, bauxite, tin and gold—there was the unparalleled inflow of capital, which, in the long run, was to make their economies entirely dependent upon that single commodity. But for the vast majority of countries, the cost of meeting the import bills became significant drains upon national resources, leading ultimately to the incurring of substantial debts that have continued to influence the structural performance of these economies, even 30 years later. For all countries alike, and indeed for much of the world, the strains of price inflation brought to the forefront the power and influence of multinational corporations as essential intermediaries in the global flow of goods and services. Taking on the multinational corporation became a release valve for all. In African countries, responding to the 'challenge' of the multinational corporation became an integral and defining component of 'development'.

The response took the form of what might be referred to as 'indigenisation'. The commodity-rich countries sought to exercise greater influence over—and, incidentally, to appropriate more of the surplus value—of their resources by insisting upon greater ownership and control of the entities responsible for the extraction, transportation and distribution of their national patrimony. These countries employed the renegotiation of 'concession agreements' as leverage for forcing multinational companies to take them on as joint venturers in the exploitation of their national resources. Parastatals proliferated as the government rapidly was transformed from an incentive-giving regulator into a co-venturer and active market participant.

A similar nationalist impulse led African governments to insist that nationals be given a broader role even in those sectors of the economy in which the government itself did not desire active participation. A typical approach involved dividing up the economy into segments and insisting that certain segments be completely or partially under the control of nationals.⁶⁰ Thus, foreigners might be forbidden from owning small retail

⁶⁰ See eg Thomas J Biersteker, *Distortion or Development? Contending Perspectives on the Multinational Corporation* (Cambridge, MA, MIT Press, 1978).

stores, allowed no more than a minority interest in small manufactures such as the production of alcoholic beverages, but permitted a controlling interest in complex manufacturing, such as that involved in the production of pharmaceuticals. The obvious underlying ideology was that development entailed the transfer of knowledge to local stakeholders and that such knowledge is best acquired through practice. But the implementation of this belief was constrained by an equally powerful reality: an innate belief in the sanctity of property rights. Whatever may have been the leftist rhetoric of African political leaders, their governments operated within the realm of, and with respect for, capitalist economic realities. Transfer of ownership required compensation, and this meant finding local capital with which to compensate foreign owners. Effectively, this meant that, as a practical matter, much of the brunt of indigenisation was borne not by large multinational companies, but by small entrepreneurs, usually from other 'third world' societies, notably the Lebanese, Indian-Pakistani and Greek diaspora.

As a first impression, the indigenisation/nationalisation phase of development might be viewed as embodying distinctively different principles from those that controlled development in the first phase. After all, while the latter had as a core objective the attraction of foreign investment, the former was less welcoming and indeed focused upon eliminating it in some sectors. But closer inspection reveals that the discord lay more in philosophies of implementation than of objectives. And, in turn, the routes of implementation were dictated, in both phases, less by strong ideological commitments to a particular mode of development than by the need to respond to external stimuli. Industrialisation remained the central pull of development, but while early development theorists suggested this could be achieved through tax incentives and import substitution, later theorists saw salvation through increased local ownership. Both perspectives were pioneered in the main by Latin American scholars and politicians, and African leaders embraced them as part of a global trend. Among these leaders and their policy advisers, the extent to which local ownership may have undercut the push for capital accumulation appears not to have generated much discussion, probably in part because its effect was to shift wealth to the urban population, a group that also had been favoured in the first phase of the development process.

Similarly, a frequently overlooked consequence of both the planning and indigenisation phases of African development policies is that they institutionalised—if they did not create—a deep-seated environment of corruption. Both concentrated not only regulatory but, even more importantly, distributive power in the central government. Participation in and control of central government became the easiest path to wealth. Prior to the 1990s, virtually all of Africa's civil wars were fought in resource-rich countries. In this sense, such wars differ from the civil

wars of the 1990s, which were essentially conflicts of desperation rather than of distribution.

iii. African Solidarity as Development

By 1980, the indigenisation phase had fizzled out. Africa, like much of the rest of the world, was being swept into the vortex of what came to be known simply as the debt crisis. The commodity price rises of the 1970s and the monetary responses to counteract them by the users had led first to inflation and then to stagnation. These, in turn, generated political consequences, none of which was more crucial than the rightward shift in political attitudes in the West, most graphically illustrated by the sweeping victories of Ronald Reagan and the Republican Party in the US and Margaret Thatcher's Conservative Party in the UK. This 'neo-conservative' climate heralded a monetarist approach to economic policies by Western governments and the international financial institutions. The thrust of these policies was to drain liquidity from the international system. Developing countries that had relied extensively on borrowing during the second half of the 1970s felt the brunt of the economic austerity. To a greater extent than most, African countries lacked the internal and institutional adjustment mechanisms for coming to grips with the changed environment.

Almost instinctively, in this environment of 'each for each', African countries sought to avoid their seemingly naturally assigned place as the 'hindmost' by seeking refuge in the notion of continent-wide solidarity. Beginning with the Lagos Plan of Action and continuing through the Abuja Declaration, African leaders aspired to a continent-wide economic policy that would restore some of the lustre that had gone out of the idea of development. The plans and programmes proposed by the various declarations, communiqués and agreements had as their core objectives the transcendence of the numerous (and not infrequently ineffectual) sub-regional economic associations (or 'communities') into a continent-wide co-operative venture. The ambitions started modestly enough, but escalated, usually in a rhetorical mimic of developments in Europe. Consultation with regard to policies, for example, metamorphosed into harmonisation, and ultimately—but only further down the road, of course—into the adoption of a single rule, such as that for a common currency.

