ARTICLE: THE FAILURE OF THE NATION STATE AND THE NEW INTERNATIONAL ECONOMIC ORDER:

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ARTICLE: THE FAILURE OF THE NATION STATE AND THE NEW INTERNATIONAL ECONOMIC ORDER: MULTIPLE CONVERGING CRISES PRESENT OPPORTUNITY TO ELABORATE A NEW JUS GENTIUM

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SUMMARY:
... She noted the wealth of Africa - not only in coffee, cocoa, and tea, but also in gold and cloth. ... B. Problems in Africa's Foreign Relations: From NIEO to NWO to Globalization ... Looking at the world through a global perspective, which considers not only the first world but also the third world, we must take a realist perspective. ... Unfortunately, the hope that the reality of interdependence (and dependency on luxuries - coffee, tea, cocoa - is not the same as dependency on primary necessities - finished goods, wheat, soy, corn, beef ...) will lead to an "enlightened self interest" that recognizes, for example, that refugees in the first world are the consequence of poverty in the third world are almost as badly founded. ... This paper has attempted to show that a correct appreciation of the plight of third world states generally is dependant upon an understanding of the historical presumptions inherent in international law and also upon an appreciation of the challenges of the transformation of the state through disintegration into subnational and privatised entities which occurs simultaneously with an integration of macro state functions into transnational entities. ...

HIGHLIGHT: ABSTRACT

Both the New International Economic Order ("NIEO") and the New World Order (NWO) have failed to end poverty in the third world, most notably in Africa. The failure of these two theories, themselves responses to the failure of the Westphalian state system, and the material facts of globalisation present an opportunity to elaborate a new law of nations. Abandoning the Westphalian model is the best way forward, not only because of the technological revolution in the first world, but also for cultural reasons in Africa, where borders almost never correspond to nations.

TEXT:
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INTRODUCTION
"Africa is rich." The woman who told me that met me in a dream. She noted the wealth of Africa - not only in coffee, cocoa, and tea, but also in gold and cloth. Indeed Africa is resource rich not just in agricultural or "exchange value" metals such as gold, silver, platinum or rocks such as diamonds. Africa is also resource rich in petroleum, cobalt, and another half dozen or so "strategic minerals" which while not used in daily life are of vital importance for high performance aircraft - to say nothing of cocoa, coffee, and many other crops which are unavailable in the global north. "Africa is rich," she said. She meant it (she was carrying her infant child on her back using a sort of hammock "backpack" which I had never seen in North America but which is popular in the African communities in France). So maybe she was saying it to instill pride in her child - who knows, she was a stranger and it was just a dream. That dream has nagged at me since then. "Why is Africa resource rich - yet beset with a declining growth rate?" n1

This paper will attempt to answer that question by explaining the legal mechanisms that both failed to present stable governments for Africans and which have permitted systemic - if not systematic - looting of Africa's resources. Africa is rich - and cursed. Africa is all too often cursed with irresponsible corrupt and illegitimate governments. Divided nations living within artificial borders and subject to the manipulations of their former colonial masters cannot provide effective internal order, and [*189] thus, these nations become prey to opportunists, demagogues, and exploiters. This reality is exacerbated by the transformations in the international state system. However, those transformations could also present the opportunity for the re-conceptualization of legal structures to help these nations escape from endemic poverty.

METHODOLOGICAL FOUNDATION

"The Master's Tools Will Never Dismantle the Master's House" n2

-Audre Lorde

To criticize the neo-colonial system and rebuild on better foundations that will serve the people, we must understand that the colonial and neo-colonial regimes are not inevitable and that law is not inevitably just. International law is fundamentally Western and Christian, n3 the law of civilized, (i.e. civil law) states. n4 This lens filters all thought on international law. The filtering that it does favors some outcomes and excludes others. Because of this built-in systemic bias, some argue that international law is in fact illegitimate. n5 However, even if international law as a whole is illegitimate, it can neither be ignored nor dismissed. It may be bad law, but it is the only law that there is and it is the necessary starting point for any transformation of its contents.

