

SOME THOUGHTS ON REBUILDING AFRICAN STATE CAPABILITY

A. PETER MUTHARIKA*

INTRODUCTION

In response to the *Law Quarterly's* invitation to write about almost any subject, I had originally intended to reflect on my experiences on this faculty and the opportunities the move to Anheuser-Busch Hall presents. Another contributor to this volume has amply documented the changes that have taken place in the composition of the faculty and the student body over the past several decades and their impact on the overall quality of the law school.¹ I believe our law school has the potential of becoming even better if we are able to develop a curriculum that provides our students with skills essential to working in a global economy. In this regard, I invite my colleagues to bring an international dimension, where feasible, to every course they teach. In addition to providing our students with adequate skills, we, the law teachers, face the challenge of instilling in our students a sense of fair play and tolerance² in a world that is becoming increasingly intolerant. Finally, it is probably impossible to build a great institution if there is a morale deficit among those whose responsibility it is to teach and service students. A great institution should therefore periodically review its staff reward system to ensure its continuous fairness. Possibilities for advancement for the non-academic staff will be guaranteed through the continuation of internal and external training programs that enable them to update their skills. To develop an evaluation system that accurately assesses students' skills, it is imperative that grading systems are periodically reviewed and changed where warranted. There will continue to be legitimate disagreements on priorities as our law school community adjusts to a world of limited resources. I believe that where it is warranted, we will continue to disagree without being disagreeable.

For the rest of this essay, I will discuss a subject that would probably have been of little or no interest to the average American lawyer some ten or

* Professor of Law, Washington University. LL.B., London University, 1965; LL.M., Yale University, 1966; J.S.D., Yale University, 1969.

1. See David M. Becker, *My Two Cents Worth on Changing Times*, 76 WASH. U. L.Q. 45 (1998).

2. See Sandra Day O'Connor, Associate Justice, Supreme Court of the United States, *Professionalism*, Remarks made at the dedication of Anheuser-Busch Hall at Washington University School of Law, Sept. 20, 1997, reprinted in 76 WASH. U. L.Q. 5 (1998).

fifteen years ago. But the world has since changed. Communism has collapsed, the United States is now the only superpower, and modern information technology has created a global neighborhood.³ As American capital and technology seek foreign markets, the viability of the world's second largest continent should be of at least some interest to the American lawyer. I want to talk about what the World Bank in its 1997 World Development Report has called a "Crisis of Statehood—A Crisis of Capability" in Sub-Saharan Africa in particular and in Africa in general⁴ and how the African States in cooperation with the international community might respond to it.

I. SOURCES OF AFRICAN STATE INCAPABILITY

The roots of Africa's incapability can be traced to the institution of colonialism under which the European powers amalgamated disparate ethnic and social groups into the colonial nation states.⁵ To consolidate the African colonial state, attempts were made to create anglophonic, francophonic and lusophonic identities among the Africans thereby undermining African cultural identity. Additionally, African subjugation was achieved through a system of "indirect rule," originally devised by Lord Lugard in Nigeria, under which the colonial state made conscious efforts to co-opt one ethnic group, usually one not large enough to challenge the colonial power, through which the state ruled the other ethnic groups.⁶ At the end of colonial rule, power was handed over to the Africans in a manner that left political and economic power in the hands of the co-opted group. Burundi and Rwanda are excellent examples of this policy.⁷ Indirect rule could be effectively

3. For a detailed analysis of the concept of a "global neighborhood," see COMMISSION ON GLOBAL GOVERNANCE, *OUR GLOBAL NEIGHBOURHOOD: THE REPORT OF THE COMMISSION ON GLOBAL GOVERNANCE* (1995).