As an abstract proposition, the yearning for continent-wide solidarity is completely understandable. More than in any other continent, African national units are less expressions of geography or of internal histories than they are of externally imposed political agreements. There simply is no escaping the reality that these borders originated from indifferent line-drawings on poorly constructed maps by distant politicians with no

knowledge of (or, for that matter, interest in) the histories or cultures of the continent. And, tragically, post-independent national borders have been and will continue to be maintained—under the doctrine of *uti possidetis*—by a desire for stability, even though the consequence has been anything but. Transnational co-ordination (or, even better, outright harmonisation) of policies is thus a means of transcending the shortcomings of the arbitrary imposition of nationalism while retaining it.

In practice, however, preaching solidarity often proves to be immeasurably easier than living it. If individuals find it difficult to subordinate self-interest and identity for group welfare, it is doubly difficult for national polities and their political leaders to do so. These leaders, typically, are in the business of putting out fires, or at best planning for the short run. Planning for and implementing continent-wide harmonisation policies require thinking about the long run, and this, in turn, entails possessing a good deal of information about the future—or at least relevant predictive capacities—and, of course, technical competence in planning and implementation. And, perhaps most importantly, being able to plan for the future requires a stable and predictable present environment.

Africa in the 1980s can hardly be characterised as having been stable. Aside from the usual unpredictable coups d'état, civil wars and natural disasters, extraordinarily poor management of the economy coupled with the austerities of the new monetarism of the international system created a restive population. Famine became endemic, and structural adjustment policies undermined notions of employment stability in the industrial and service sectors of the economy. These presented enough challenges to African governments, so that it is hardly surprising that the programmes of the Lagos Plan and of the African Economic Community remained essentially aspirational. Indeed, the structural adjustment prescriptions of the International Monetary Fund and the World Bank were much more significant determiners of Africa's development policies in the 1980s and early 1990s than were the solidarity proposals of the Lagos Plan.

iv. Globalisation and Contemporary Development Plans

Two watershed phenomena shaped the 1990s, and both have had significant impacts on how African leaders have come to define *development*. The first was the complete disintegration of the former Soviet Union as a competing axis of power to the US. The second was the emergence of a mass consumer market for the technologies of the silicon-based integrated circuit and the network of allied services that they made possible. The collapse of the Soviet Union meant that, for the first time since their political independence, African leaders did not have to make a conscious choice between the competing ideologies framed by communism, on one hand, and liberal capitalism, on the other, as to the role of the state

and its relationship to society. They had a pre-packaged answer in the declarations emerging out of Washington and the academic institutions of North America and Western Europe. Free markets are efficient; democracy is both a right of the people and humane; the 'rule of law' is efficient, humane and just; and all three explain the superiority and triumph of Western capitalism both over time and in the deadly struggle of the last 50 years. Emerging countries that seek to develop and be successful must therefore embrace this proven mode of development.

Even if African societies were not already prone to co-opting (at least rhetorically) the dominant ideology of the moment, two factors rendered their embrace of the new template virtually inevitable. In the first place, adoption of these principles was made an element of the conditions for the extension of economic assistance to these countries.⁶¹ A decade and more of radically increasing impoverishment left these societies in no shape meaningfully to debate the requirement. Second, and in any event, the triarchy of 'democracy', 'the market' and the 'law' independent of any coercive measures to impose them had gained widespread general acceptance in the global marketplace of ideas. It is true that the level of their actual practice by societies was suspect, but in regions as historically, culturally and politically dissimilar as Latin America, Eastern Europe, the Indian subcontinent and East Asia, intellectuals and governments subscribed to these ideas and indeed presented them as normative ideals. For the first time since the principles of self-determination and the outlawry of war among nation-states swept through Europe and Asia at the turn of the twentieth century, there now seemed to be another truly unifying set of global principles.

The universalisation of these principles was facilitated by the second distinctive phenomenon of the 1990s: the mass diffusion of computer and satellite technology-based communication networks. The revolution in information exchanges brought about by the ready availability of the computer and the orbiting satellite has made it easy to transmit information at virtually any given time from virtually any spot on the globe to a tailored audience, and to have that information more or less instantaneously received and acted upon by that audience. The result is that the entire globe appears as an open book in which any and all with the desire to do so are entitled to inscribe their preferences. The more affluent we are, the more we come to see our particular preferences as

⁶¹ See eg African Growth and Opportunity Act of 2000, n 47 above. The EU, the IMF and the World Bank were less categorical in insisting that these were essential for obtaining disbursements, but they made it equally clear that they viewed adoption of these principles as integral to the realisation of their development missions. The United Nations Development Programme sanctifies the principles in its annual *Human Development Reports*. See eg United Nations Development Programme, *Human Development Report* (New York, Oxford University Press, 2004).

universal laws that must command obedience. And so institutions and practices that in the past might have been understood for what they are, expressions of cultural experiences and predilections that are entitled at most to respectful evaluation by the outsider, are now presented as exemplary truths binding upon all. And this perspective is held not only by affluent Westerners, but also by overawed non-Westerners, who find it more redeeming to believe that their poverty is less the result of their incompetence—poor managerial skills, for example—than that the wealth of the West is the result of the latter's technological prowess. The answer to development is thus to acquire that Western technological know-how and the institutions that have made it possible.