If we understand the fact that customary international law and sovereignty are western concepts that were adopted by or imposed on the rest of the world, we can then consider alternatives. The fall of the Soviet bloc signals the end, in practice, of socialist law as a systemic challenge to liberalism. Islamic Shari'yah however still presents an alternative to liberalism. Islamic law is in some ways quite fair, for example, it prohibits usury. In other ways Islamic law is problematic, as it limits the role of woman to a very specific function. That, incidentally, is arguably still more humane than capitalism. Many of the roles capitalism proposes for women are essentially prostitution - whether obvious, hidden or glamorised. Though the debate over the freedom to choose a career as a sex worker versus the "oppression" of Islamic marriage is beyond the scope of this paper; it is useful to point out the tension to demonstrate how [*190] quickly many "unquestionable" (i.e. unquestioned) presuppositions of individualistic capitalistic thought can unravel. The point is that law should offer better roles to persons other than "objects of sexual gratification" or "child bearing units." Both capitalism and neo-feudalism fall short of emancipating women for different reasons. In different ways, their strengths and weaknesses are often asymmetrical - and are not necessarily antithetical.

This illustrates how "progress" can turn out to be repression n6 and how apparently attractive concepts like "human rights" can become a trap used to manipulate and destabilize third world governments. n7 For example, free public education in francophone Africa always came with the explicit understanding that the gift of French culture and civilization bore the duty to uphold and extend that culture (which again is not universally or necessarily evil - every
culture has its good points). However the imposition (to put it bluntly), transposition (to put it diplomatically), or transmission (to put it nicely) of French art, philosophy, literature and table manners often carried with it the erasure of national history and culture. This erasure is not confined to the Third World but also occurs in the First World and thus shows either the disjunction of law and social practice or that oppression is universal. This process of internalisation of the dominant (and self contradictory) paradigm of Christian liberal individualism is a wedge that splits national elites and non-elites in the Third World and pits nation against nation even within the First World (i.e. Latinos and Africans in America). n9

The exposure to the internal contradictions of the system leads one to recognize that the superstructure (i.e. the intellectual justifications of the system) is only smoke and mirrors. If you really want to understand the machinations of power you must look at the forces of production (i.e. the material base, the economic relations) and not the superstructure that rationalises it (Foucault). The instrumentalities of oppression are ultimately material.

Good practice thus looks at material basics. However, when discussing the super structural rationalizations of the hierarchical imposition of force and the extraction of labour and raw materials thereby, Third World approaches to international law can help in the demystification. Like critical legal studies, TWAIL operates through deconstruction (exposing rationalization as such and demonstrating the material realities), criticising hierarchy (the method through which labour is extracted and ideas justified), and raising alternative perspectives and possibilities. One point critical race theory seeks to expose is that thinking in terms of "blacks" and "whites" injures both blacks and whites - though materialist analysis must step in to say "yes, but the net result of the racism is a net economic gain for whites" - and some persons of colour. In other words, neo-colonialism is profitable for some - and will continue for that very reason, unless actively, systematically and vigorously opposed with realistic critiques and alternatives. TWAIL, like CLS, offers critiques. Does it offer alternatives?

PROBLEMS FACING AFRICA

A. Problems within Africa

Having exposed the methodology used we can now ask, "What is the problem?"

The principle problem facing Africa is poverty. Africa is not alone in poverty; in fact, about two-thirds of the world lives at or below subsistence level. However, African poverty is endemic, among the worst on the planet, and has been steadily getting worse since decolonization. The wealth gap between the First World and Africa has widened and in fact Africa has experienced a net loss of income (i.e. negative growth rates). Debt forces African states into "structural readjustment programs" ("SAPs" - currency, interest rate, and exchange rate mechanisms which automatically "adjust" the countries macroeconomic indicators). SAPs effectively transfer wealth from Africa to the First World via usury. Perpetual debt, continuously refinanced, leads to currency instability and capital flight. If an African state seeks to avoid this through inflating its currency, the result is capital flight leading to economic downturn exacerbating the problem. Thus the Third World is directly and indirectly dependent on western currency: through foreign investment when the currency is so devalued as to become meaningless or is seen as risky, and indirectly, when the local currency is "pegged" to a stable Western currency (a prudent policy). This is unavoidable so long as those states remain indebted and so long as their domestic currency is seen as unstable. From these facts follows the logical conclusion that a stable monetary policy is one key to curing African poverty.