4. "State capability" or "capacity" refers to the existence of institutions and practices that enable a state to achieve its developmental goals. For a detailed analysis of the concept of state capability, see, WORLD BANK, *PARTNERSHIP FOR CAPACITY BUILDING IN AFRICA, STRATEGY AND PROGRAM OF ACTION* (Sept. 28, 1996); see also GLOBAL COALITION FOR AFRICA, *1994 ANNUAL REPORT: AFRICAN SOCIAL AND ECONOMIC TRENDS 12* (1995); United Nations, *The United Nation's System-Wide Special Initiative on Africa Booklet* (visited June 17, 1997) <<http://undp.org/undp/news/unsia00.html>>; WORLD BANK, *WORLD DEVELOPMENT REPORT 1997*, at 1-15 (1997).

5. For a detailed discussion of colonialism and its lasting impact on the African continent, see Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113 (1995). See also A. Peter Mutharika, *The Role of International Law in the Twenty-First Century: An African Perspective*, 18 FORDHAM INT'L L.J. 1706, 1713 (1995); WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972).

6. See David de Chaud, *South Sudan Claims for Right of Self-Determination* (visited Jan. 16, 1998) <http://www.sas.upenn.edu/African_Studies/Articles_Gen/de_Chaud.html>.

7. Linda Maguire, *Power Ethnicized: The Pursuit of Protection and Participation in Rwanda*

carried out only if certain parallel indigenous institutions such as chieftaincy and African traditional law were retained. The unintended consequence of this institutional parallelism is that the post-colonial African state has found it extremely difficult to create a uniform system of political and judicial administration. This leads to uncertainties and conflicts in judicial administration and is a major contributor to state incapability.

Internal political instability, bad governance, misguided economic policies, civil disorders and inadequate infrastructures have in the past contributed to Africa's capability deficit. Over the past decade, however, the African states have begun to understand that societies that democratize, respect human rights and uphold the rule of law tend to create the kind of stability that is conducive to economic development.⁸ They must now develop institutional mechanisms that are consistent with this new understanding.

The manner in which the global economic system is organized has also contributed to Africa's incapability. Thus to the extent that Africa is marginalized in the global economic and political decision-making system, it lacks the ability to explain itself to the rest of the world.⁹ Its large external debt, unfavorable trade terms, political instability and negative perceptions about the continent have combined to create an unattractive investment climate. Thus while returns on foreign direct investment to Africa are higher than any other developing region, Africa currently receives less than two percent of all foreign direct investment to developing countries.¹⁰ Africa can not rebuild its capability if the global economic system continues to marginalize it.

and Burundi, 2 BUFF. J. INT'L L. 49, 55-56 (1995). In Rwanda, for example, the Hutu are a majority and yet the Belgian colonial rulers created a ruling elite out of the minority Tutsis because the Tutsi were considered by the Belgians to be "better qualified, more intelligent, more active, more capable of appreciating progress and more fully accepted by the people." *Id.* This preferential treatment led to ethnic tension. *See id.* at 64. Between 1959 and 1961, the Hutu majority began its major challenge to Tutsi domination and the rivalry between the two groups continues today. *See id.*

8. Botswana, Cote d' Ivoire Eritrea, Ghana, Mauritius and Zimbabwe are illustrative of this phenomenon. Another interesting example is Ethiopia. Plagued by civil strife and famine in the 1980s, Ethiopia is now considered an African "success story" since its corrupt government was driven from power. In 1996 it even became a net food exporter. *See* Alison Beard, *Hopes Rise That Africa Will Soon Feed Itself*, WASH. TIMES, Aug. 7, 1997, at A12.

9. *See generally* BINGU W. MUTHARIKA, ONE AFRICA, ONE DESTINY: TOWARDS DEMOCRACY, GOOD GOVERNANCE AND DEVELOPMENT (1995).

10. *See* UNITED NATIONS CONF. ON TRADE & DEV., TRANSNATIONAL CORPORATIONS AND MANAGEMENT DIVISION, WORLD INVESTMENT REPORT 1995: TRANSNATIONAL CORPORATIONS AND COMPETITIVENESS 84 (1995).