And since 'globalisation' is 'inevitable,' all might as well join it and get the most out of it. That, clearly, is NEPAD's perspective.⁶² But while NEPAD is blunt in stating the forces at work in its creation, it should by now be evident that these forces, at core, are no different than those that framed earlier development episodes in Africa. African leaders see development primarily as a tool that would make their societies more like the West. In this sense, 'development' is simply an aspect of a much-evaluated sociological phenomenon, that of modernity.⁶³ Industrialisation is the core of the process. The process is also universal, borrowing ideas as readily as capital from whoever produces them in surplus. It may be helpful to tailor the product to the particular needs of a society, but this is a secondary requirement; for the same basic ideas of centralised political leadership, social open-mindedness and, above all, economic efficiency drive the modernisation process. The purpose of this chapter, however, is not to weigh in on the merits of modernity or even of development as an objective, but to examine the propriety of the processes NEPAD employs to realise its objective. It is to this end that I now turn.

IV. PROCESSES OF DEVELOPMENT

From the brief survey just presented, it should be obvious that one of the cardinal teachings of NEPAD is the rejection of the core philosophy of the first two eras of post-colonial African economic development: central planning and national/indigenous ownership and control of domestic resources. At the same time, NEPAD has subscribed fully to

⁶² See NEPAD Doc, n 9 above, at paras 1-2:

The Programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world ... The continued marginalisation of Africa from the globalisation process and the social exclusion of the vast majority of its peoples constitute a serious threat to global stability.

⁶³ See generally Chibundu, n 24 above.

the efficacy of trans-African solidarity and the neo-liberal economic and political institutions that underpinned the third and fourth phases of post-colonial development. The premium here is on collaboration. Three forms of 'partnerships' are evident. In the first place, NEPAD clearly contemplates extensive consultation and co-ordination among African leaders in the formulation of policies, institutional capacity-building and the monitoring of the implementation of the commitments undertaken under NEPAD. Second, NEPAD seeks a partnership between African governments, on one hand, and foreign governments, international financial institutions, private foreign investors and traders, on the other. Third, there is the possibility of a partnership between African leaders and their citizens. The efficacy and success of structuring economic growth on such a triarchy of relationships will be the ultimate gauge of what NEPAD has to contribute to the international legal and economic orders.

A. Development through Co-ordinated Solidarity

If NEPAD represents novelty, it is not because of its push for the trans-national co-ordination of governmental policies. Ever since Kenya, Uganda and Tanzania created the East African Economic Community (EAC), African countries have sought to co-ordinate economic policies across national frontiers. Successful or not, 'economic communities' have proliferated and now dominate the African landscape, ranging from the Southern African Development Community (SADC), to the Commission for East and Central Africa (CECA), to the Economic Community of West African States (ECOWAS). Nor is NEPAD's quest for a continental reach particularly innovative. The Lagos Plan of Action and the Abuja Declaration on an African Economic Community were no less ambitious in their territorial coverage. What may be distinctive in the current experiment is NEPAD's breadth of reach into the subject matter of the content of development. NEPAD unveils development not solely as an economic process, but as one that implicates socio-political considerations as well. But even this is not entirely new. ECOWAS, for example, while styled as an economic community, has been a good deal more relevant to the lives of West Africans as a 'peacekeeping' political institution than as an economic one. Nonetheless, NEPAD's willingness to define development in broader than classical economic terms deserves some attention.

Much has been made of NEPAD's commitment to 'good governance,' 'democracy,' 'human rights' and 'the rule of law' as elements of the development process. Even though the elements and expanse of these terms are only vaguely identified, the fact that African governments are willing to commit to them in an official development programme is clearly a departure from orthodox behaviour. To be sure, these 'commitments'

have been driven more by a desire to appeal to neo-liberal governments, money lenders and civil society institutions in the West than by internally generated pressures and stimuli for accountability, but they nonetheless affirm the potency of the standard criticism of the earlier institutions of trans-African governmental co-operation, which were based on a rather absolutist view of sovereignty. NEPAD does not authorise member countries to guarantee the existence of these civic virtues within the territories of other member states, but by acknowledging a common concern for their existence, and by creating a 'peer monitoring' group, NEPAD has gone beyond the traditional indifference—if not outright hostility—that African governments typically have demonstrated towards fostering institutional constraints on their use of power.

These developments, however admirable, should not obscure the glaring reality that the existence of a causal relationship among 'good governance', 'democracy,' and 'the rule of law,' on one hand, and 'economic development,' on the other, are simply assumed, not demonstrated. Commitment to the former, even if wholehearted and forcefully implemented, does not necessarily assure realisation of the latter. Indeed, as even proponents of globalisation are beginning to accept, and contrary to the global diagnosis of the 1990s, the African sickness is less the problem of an overwhelmingly intrusive state than it is of the 'weak state'.⁶⁴ Concepts like 'democracy' and 'the rule of law' clearly have impacts on state formation, but they do not lead inexorably to one type of polity or another. Whether a state is strengthened or weakened by these processes (and it is important to emphasise that neither democracy nor the rule of law automatically leads to substantive outcomes) depends on the conjunction of a series of elements: an informed and motivated general public, an experienced and competent technocratic corps, a peaceful and stable society and, of course, a reasonably resourceful and resource-endowed population. In other words, the emergence of 'good governance', 'democracy' and 'the rule of law' may be just as dependent on 'economic development' as economic development is on these factors.