Shortages of capital are of course already a problem even where responsible monetary policies are in place because of political instability and new and more attractive investment opportunities in Eastern Europe.

However, if the immediate consequences of debt are currency instability and capital flight, the ultimate consequences are famine and at the most extreme genocide.
The West likes to argue, sometimes contemptuously, that third world poverty is a function of political corruption. That argument ignores the fact that corruption serves the interest of western governments and is an instrument of indirect control. Corrupt governments are both easier to control through bribery, to destabilize through revolution, and to eliminate through coup d'etat.

These general tendencies can be illustrated by specific examples. Sudan is one of the poorest lands on earth - yet has oil. However it has also (and in part as a result) had a civil war leading to an instable business climate. The result: restrictions on capital and an imbalance of payments in the 1980s. So while Sudan could have done very well indeed, it did not do as well as it might have. There are of course far worse cases: Rwanda, for example, which suffered an orchestrated and efficiently executed genocide.

What is true of Sudan and Rwanda specifically is true of other African states generally: ethnic division of peoples within artificially created colonial administrative boundaries can lead to conflict. Almost every African internal conflict fits this description. The vicious circle of unstable and corrupt governments overseeing irresponsible monetary policy leading to perpetual indebtedness, currency instability, and capital flight is thus completed when those unstable and corrupt governments collapse, which they do with sickening regularity, and all too often in pools of blood - occasionally instigated, sometimes aided and abetted but rarely regretted by western multinational companies and former imperialist powers. These problems can only be seriously addressed either by the establishment of stable multinational states (unlikely but not impossible) or by redrawing the borders of African states to reflect the national realities. So, a stable monetary policy is a necessary but insufficient condition to improvement.

B. Problems in Africa's Foreign Relations: From NIEO to NWO to Globalization

The relationship of the first and third world since the declaration of the NIEO in 1974 has been marked by great hope and even greater disappointment. This paper argues that this relationship can be studied with reference to three distinct phases: the so-called "New International Economic Order" (1974-1989); the attempted New World Order (1990-1994); and Globalization (1995-present). African states' relations with the first world also roughly parallel this distinction moving through three phases of colonial domination (pre-NIEO), confrontation with threats of nationalization (NIEO/NWO), and negotiation (NWO/globalization).

None could have predicted in 1974, the spectacular, in fact near total failure, of the third world to impose a "New International Economic Order" on the West. Because this project was so ambitious, and failed so spectacularly, yet covers nearly two decades, we shall explore it in some depth.

The NIEO was declared during the first Arab oil embargo of 1974. The cold war was in full swing, illusions of detente to the contrary. The Nixon regime had waged proxy wars in Chile, former Indochina, and among the Arab neighbours of Israel. Two of these proxy wars (Suez 1973 and Chile) were diabolically successful. Despite "rumours" (probably true) of U.S. and Soviet fighter pilots engaging in dogfights in the skies over the Sinai and North Vietnam, the world did not explode into a nuclear war. However the U.S. probably did not foresee the Arab oil boycott which drove the world into its worst post-war recession, effectively ending the constant growth and prosperity of the post war. Given the collapse of the Nixon administration in a bloodless administrative coup and the crippled U.S. economy (suffering from simultaneous inflation and high unemployment) it is hardly surprising that the third world thought it possible to wring concessions out of the first.

This did not happen. In order to understand why we will now examine the contents of the NIEO.

1. Contents of the NIEO

Philosophically, the NIEO argued that the world was a "global village," i.e. one national society. Because wealth and knowledge are socially produced, they should be socially distributed. NIEO, like TWAIL, questions the northern model of development, but does recognize that while some "progress" is in fact repression, development is the...
"sine qua non ... for existence." n45 Since the NIEO does not reject the idea of progress it must be seen as a modern and to some extent "western" idea (which raises the interesting question: where does the North end and the [*/195] West begin?).