II. STRATEGIES FOR REBUILDING AFRICAN STATE CAPABILITY

As we enter the twenty-first century, the Westphalian concept of the nation state continues to face challenges from internal ethnic, linguistic, religious and cultural forces in a manner unheard of since the creation of the modern nation-state. These challenges will have serious implications for international law and politics as Oscar Schachter has correctly observed.¹¹ Lawyers in stable developed societies will have the task of devising new institutional mechanisms that are capable of accommodating separatist tendencies within the nation-state. Their counterparts in Africa will have the even greater task of ensuring that some of the gains made over the past decade are not reversed by internal challenges that Africa continues to face.¹² Consequently, to restore state capability, the African states will need to take concrete measures, individually and collectively, in several specific areas.

A. Governance Capacity Building

Authoritarianism and economic statism have, in the past, created a disabling African economic climate that has been hostile to foreign and domestic private investment. This has resulted in negative economic growth and has created economies that are too dependent on foreign aid. Authoritarianism and economic dependency have also created an atmosphere in which the African states have been unable to mobilize and utilize Africa's enormous natural and human resources.¹³ An authoritarian state is by definition unaccountable. When a state has been structured in a manner that prevents accountability, it usually leads to the emergence of a small elite class whose main preoccupation is self-preservation through exclusive control of the economic and political institutions. Individuals who pose a threat to this group—especially those in the security services (army, intelligence, and police)—are usually co-opted through a generous reward system. The authoritarian state is therefore by definition corrupt.¹⁴

11. See Oscar Schachter, *The Decline of the Nation-State and its Implications for International Law*, 36 COLUM. J. TRANSNAT'L L. 7 (1997).

12. See generally Kofi Annan, Secretary-General Statement to the Ministerial Meeting of the United Nations Security Council on Africa (Sept. 25, 1997) (manuscript on file with the *Washington University Law Quarterly*). See also Dr. Salim Ahmed Salim, Statement of the Secretary-General of the Organization of African Unity at the Ministerial Meeting of the United Nations Security Council on Africa (Sept. 25, 1997) (manuscript on file with the *Washington University Law Quarterly*).

13. One result of African authoritarianism is the presence of highly qualified Africans exiled all over the world. This severe loss of intellectual resources, if reversed, would have a tremendous impact on Africa.

14. Nigeria and Zaire under Mobutu are good examples of the authoritarian corrupt state.

The African states must therefore expand their capacities through good governance. Here the lawyers, civil liberties advocates, non-governmental organizations, religious groups and civil society as a whole can contribute to African state capacity if they demand the creation of political and legal institutions that provide for transparent and good governance, and the existence of an independent and predictable judicial system. It is now becoming apparent that those African countries that democratize, fight corruption,¹⁵ respect human rights and uphold the rule of law tend to register significant economic growth.¹⁶ For those African countries that are democratizing through multi-party elections and institutional reforms, efforts must be made to ensure that this movement toward democracy is made irreversible.¹⁷ For those that have not yet embarked on democratization, effective incentives must be introduced to enable them to embark on the path towards democratization.¹⁸ This will, of course, not be an easy task.

Africa is a complex continent with countries at different stages of political and social development. In an earlier study, I classified the African countries into the "newly democratizing" states, the "failing" states, the "failed" states, the "recovering" states and the "recovered" states.¹⁹ I believe these are still valid classifications. A common element that characterizes all these countries is lack of political stability. It is this lack of political stability that renders democratization difficult. It is therefore not surprising that in those African states that are highly unstable, the democratization process has been reversed. Sierra Leone and Burundi offer excellent examples in this regard.²⁰ Each

15. Under pressure from the donor community and from private groups such as Transparency International, many African countries have taken measures against corruption through the creation of Anti-Corruption Commissions. See generally *Transparency International* (visited Jan. 26, 1998) <<http://www.transparency.de>>. Corruption, however, has an international dimension and national efforts against corruption will not succeed if there is no international cooperation. Organization for Economic Co-operation and Development efforts to criminalize bribery and to end tax deductibility by the end of 1998 are in this regard commendable. See generally *Organization for Economic Co-operation and Development* (visited Jan. 26, 1998) <<http://www.oecd.org>>. Countries that allow tax deductibility bribes and extortion (e.g., Belgium, Luxembourg, France, Greece and Germany) should abolish such practices by adopting legislation similar to the American Foreign Corrupt Practices Act. *Id.*; see also Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78m(b), (d)(1), (g)-(h), 78dd-1, 78dd-2, 78ff(a),(c) (West 1994)).