Ultimately, in terms of the relationships under discussion, NEPAD may be less important for what it says and does than for what it symbolises. It is an integral part of the African Union, itself a rethreading of the Organisation of African Unity. Both exemplify an explicit acknowledgement by current African leaders of the irremediable

⁶⁴ See eg Sachs, n 2 above; Joseph Stiglitz, *Globalization and Its Discontents* (New York, WW Norton, 2002). Hurst Köhler, the managing director of the IMF, spoke to this evolving view in an interview with the German magazine *Die Zeit*, which the IMF apparently viewed as sufficiently newsworthy to have published on its website. See 'Globalisation—All Together or Not At All,' 25 Sept. 2003 <<http://www.imf.org/external/np/vc/2003/092503.htm>> accessed 1 Feb. 2006.

failure of prior transcontinental institution-building efforts. But rather than abandon these efforts, both NEPAD and the African Union indicate the belief that what is needed is a re-articulation of the grounds for collaboration. While political co-operation had been the glue of pan-Africanism in the immediate post-independent era, the integration of NEPAD and the African Union indicated the arrival of a new mind-set, one that saw economics as playing no less an important role in African integration than political and security issues. But this mind-set was neither unique to nor did it originate with African leaders. Indeed, like much else about NEPAD, it was lifted wholesale from the West. President Clinton, taking office immediately after the collapse of the Soviet Union, vigorously maintained that in the new age of globalisation, economic power was as important for national security as military power.⁶⁵ Western Europeans concurred, and spent much of the 1990s cementing European integration on the foundations of economic interdependence. Of course, more recently, this position has lost some of its lustre.⁶⁶ In the Balkans, the Middle East, southern and Central Asia and, indeed, in West and Central Africa, military force is re-asserting itself as the measure of authority and influence. This re-assessment no doubt will in time also be undertaken in Africa, depending upon how successfully NEPAD works out over the next few years. But in the interim, gauging NEPAD's possibilities requires closer inspection of the other affiliating partnerships.

B. Partnership with the Developed World as Development

NEPAD's view of the contemporary development scene as essentially a contractual arrangement in which African governments give up their autocratic tendencies in exchange for capital inflows from the West is perhaps most graphically illustrated in the way that it addresses the relationship of the continent to the developed world. That this relationship is central to, and in fact forms the backbone of, NEPAD is clear right from the outset.⁶⁷ Many of the policies articulated by NEPAD are justified substantially on this basis.⁶⁸ But it is not until the closing paragraphs of NEPAD's framework document that the full nature of the terms of the bargain are brazenly spelled out. For their part, African leaders undertake

⁶⁵ See Andrew J Bacevich, *American Empire: The Realities and Consequences of U.S. Diplomacy* (Cambridge, MA, Harvard University Press, 2002).

⁶⁶ See eg Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (New York, Random House, 2003).

⁶⁷ Compare NEPAD Doc, n 9 above, at paras 1-2.

⁶⁸ See nn 27-8 above and accompanying text.

to expand 'democratic frontiers' and to deepen the 'culture of human rights'.⁶⁹ The result, they assure the world, will be that:

A democratic Africa will become one of the pillars of world democracy, human rights and tolerance. The resources of the world currently dedicated to resolving civil and interstate conflict could therefore be freed for more rewarding endeavours.⁷⁰

Further, African governments will assure the continued participation in the web of conditionality-driven multilateral programmes sponsored by international financial institutions and developed country governments, thereby lending their imprimatur of respectability and legitimacy to these programmes.⁷¹

In exchange, NEPAD asks that developed country governments and international financial institutions support peacekeeping initiatives, accelerate debt reduction, increase official development assistance to at least 0.7 per cent of the gross domestic product of developed countries, make available on less stringent terms access to pharmaceuticals, negotiate 'more equitable' terms of trade within the World Trade Organization framework and encourage greater private investment in Africa.⁷²

The form of the 'partnership' is presented as one of mutuality. But is it? Is the promise of a peaceful and stable Africa, or the 'expansion of democratic institutions' and 'deepening of a culture of human rights', any more of a benefit to the West than it is to Africa? That African leaders apparently believe so, at least sufficiently to think that this promise can provide the quid for the various quos they subsequently demand, is a testimony to how much traditional thinking remains in this new partnership. And yet, that Africans are willing to go out of their way to see encouraging private investment by Westerners in African economies as an obligation of the West is certainly a shift from the tendencies African leaders displayed in the 1970s and 1980s.

But the ultimate test of NEPAD's capacity to foresee and prepare for the future—and, in doing so, to contribute to the international order—may well lie in what role it plays in structuring relationships between African states and the new emerging economic colossus, China (and to a lesser extent, India). NEPAD is a statement of the depth of neo-liberal influence on African states, an influence which, during the 'indigenisation' phase of the 1970s, had emphasised (and in some instances actually forged) strong economic ties with the People's Republic of China and other governmentally centralised economies. Today, NEPAD, presents the relevant

⁶⁹ See NEPAD Doc., n 9 above, at para 180.

⁷⁰ *Ibid.*

⁷¹ See *ibid* at para 184.