Let us turn to the positive content of this philosophical framework. The NIEO proposed a charter of economic rights and duties. n46 It manifested a distrust of international law among the third world states n47 for the reasons outlined in our discussion of TWAIL and entailed a rejection of classical capitalist theories of trade. n48 NIEO acknowledged the systemic hypocrisy n49 of imperialism and presented a coherent theoretical rejection of the West as an intellectual paradigm. n50

The NIEO was declared in a resolution of the U.N. General Assembly. n51 In addition to the charter of rights and duties it also contained a programme of action. n52 Its goals went beyond merely alleviating poverty in an attempt to change the material relations of production in order to better the lot of persons in the third world. n53 Among the demands were: increased exports from the third to the first world, transfers of capital to the third world, transfers of technology to the third world, a regime to control multinational corporations, as well as provisions for increasing aid and to alter the international monetary system. n54 Some have argued that these principles were not so radical since they still presumed at least a mixed economy and were not outright nationalization. n55 If presented as reparations such transfers would be more defensible. However, without presenting at least a symbolic exchange calling for unilateral wealth, transfer from the first to the third world would be met with scepticism.

As to the applicability of NIEO, some argued NIEO to be binding international law n56 presenting the argument either that the resolutions of the general assembly are a source of law or reflect "instant" international custom. n57 Within a classical Western conception of international law this is of course nonsense. A custom must be an accepted practice viewed as binding, and here there was no practice. As to the argument that U.N. resolutions are binding, while the U.N. is an international organization with [*196] legal personality, it is no state or a super legislator. Resolutions of the U.N. are not binding but depend upon enactment either by member states or by the Security Council. It was of course exactly this egalitarian strand of the UN that was called into question by the NIEO (and later TWAIL), particularly in the extreme variants, which consciously reject customary and conventional international law. Such radical critiques failed in part because they did not offer serious alternatives for elaborating legitimate international law.

As we shall see, the ultimate failure of the NIEO to realise its ambitions shows that while the West regularly uses its economic power to control the third world, n58 any new economic order will arise through reform under the aegis of the Bretton Woods system - at least for the foreseeable future. n59

2. The New World Order ("NWO")

The end of the cold war in 1989 also marked the functional end of the NIEO. While NIEO literature does continue, the chances of realising the ambitions of the NIEO are currently nil. This is not to say that there was an immediate and instant abandon of any idealism. During the transition from cold war to colder peace, the West sought repeatedly to impose normative standards on the third world, which would serve the interests of the third world. While the coalition arrayed against Iraq killed many people, it was also nearly universal and thus in some sense "legitimate." During the Clinton administration the U.S. attempted (at increasing risk to its own soldiers) several "humanitarian interventions" in Haiti, Liberia, and Somalia. However, the warring factions in Somalia effectively prevented any help being done. As a consequence of the experience of risking the lives of its soldiers in pointless conflicts, the West has since drawn a line and resolutely ignored wars, with the notable exception of Yugoslavia, and there only because it is in Europe. n60 France waited to intervene in Rwanda only after both sides were exhausted. While it is true that "the west ditched Africa," it is difficult to blame western governments for their inability to impose peace by risking the lives of their own citizens to forcibly separate warring peoples. n61

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3. Globalization

With the end of the hope for global coalitions and humanitarian peacemaking (as opposed to peacekeeping) in the third world, the world settled into the current phase of globalization focused principally on economic expansion. The main foreign policy concern of neo-colonialism today, despite rhetoric of "clash of civilization" or "war on terrorism," is almost purely commercial through opening up third world markets and maintaining access to raw materials: the supposed "war on terrorism" serves this end nicely. Economic expansion, accomplished through multilateral treaties administered by un-elected bodies such as the World Trade Organization ("WTO"). Such negotiations, like most international negotiations, are undemocratic and thus illegitimate; n62 NIEO scholars have recognized that global negotiations are not always good and that bilateral negotiations are sometimes better. n63 However, that presupposes the objective of the international system to be the alleviation of third world poverty when the systemic objective is in fact efficient wealth extraction. Any residual idealism has already served the purpose of a peaceful transition from cold war to colder peace, and moreover been proven by experience in Somalia to be naive, unrealistic, and in fact dangerous. Peacekeeping missions may continue, but to expect any further attempts at peacemaking would be unrealistic.