16. Among such countries are Botswana, Eritrea, Ethiopia, Malawi, Mauritius, Mozambique, South Africa and Zimbabwe. See, GLOBAL COALITION FOR AFRICA, *supra* note 4, at 5.

17. Eritrea, Malawi, Namibia, South Africa, Tanzania, Zambia, Zimbabwe have all begun to democratize through multiparty elections and institutional reforms.

18. Under the African Growth and Opportunity: The End of Dependency Act, H.R. 4198, 104th Cong. (1996), United States economic assistance to Africa will be given to those African countries that undertake significant economic and political reforms. While this approach may be justified, care should be taken to ensure that this does not lead to external control of African economies.

19. A. Peter Mutharika, *The Role of the United Nations Security Council in African Peace Management: Some Proposals*, 17 MICH. J. INT'L L. 537, 541 (1996).

20. See R.G. Mugabe, President of the Republic of Zimbabwe and Chairman of the Organization

country must therefore define its own path towards democratization as long as there exists the consensus that Africa must create a stable political climate within which the democratization process has the chance to succeed. It is therefore commendable that the Organization of African Unity ("OAU") has invited the international community to join it in refusing to recognize any government in Africa that assumes power "through undemocratic and unconstitutional means."²¹

To move African states away from aid dependent economies, democratic reforms must be accompanied by economic and infrastructural reforms as well as debt management strategies that create a climate attractive to foreign investment. Privatization, development of adequate transportation, telecommunications, radio, postal and television services, an educated labor force and adequate health services must be given priority if the African state is to regain state capability. Africa must utilize modern information technology both to increase Africa's international visibility and to combat the negative perception that Africa continues to face.²² Finally, African state capability will be enhanced if the African states are able to accommodate internal disunities.

B. Economic Integration

With the possible exception of Nigeria and South Africa, the individual African economies are too small and therefore unattractive to foreign investment. The African states will be able to attract foreign investment and thus participate in the global economy if they are able to create large internal markets through economic integration.²³

Over the past three decades, various integration efforts have been undertaken at the regional and subregional levels with generally limited

of African Unity, Statement at the Ministerial Meeting of the United Nations Security Council on Africa 6 (Sept. 25, 1997) (manuscript on file with the *Washington University Law Quarterly*). See also Annan, *supra* note 12, at 4.

21. Mugabe, *supra* note 20, at 6.

22. See Council on Foreign Relations, *Promoting U.S. Economic Relations With Africa*, (Dec. 17, 1997) <<http://www.Africanews.org>>; AFRICA POLICY INFO. CTR., RECOGNIZING AFRICA'S SUCCESS: FACILITATING AFRICAN INITIATIVE 3 (1997). APIC Data, *Recognizing Africa's Success: Facilitating African Initiative*, June 11, 1997 (manuscript on file with *Washington University Law Quarterly*).

23. Theoretically, the African states have committed themselves through the Treaty Establishing the African Economic Community to establish a common market by the year 2000. See Organization for African Unity, Treaty Establishing the African Economic Community, June 3, 1991, 30 I.L.M. 1241 (1991). One major characteristic of a common market is duty free movement of goods within the market. In many African countries, the major source of government revenue is customs duties. It will be difficult for governments to surrender this source of revenue.

success due to design, institutional difficulties, and the inability of the African states to manage them because of limited resources. Additionally, the existence of organizations external to Africa but to which different groups of African states find it beneficial to belong, has to some extent undermined the sense of unity within the African region.²⁴ Membership in such organizations, however, enables the African states to participate more effectively in the international economic and political system. Institutional arrangements need to be structured in such a way that such membership does not undermine African integration efforts.