⁷² See *ibid* at para 185.

partnerships as those framed by and within the sponsored collaborations of the Bretton Wood institutions and foreign private investors. Apparently unanticipated among the framers of NEPAD in 2001 was the state-guided path to frenetic economic growth that has been the 'miracle' of China. Yet in many ways China's relentless emphasis on the building of basic infrastructures, experiments in the regulation of population flows from rural to urban centres, reliance upon co-operation between local governments and foreign investors, tinkering with the adaptation of foreign and international legal standards to local conditions and rules and, perhaps above all else, flexibility in the moulding of weak political institutions to meet the demands of strong economic forces without simultaneously creating social chaos may offer more lessons for African societies than the repetition of yet another phase of the 'stages of economic growth'. Thus, whether over the long term NEPAD looks East (in addition to its obvious facing to the West) may well be essential in determining its place within the international order.

C. Foreign Investment and Development

Craving for capital, since the beginnings of the Industrial Revolution, has been the primary driving force in the shaping of development policies. Moments of retrenchment and even outright reaction can be identified, but the dominant ethos of proponents of economic growth is to encourage capital inflows into the industrial sector. As already explained, the first development phase in Africa forcefully embraced this conception of development.⁷³ But even in the second and third phases, attracting and allocating foreign capital continued to shape development policies. It is hardly surprising, then, that NEPAD continues the trend. But it does so more emphatically and explicitly.⁷⁴

Crucially, the role of the African government remains central in the capital accumulation process, as articulated under NEPAD. There is, of course, the obeisance to markets, but there is remarkably little about encouraging internal capital formation. Rather, the focus is on attracting external capital from a variety of sources. Government-to-government aid remains important, and there is a call for the reduction—preferably outright elimination—of prior official indebtedness.⁷⁵ Multilateral institutions, notably the World Bank and the Africa Development Bank, are also seen as partners for development. But by far the most emphasis is placed

⁷³ See n 58 above and accompanying text.

⁷⁴ See n 63 above and accompanying text.

⁷⁵ See eg NEPAD Doc., n 9 above, at paras 147, 149, 150, 155.

upon attracting private foreign investment. To this end, NEPAD makes it clear that gone are the days of sentimental nationalism and that foreign investors need not fear the nationalisation of their assets. To the contrary, state parastatals would be privatised, and foreign investors would be free to acquire privatised property. And beyond that, African governments would enter into 'public-private partnerships' in which those aspects of the national economy that cannot be fully privatised may nonetheless benefit from the expert management and incentives orientation of the private sector. The use of credit guarantees and acceptance of investment insurance schemes such as those sponsored by the World Bank-affiliated Multilateral Investment Guarantee Agency and the US government-backed Overseas Private Investment Corporation will provide additional incentives for foreign investors.

But NEPAD's most significant contribution to both the theory and the praxis of development is its ratification of the neo-liberal consensus that governments have an obligation to create and nurture an aggressively hospitable environment for foreign investment. NEPAD declares:

A basic principle of the Capital Flows Initiative is that improved governance is a necessary requirement for increased capital flows.⁷⁶ ... The first priority is to address investors' perception of Africa as a 'high-risk' continent, especially with regard to security of property rights, regulatory frameworks and markets.⁷⁷

Transparency in regulation, functioning and reasonably efficient administrative and judicial systems, an attentive bureaucracy and, ultimately, an accountable government are obvious elements of the bargain, and affording and securing these elements to the foreign investor are objectives to be aimed for. Further, as already indicated, NEPAD explicitly requests that developed country governments implement policies that would encourage their nationals to invest in Africa. Here, for example, the use of insurance schemes that guarantee against losses flowing from currency devaluations, political instability or property expropriations, despite the obvious constraints such schemes place on 'sovereignty', are actually favoured under NEPAD.⁷⁸

In recognising that the macro-environment may well be more important than any specific policy in influencing capital inflows, NEPAD falls into step with current received wisdom. And there is little doubt that 'good governance' contributes significantly in shaping the perception of the foreign investor. But even if one accepts the primacy of foreign investment in the development equation, one might nonetheless query whether

⁷⁶ *Ibid* at para 144.

⁷⁷ *Ibid* at para 151.

⁷⁸ See *ibid* at para 185.

NEPAD has in fact identified the right mix of macro-policies. To be sure, the emphasis on good governance fits within the conception of development as a 'holistic' project, but the omission from NEPAD's apparent concerns of such factors as budgetary, fiscal, monetary and interest rate policies clearly point to the limits of this holism. These elements presumably are not emphasised because of their recent pedigree as components of the much-derided 'structural adjustment programmes'. In keeping with temporal sentiments, the opprobrium of these programmes made the inclusion of their elements anathema to NEPAD's creators. And yet consideration of these elements is highly relevant to any sustained effort at attracting foreign investment. A transcontinental harmonisation of such policies may be just as vital to avoid a 'beggar thy neighbour' competitive environment as 'good governance' may be in promoting the entire continent to foreign investors.

But all of this assumes that attracting foreign investment depends upon government policies. While such policies may operate at the margins in particular cases, it is not clear that they are instrumental in the vast majority of situations. As already indicated, external investments in African economies have been driven predominantly by micro-economic considerations, particularly the demand for, and availability for extraction of, raw materials. Investments in oil, diamonds, gold, copper and the like have waxed and waned with little relationship to specific government policies. Of primary importance has been the external demand for these resources and, secondarily, some level of minimum internal security. Internal security is worth striving for not only for the purpose of encouraging foreign investments, but even more so for the welfare of the domestic population. And here NEPAD is worth examining less for what it says about foreign investment and more for the mind-set it exhibits with regard to the appropriate relationship between African leaders and the people they are supposed to lead.