C. Problems Facing Not Only Africa but the Entire World: The Decline of Sovereignty

The problem we have identified is the failure of the third world to resist the depredation of its resources. This failure is most clearly seen at the theoretical level in the collapse of the NIEO following the end of the cold war. The theoretical failure is not, however limited to Africa. The transformations in the idea of sovereignty have had consequences that affect not only the third world, but also the first world yet which further operate to the disadvantage of persons in the third world.

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1. Fragmentation

a. Fragmentation in the Practice of Sovereignty: the Death of the Monopoly of the State as Sole International Legal Person

The classical international law definition of sovereignty considers only states as international legal persons. However, the theory is being undermined in practice by material realities. The influence of multinational corporations, some of which have larger budgets than third world countries, is not to be discounted. n64 Some have even posed the question whether multinationals are or should be subjects of jus gentium. n65 Not only the corporations, but also the mobility of the capital that their shareholder's employ and deploy as well as the impetus of that capital undermines the practice of sovereignty through currency and interest rate destabilization. n66

If the nominally "sovereign" third world faces the "goliath" of multinational companies, it also faces a swarm of "Davids": non-governmental agencies ("NGOs"). Whether they pursue helpful or harmful acts, NGOs undermine the claim of the state to the monopoly of legitimate representation. n67 More problematic, arms merchants and drug dealers simply ignore the boundaries of the state. n68 While a refugee seeking a better life in the first world is certainly no criminal, the instant global mobility which permits migrants from Sri Lanka to emigrate (legally or not) to France shows one more stress on the concept of the "sovereign" (nation) state. n69

b. Fragmentation of the Idea of Sovereignty

The idea of the state as monopolist of representation and legitimate violence is undermined in practice by these realities. However, theoretical challenges to "the state" and "sovereignty" also abound. n70 At the most fundamental level, representative individualistic liberal theory undermines the state. n71 If the individual is primary, why should the state be able to [*199] control him or her? Once the premise of the primacy of the individual is admitted, the consequence of the rebuttable presumption of the illegitimacy of state action follows.
The idea of the sovereign as absolute master was also questioned in the war and post-war treatment of Iraq, where we see the nominally "sovereign" Iraqi state controlled in terms of imports, exports, and airspace. Other breaches of state sovereignty crop up in unlikely places: none would imagine the case of Agusto Pinochet as becoming one more example of the invalidity of the old presumption that "the sovereign can do no wrong." Nonetheless, his arrest is evidence of exactly that proposition. Yugoslavia/Kosovo is one more example of a nominal sovereign being nothing more or less than the battlefield for transnational interests (Islam, the West, pan-Slavism, and oil futures). It is not impossible that the phenomena of globalization will lead to a new jus gentium, as some scholars have suggested.

One element of the new jus gentium would be the limitation of sovereignty according to a principle of responsibility. If democracy were to be a principle of the new jus gentium such democratic demands must be proportioned to economic development. The new law of nations proposed would thus become a constitutional system of international law. That is probably just unrealistic utopian fantasy. However the decline of the Westphalian nation state explains why such fantasy can be considered. We will now explore how the concept of the state has been challenged through integration and disintegration.

c. Fragmentation of the Idea of the State

Just as the idea and practice of the state as hermetic atom is most clearly failing, the state is also disintegrating via an atomization into ever smaller entities. One method, which brings about state decomposition, is privatisation. While the NIEO neither foresaw nor proposed privatisation, such a principle could become a part of international law and is certainly a trend of some twenty years now. The tendency toward privatisation affects not only administrative functions of the state, but even reaches to police functions. Decomposition of the state into ever smaller entities also occurs not only functionally but also structurally: the state is being fragmented into different sub-state entities (regions and peoples). Thus the challenges facing African states are not only due to their position as poor puppets of former colonial masters, but also due to challenges facing the state and the international state system as a whole.