The colonial system of governance and economic organization was deliberately structured in a manner that enabled people in Malawi (then a British colony), for example, to trade and communicate with people in India, Hong Kong and Britain, but not with people in Mozambique (then a Portuguese colony) with whom they share a common border. Thirty years after independence, trade between Malawi and Mozambique is still negligible. The average Ghanaian citizen (anglophonic), for example, may not in certain respects have much affinity towards his Togolese neighbor (francophonic). While greater intra-African contacts by politicians, intellectuals and professionals are breaking down these barriers, more effective cooperative mechanisms need to be developed. One of the greatest contradictions of our time is that while we talk about global trade and a liberalized global economy, there is a concurrent developing tendency towards block trading through regional economic arrangements. Asia-Pacific Economic Cooperation ("APEC"),²⁵ European Union ("EU"),²⁶ North American Free Trade Agreement ("NAFTA")²⁷ and MERCUSOR²⁸ represent this trend. It is imperative therefore that the African states move towards greater economic integration in order to access foreign markets and attract foreign capital. Failure to integrate will only lead to further marginalization. There appear to be two strategies that might be adopted. First, cross-border trade within the continent needs to be encouraged.

24. Among such organizations are the Organization of Islamic States, the Commonwealth of Nations, La Francophonie and the newly created organization of Portuguese Speaking countries.

25. Asia-Pacific Economic Cooperation, Nov. 6-7, 1989, 1994 B.D.I.E.L. AD LEXIS 15. The 17 members of APEC include: People's Republic of China, the Republic of China, Philippines, Malaysia, Thailand, Singapore, Indonesia, Brunei, Papua New Guinea, Australia, New Zealand, Chile, Mexico, South Korea, Japan, the United States and Canada. Asian-Pacific Economic Cooperation Forum: Declaration of Common Resolve, Nov. 15, 1994, para. 3, 34 I.L.M. 758 (1995).

26. The Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 247.

27. North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 296 (1994).

28. Argentina-Brazil-Paraguay-Uruguay: Treaty Establishing a Common Market, Mar. 26, 1991, 30 I.L.M. 1041 [hereinafter MERCUSOR]. MERCUSOR is the Southern Cone Common Market, consisting of Argentina, Brazil, Paraguay and Uruguay.

Second, the existing regional and subregional organizations (ECOWAS,²⁹ SADC,³⁰ COMESA,³¹ MAGHREB,³² etc.) need to be restructured in a manner that allows them to operate more effectively within their respective sub-regions while at the same time developing mechanisms that enable them to cooperate with each other with the aim of their eventual merger into an African Economic Union.

C. Conflict Management

As we enter the twenty-first century, it is likely that African cross-border conflicts will diminish or perhaps disappear. The threats to the African states will in most cases therefore come from internal ethnic, religious, cultural and linguistic conflicts. These internal conflicts will have an external dimension to the extent that such conflicts usually displace people across national boundaries. Refugee problems and other cross-border problems such as drug trafficking, arms smuggling, etc., can only be managed if adequate inter-state mechanisms are developed. Additionally, major internal conflicts do in some cases have regional destabilizing consequences.³³ The conflicts in the African Great Lakes Region (Burundi, Democratic Republic of the Congo and Rwanda) are illustrative examples. When these occur, they should be collectively responded to under the expansive interpretation of the United Nations charter that was adopted in connection with United Nations Operations in Somalia ("UNOSOM") in 1992.³⁴

In the Somalia situation, international intervention was undertaken in order to ensure UNOSOM's success. In this case, the collapse of civil authority in Somalia was treated by the Security Council as a "threat to the peace" within the meaning of Article 39 of the United Nations Charter because the collapse threatened the essentially humanitarian objectives of the mission.³⁵ Similar interventions may not be possible in future instances of