D. Development and the Mobilisation of the People

NEPAD, as already shown, is presented unapologetically as a programme of 'African leaders'.⁷⁹ The involvement of 'the people' comes in the form of an 'appeal', which conceivably they may either accept or ignore. To the extent that governments do in fact hold themselves subject to the democratic principle and the principles of accountability embodied in the concept of 'good governance' and 'the rule of law,' the relationship with 'the people' will go beyond 'an appeal'. Similarly, if the government

⁷⁹ See n 20 above.

genuinely implements the various capacity-training initiatives referred to in NEPAD, there may emerge a genuine partnership between the bureaucracy and the governed.

But the more intriguing partnership with the people suggested by NEPAD is based less upon the post-modern conceptions of a 'third way' indicated by the examples presented than it is upon a strictly commonplace industrial policy in which the government undertakes to spend resources on socio-economic goals. A brief examination of four of these areas will illuminate, constructively, the potentials and pitfalls of the new partnership with the people. In what follows, I summarise and explore the implications—both theoretical and practical—of NEPAD's explicit adoption of agriculture, culture, health and education as tenets of the development process.

i. Development as the Promotion of Agriculture and Culture

For most of Africa, agriculture, especially subsistence farming, remains the dominant economic activity. While the proportion of the population in industrialised societies of those who till the land or husband animals typically can be measured in single-digit percentages, for most African countries that figure typically exceeds 70 per cent. And this is so notwithstanding 40 years of aggressive industrialisation policies that have ploughed inordinate resources into the mining and manufacturing sectors of the economy. Among the steps recommended by NEPAD are improvements in agricultural water management, especially the adoption of small-scale irrigation, land and tenure reforms, and improvements in the cultivation, production, transportation, storage and distribution of crops, livestock and fisheries.⁸⁰ Of note, NEPAD admonishes that:

Particular attention must also be given to the needs of the poor, as well as the establishment of early warning systems to monitor droughts and crop production;—Enhance agricultural credit and financing schemes, and improve access to credit by small-scale and women farmers;—Reduce the heavy urban bias of public spending in Africa by transferring resources from urban to rural activities.⁸¹

NEPAD also calls on the developed world and the international financial institutions—especially the World Bank—to increase support for the agricultural sector.⁸²

But none of these steps is framed as an obligation of the state; and, however much one welcomes the explicit recognition of their necessity,

⁸⁰ See NEPAD Doc, n 9 above, at para 155.

⁸¹ *Ibid.*

⁸² *Ibid.* See also *ibid* at paras 134, 155.

the vagueness of their formulation compares rather poorly with the elaborate prescriptions of how to develop the digital technology infrastructure or the building up of competences in the administrative and regulatory spheres. NEPAD thus fails to impose binding commitments on African governments with regard to the rehabilitation of perhaps the most defunct sector of their national economies. This shortcoming is particularly noteworthy in the context of those aspects of agriculture the improvement of which is dependent almost entirely on the regulatory framework. There is little doubt, for example, that land ownership and tenure rules account for much of the difficulty African agriculture has experienced. Yet nothing in NEPAD indicates what the thinking of African governments ought to be in this most crucial arena of interaction between the majority of the ordinary population and their government. Moreover, there is little evidence since the adoption of NEPAD that this statement of objectives is receiving anywhere near the level of attention it deserves, or which has been given to other aspects of NEPAD. Agricultural improvements notwithstanding, NEPAD's rhetoric may again end up as the orphan sector of the development process.

The approach to the development of agriculture also presents an interesting contrast to the rhetoric and bombast on culture. We are told that:

Culture is an integral part of development efforts on the continent, [and that] it is essential to protect and effectively utilise indigenous knowledge that represents a major dimension of the continent's culture, and to share this knowledge for the benefit of humankind.⁸³

Those traditionalists who might view culture in artistic or humanistic terms, or who might be heartened at the idea that African governments intend to promote traditional dances or herbal healing are promptly disabused of such misperceptions. Indigenous knowledge, NEPAD declares, includes:

[t]radition-based literacy, artistic and scientific works, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The term also includes genetic resources and associated knowledge.⁸⁴

In short, the Geneva-based expert of the World Trade Organization or World Intellectual Property Organisation, rather than the practices of the rural peasant along the banks of the Niger, gets to define what constitutes 'African culture', at least that element of it entitled to attention from African governments. Whatever else may be said about the wisdom of

⁸³ See *ibid.*, at para 140.

⁸⁴ *Ibid.*

these policies, it is clear they fall short of the claim that they are intended to 'mobilise' the African people. NEPAD is at best a limited, but by no means an unfamiliar, type of partnership between the leaders and the ruled. It is, indeed, all too familiar.

ii. Development of the Health and Education Infrastructures

I have argued elsewhere that no two elements of the development process are more central and more ignored than health and education.⁸⁵ Both aspects of development are addressed within NEPAD's kaleidoscopic approach. With regard to health, NEPAD quite rightly highlights the abysmal data, both relative and absolute.⁸⁶ In recent years, much attention has focused on the ravages of HIV/AIDS; but while Africa may share—however disproportionately—the burdens of this illness with the industrialised world, the more astonishing and typically overlooked phenomenon is the continuing endemic persistence of illnesses long eradicated in much of the rest of the world. Here malaria and tuberculosis typify a much broader phenomenon. As the focus on HIV/AIDS has rekindled a self-evident but all too easily overlooked reality, the concern about health is not simply to relieve the sufferings of the individual (although this is surely a laudable objective), but just as importantly to address a substantial social and economic barrier to the development of a community. As is well known about the building of the Panama Canal and about the development of agriculture in the South and West of the United States, eradicating endemic diseases such as those carried by mosquitoes and tsetse flies can provide the gateway to improved economic activities and social interactions. And it is generally recognised that issues of health go well beyond addressing particular illnesses. Providing for health is much like providing basic infrastructure. The necessary attention extends well beyond building hospitals, training medical personnel or filling up drugstores, as important as these are. Just as important is mass education: getting individual citizens to recognise the significance of personal and communal hygiene and to take responsibility for such seemingly simple tasks as the maintenance of local sanitation.