29. Treaty of the Economic Community of West African States, May 28, 1975, 1010 U.N.T.S. 17 [hereinafter ECOWAS].

30. Treaty Establishing the Southern African Development Community, Aug. 17, 1992, 32 I.L.M. 116 (1993).

31. Treaty Establishing the Common Market for Eastern and Southern Africa, Nov. 5, 1993, 33 I.L.M. 1067 (1994).

32. On February 17, 1989 Morocco, Algeria, Mauritania, Tunisia, and Libya formed the Arab Maghreb Union. See *North Africa: Five Heads of State Launch Arab Maghreb Union*, INTER PRESS SERVICE, Feb. 17, 1989, available in LEXIS, news Library, ARCNEWS file.

33. At the height of the Mozambique conflict, for example, Malawi harbored over one-million Mozambican refugees. There were also many Mozambican refugees in Zambia and Zimbabwe.

34. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/Res/794 (1992).

35. Article 39 of the United Nations Charter states: "The Security Council shall determine the existence of a threat to the peace, breach of the peace, or act of aggression, and shall make

internal disunity if the humanitarian element is absent. In any event, after failures in Somalia and Rwanda, the international community will be extremely reluctant to get involved in future African conflicts as was demonstrated in 1996/1997 before the collapse of the Mobutu regime in Zaire (now the Democratic Republic of the Congo). The African states must therefore devise their own institutional arrangements to accommodate internal disunities. To begin with, there is now a consensus that the resolution of Africa's problems must be done primarily by the Africans themselves.³⁶ This new consensus has to some extent produced commendable results in the case of Mozambique and Liberia. In situations such as Angola and the Sudan, this objective still remains elusive. Mozambique provides a model that others in the African region might emulate. Through political accommodation, resettlement of refugees and drastic reforms of the economy, the Mozambican government was able to bring the Resistencia Nacional Mocambicana ("RENAMO") into the political process in 1992 after nineteen years of armed conflict. The Mozambique experience suggests that internal accommodations are feasible if such accommodations grant equitable access to the political and economic process. In the case of Mozambique, this success was complemented by a well executed United Nations conflict management strategy.³⁷ The Mozambique success also provides an example of how the emerging partnership between the international community and the African states should be structured. Within Africa itself, collective conflict management activities have been undertaken under the auspices of sub-regional groupings such as ECOWAS, SADC, and COMESA.³⁸ At the continental level, similar efforts have been taken under the OAU's Mechanism for Conflict Prevention, Management and Resolution.³⁹ These mechanisms have so far had limited success due to lack of a clear mandate, adequate structures and resources. It is therefore commendable in this regard that there is now emerging greater cooperation between the OAU and the United Nation in African conflict management. This new partnership has had some successes in Liberia and the Republic of the Congo.⁴⁰ A measure of this perceived success was the decision by the United Nations to convene a special 1997 ministerial meeting of the United

recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." U.N. CHARTER art. 39.

36. Annan, *supra* note 12, at 3. See also *An African Answer to African Wars*, THE ECONOMIST, Oct. 18, 1997, at 45.

37. General Peace Agreement for Mozambique, U.N. SCOR, 47th Sess., at 3, U.N. Doc. S/24635/Annex (1992).

38. See *supra* notes 29-31.

39. See Mugabe, *supra* note 20, at 4.

40. See Annan, *supra* note 12, at 8.

Nations Security Council to develop strategies for Africa's long-term security. Additionally, the American/Africa Crisis Response Initiative⁴¹ has the possibility of contributing to Africa's security if care is taken to ensure that African sensitivities about external intervention are taken into account.

CONCLUSION

Internal, external and historical factors have conspired to create the capability deficit that many African countries presently experience. Africa's state incapability is part of global state incapability expressed in its most extreme form in the collapse of the Soviet Union, Yugoslavia, Somalia and Cambodia. While the African states have correctly accepted primary responsibility for rebuilding African state capability, there are aspects of the capability problem that can only be resolved through international cooperation. In the context of conflict resolution and African security, for example, there must be more effective coordination between the UN and the OAU as provided under Chapter VIII of the United Nation's charter. UN/OAU cooperation will also enhance African conflict resolution capabilities if there is a commitment to an integrated approach to Africa's insecurity. In this regard it is commendable that Japan will in 1998 convene two ministerial conferences that will take a comprehensive approach to Africa's security problems.⁴²

In the economic area, for example, aid dependency, unfavorable trade terms, inadequate capital flows to Africa, the debt problem, marginalization of Africa under the General Agreement on Tariffs and Trade,⁴³ World Bank

41. This is a peace-keeping training force for African armies. The objective is to train African armies so as to enable Africa to handle its security problems. *Africa/United States: Madeleine's Mission*, AFR. CONFIDENTIAL, Dec. 5, 1997, at 1.

42. The January 1998 Ministerial International Conference on Preventive Strategy will deal with humanitarian assistance to refugees and displaced persons. In the fall of 1998, Japan will co-organize a conference with the United Nations, the Global Coalition for Africa and the Second Tokyo International Conference on African Development ("TICAD II") to design ways for applying a "new development strategy" to Africa. See Keizo Obuchi, Minister of Foreign Affairs of Japan, Statement made at the Ministerial Meeting of the United Nations Security Council on Africa (Sep. 25, 1997) reprinted in U.N. Press Release SC/6420, Sept. 25, 1997, at 12.

43. General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, 61 Stat. A3, T.I.A.S. 1700, 55 U.N.T.S. 187. The GATT has now been succeeded by the World Trade organization. See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, Legal Instruments—Results of the Uruguay Round vol. 1 (1994) 33 I.L.M. 1125 (1994) (includes the Agreement Establishing the World Trade Organization, the General Agreement on Tariffs and Trade 1994 and other related agreements). See also Robin Cook, Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland, Statement made at the Ministerial Meeting of the United Nations Security Council on Africa (Sept. 25, 1997).

and International Monetary Fund⁴⁴ structural adjustment programs that sometimes have punitive consequences, are contributors to the African capacity problem. At present, international initiatives such as the United Nations Agenda for the Development of Africa ("UN-NADAF"), the United Nations Special Initiative for Africa, United Nations Industrial Development Organization's Alliance for Africa's Industrialization and the Lome Convention arrangements have all had limited successes.⁴⁵ New methods must be devised to link Africa to the global economy.

African state capability will be additionally enhanced if the developed countries place a moral dimension to their dealings with Africa. Excessive arms sales to the African states, for example, have led to the diversion and misallocation of Africa's limited resources. Land mine sales have rendered large areas of Angola, Mozambique and Zimbabwe unusable.⁴⁶ Finally, rigid application of well-intentioned international policies may in extreme cases contribute to the African capability problem. A good illustration is the application of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES").⁴⁷ Unforeseen at the time Namibia and Zimbabwe became parties to the convention, the elephant population in these two countries and to some extent in Malawi has multiplied to a level that has created threats to productive land use. Namibia and Zimbabwe recently obtained a limited exemption from the convention after extremely protracted negotiations.⁴⁸ In future the convention should be applied in a manner that balances the interests of the four-legged and the two-legged inhabitants of the African continent.

44. Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39, *as amended*, 20 U.S.T. 2775; 29 U.S.T. 2203; T.I.A.S. 11898.

45. See Mugabe, *supra* note 20, at 8.

46. See Jack H. McCall, *Infernal Machines and Hidden Deaths: International Law and Limits on the Indiscriminate Use of Land Mine Warfare*, 24 GA. J. INT'L & COMP. L. 229 (1994).

47. Convention on International Trade in Endangered Species, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 (entered into force July 1, 1975).

48. African Information Afrique, *Early Calls to Reverse CITES Decision on Elephants*, Jan. 20, 1998 (manuscript on file with the *Washington University Law Quarterly*).