NEPAD's overall approach to health, unfortunately, is framed less by an introspective look at the daily health needs of the societies whose interests

⁸⁵ See Maxwell O Chibundu, 'Africa's Economic Recovery: On Linkages, Leapfrogging and the Law' (2000–2003) *Third World Legal Studies* 17–36.

⁸⁶ See NEPAD Doc., n 9 above, at para 126. According to NEPAD: 'In 1997, child and juvenile death rates were 105 and 169 per 1000, as against 6 and 7 per 1000 respectively in developed countries. Life expectancy is 48.9 years, as against 77.7 years in developed countries. Only 16 doctors are available per 100,000 inhabitants, as against 253 in industrialised countries' para 126.

it purports to address than by taking advantage of current international health headlines. The response is framed either in very vague terms or by relying on contributions from the international sector. Without disparaging the usefulness of the latter, it is surely worth considering whether the health needs of the continent cannot be satisfied by change of habits and practices rather than huge capital expenditures. Put another way, NEPAD fails to address a well-known distinction in issues of health: the appropriate balance between preventive and curative measures. Clearly, NEPAD recognises the importance of addressing issues of health, but far from forming a partnership with the people to do so, African governments would rather look outwards for financial and technical expertise. Yet among the various activities that constitute development, personal and communal responsibility for health may be more manageable than in any other areas, such as industrialisation. This may, indeed, be one area where a government can genuinely harness 'indigenous' assets for collective welfare.

Education—or, more accurately, formal (ie systematically organised and structured) education—is, of course, the *sine qua non* of modernity. If there is a function that post-colonial African governments have always embraced without equivocation, it is education. And yet the paradox persists that the educational situation in Africa at the turn of the twenty-first century is uniformly dismal. The availability of 'universal primary education' has been one of those gauges of educational advancement. For many African countries, this objective was to be realised no later than the end of the 1970s. None achieved this. NEPAD takes up this challenge, and in keeping with the United Nations Millennium Development Goals,⁸⁷ it encourages African countries to assure universal primary education to their citizens by 2015.⁸⁸ But, as recent reports by the World Bank suggest, the current rate of progress indicates this is an objective that is likely to be unrealised.

Unsurprisingly, much of the attention on education focuses on issues of interest to technical and tertiary institutions and their beneficiaries.⁸⁹ A disproportionate amount of African resources has always gone into these institutions of formal education; and yet the results have been uncertain. On one hand, the absorptive capacities of the economies effectively to make use of the 'graduates' so produced has always been underwhelming, so that the spectacle of the postgraduate humanities scholar driving a taxi cab is as much a feature of African folklore as is the non-commissioned army sergeant-major who becomes a head of state.

⁸⁷ These were adopted following a summit meeting of the heads of states of United Nations member countries.

⁸⁸ See NEPAD Doc, n 9 above, at para 117.

⁸⁹ This bias has been taken up in Tony Blair's Commission for Africa Report, n 6 above.

On the other hand, there is no doubting the shortage in Africa of engineers and medical doctors, even though a surplus of Africans—many trained by or at the expense of Chinese, Cuban and Russian experts—are successfully plying their trade in the West. NEPAD's core responses to these complex contradictions are to suggest ploughing more resources into research⁹⁰ and to:

Create the necessary political, social and economic conditions in Africa that would serve as incentives to curb the brain drain and attract much-needed investment.⁹¹

Clearly, there is merit in both suggestions, but they are at best tangential to the basic issues that confront educational systems on the continent. Neither addresses the need to connect the quest for universal primary education with the rationalising of institutions and resources of post-primary education. Similarly, the second most obvious failing in African education policies today—next only to the persistent inability of the continent to provide minimal literacy education to the bulk of its population—is how best to rehabilitate moribund educational institutions. It is evident that the educational problem—whether in the context of providing universal primary education or of training the right professionals—has not been the failure to pour resources into the undertaking. Rather, it has been how to direct and manage those resources. Both at the primary and post-secondary levels, the basic problem has not been the shortage of bricks and mortar, but how to maintain the bricks and mortar; and this is so not only in the context of hard assets, but of soft ones as well. NEPAD's recommendations, even if followed up by specific implementing policies, are unlikely to address these shortcomings effectively.

V. CONCLUSION

The educational dilemma squarely brings to the forefront a recurring theme of Africa's development policies. As should be evident from what has been said throughout this chapter, the development process has been hampered neither by the lack of ideas nor by the devotion of resources to realising those ideas. Rather, it is the absence of steadiness and persistence in seeing through the implementation of the ideas that is most characteristic of the failures of the process. In part, the lack of patience reflects ambiguities among Africans as to what constitutes development. Should it be measured in terms of social welfare within the community or in terms of the relative privation of the community vis-à-vis the rest of

⁹⁰ See NEPAD Doc, n 9 above, at para 118.

⁹¹ *Ibid* at para 122.

the world? The uncertainty is itself a measure of the lack of self-assurance that is embedded in the political development of most African nation-states. These polities, for the most part, are the product not of internally generated forces but of external administrative convenience. The result is a culture of development that is dominated by a desire and tendency of looking outwards for approval rather than of sensing and responding to internal needs. African leaders therefore embrace and discard development policies in tune with dominant external trends. In focusing on 'globalisation' as the driving theme of contemporary development policies, NEPAD is simply travelling down a well-trodden path. Import substitution, indigenisation and regionalism previously provided anchors for development policies. Globalisation is the latest of this line. It may fairly be asked whether it and NEPAD are any more likely to succeed where others have failed.

And yet one need not be in total despair. NEPAD manifests two related important sensibilities that were absent in prior approaches to development. First, although it continues to take a 'top-down' orientation, it does so self-consciously. In 'appealing' to the ordinary people of the continent and in 'mobilising' them in the development process, NEPAD introduces a theme conspicuous by its absence in prior development policies. African leaders appear to recognise that the role of 'the people' is integral to development itself. One hopes they will take the next step and see that 'development' in fact is the function of the people, not of technocratic plans and bureaucratic implementation, however enlightened these may appear or be intended. The second element in NEPAD worth special notice is the approach that it terms 'holistic'. The crafters of NEPAD clearly have bought in to the post-modern ethos. Development must be addressed in all of its multifariousness. Doing so requires incorporating into the process not simply basic economic needs, but socio-political and cultural ones as well. This insight may be driven by the belief in globalisation and the desire to attract foreign investment, but it is no less a valuable insight. One can only hope that this recognition survives the disappointments and roadblocks that are bound to emerge when it becomes evident that Africa's development cannot be underwritten primarily by foreign investment, or as an industrialisation offshoot of the globalisation phenomenon.

There is, however, a significant element of the development process that is completely overlooked by NEPAD, but which may be weakly foreshadowed in its linkage to the African Union. The decades of the 1980s and 1990s were highly destructive ones for the continent, but they may also have been essential to the process of creating durable states there. Just as much of African colonisation boiled down to barely more than the superficial organisation of vast swathes of territory under an administrative regime, the states that came into being following decolonisation often

had no greater claim of relevance to or loyalty from the inhabitants of those territories. One of the consequences of the widespread 'disintegration' of African states in the 1980s and 1990s may therefore have been to provide a mechanism by which bonds of alignment between state and society could be formed and nurtured. Struggles over limited resources, civil war conflicts and 'genocides' are clearly divisive; but they also have the potential of kindling in the survivors a shared history of interdependence and the value of coexistence. Such shared history and memory typically constitute the breeding grounds for durable nation-states. One of the striking results of these conflicts is that, contrary to what one might expect, the arbitrarily drawn colonial boundaries have in fact held. Increasingly, Africans look for solutions less in the dissolution of their admittedly fragile post-colonial states, but more and more in the forging of compromises that would strengthen the central government. The challenge is how to stir an effective middle course between the building of a strong centre without emasculating the vibrant local institutions that are essential to checking the concentration of power within one person or a limited set of central institutions. Respect for the interests of sub-national units as well as demands for accountability from the central government are more likely to emerge from these bargains struck out of the necessity to resolve conflicts than from some abstract conception of the solidarity of nationhood. Responsibly harnessing these strengthened bonds of belonging in the service of development will be one of the profound challenges that lie ahead for African societies. The answers to these challenges will be found in the compromises of daily interactions among Africans, rather than in any overarching theories of modernisation or globalisation borrowed from without.

It is perhaps no coincidence that the strongest proponent of a new development plan for the continent, Thabo Mbeki, belongs to an unusual African grouping: the politician whose self-worth has been generated and affirmed in the crucible of actual conflict. Similarly, Olusegun Obasanjo's views doubtless have been shaped in part from the tragic internal conflicts that bedevil Nigeria. These leaders may be mistaken in their apparent belief that the key to the rejuvenation of the continent's development process lies in reflexively hitching the African cart to the globalisation wagon, but they are surely right in recognising that the participation of the led is essential to the success of the process. When the inadequacy of the former becomes evident, one hopes that NEPAD can turn to the latter without having lost too much ground.

What then are NEPAD's contributions to the international legal order? Possible shortcomings notwithstanding, at least four such distinctive contributions are identifiable. First (and perhaps most significantly), NEPAD has rejuvenated (and in many ways energised) the concept of development as a collaborative rather than confrontational engagement under

law of poor and wealthy states, weak and powerful societies, rulers and the ruled. Second, it embodies the unequivocal acceptance by African states and their commitment to a rule-based accountability for the promotion of democracy, human rights and good governance as elements of the development process, thereby promoting the likely crystallization of these norms as customary international law. Third, by committing African states to active participation in the so-called public-private partnerships, in particular, and expansive use of foreign direct investments, generally, NEPAD has further legitimised concepts that barely a decade ago were roundly decried as inconsistent with the concept of national sovereignty. And finally (but by no means least significant), in couching these and several other propositions as statements of rights and responsibilities rather than simply as political aspirations or undertakings, NEPAD is fully engaged as a transcontinental participant in the process of the progressive development of international law. Collectively, these contributions represent an African-crafted holistic stance that strongly endorses the involvement of the continent's elites in the dominant contemporary conception of the international legal order as constituted by functional networks of co-operation among actors (public and private alike) rather than by commitment to any overriding normative ideology.