2. Integration

At the same time as multiple converging phenomena result in the fragmentation/atomization/decomposition of the state in both its structure and functions (disintegration), the state is also menaced with extinction through its subsumation into ever larger transnational entities through the processes of globalisation. APEC, EU, MERCOSUR, NAFTA are all examples of this tendency toward global structures. Thus the "micro" functions of the state - police, education, and general welfare, are being broken down and removed to ever more local entities while the "global" aspects of the state - trade and defence - are handled by ever larger (and ever less democratic) transnational entities (including transnational corporations). For these reasons it is not only the third world that is facing enormous stress - the first world is also undergoing wholesale transformation of the structure of its governance.

3. Transformation

That raises the question of the possibilities of such transformation. Are the best of all worlds now possible? Inter-imperialist rivalries, a characteristic of Neo-colonialism, are much less strident than in previous eras - but only in the first world. This is partly because the objective of continental and global trading regimes was to divorce territorium and economic strength. The multinationalization of the world, with global companies operating in a global marketplace under first continental, and now more recently global rules, was specifically intended to avoid imperialist arms-races and bloodbaths of which the two world wars are only the most obvious examples. To the extent that such divorce has helped keep the peace one must give the devil his due - rather than killing Europeans and Euro-Americans, neo-colonialism now limits its killing to third world persons. Thus, the transformationist thesis argues that "the best of possible worlds is possible" - and some transformation and humanization of the world order have indeed occurred. However the transformationist thesis appears to make the mistake of considering only the first world. If we consider the
third world and its interaction with first world states we witness all the paradigms of realpolitik: arms races, ethnic rivalry, and the question of market share. The transformationist thesis must thus be seen as a special theory applicable only in the first world and not a general theory - as the failure of humanitarian peacemaking in Somalia demonstrates.

4. Realism

Looking at the world through a global perspective, which considers not only the first world but also the third world, we must take a realist perspective. The state is resilient, like a cockroach; even atomic war does not kill it. While many African states are at best only nominally sovereign, the state's claim a priori a the individual, i.e. its superior resources and capacity to marshal will and to invoke legitimacy, explains why the state will survive even in nominal sovereign entities that have little historical reality and even less cultural reality.

THE INTERNATIONAL SYSTEM'S EVOLUTION

The history of the third world is not all blood.

We can of course find many failed nation states: Somalia, Liberia, Rwanda, Bosnia, Cambodia, Chechnya, and East Timor are all examples - sometimes disasters - that demonstrate the weakness of nominally sovereign states in the face of transnational ethnic and economic concerns. There are, however, some success stories in Africa: Mauritius, Botswana, and Kenya, among others. Thus, a methodological research point which should be developed would be a comparison of these regimes to determine why the failures failed, how to prevent such failure, why the success stories succeeded, and how to repeat such success. This author's hypothesis is that there would be a direct positive correlation between ethnic unity, responsible government, and stable monetary policy with economic success, and an equally strong but negative correlation of multi-ethnicity, corruption and unstable monetary and capital policy in the failures.

D. Inability of International Law as Currently Conceptualized to Solve These Problems

The currently developing rules of international law are in fact just as incoherent as the liberal-individualist-Christian ideology from which they evolved. But, not for the same reasons: the contradictions in international law today are not the product of an incoherent ideology leading either to theoretical impasse ("paralysis"), or confusion ("spasmophilia"). Rather they are conflicts in the positive law of nations and the result of differing views of what the rules should be. The resolution of these antinomies will determine the shape of the new jus gentium. The fact that legal contradiction is so fundamental as to pose antinomian challenges to the positive law does help explain why advocates of the NIEO thought it possible to enforce a new norm of international responsibility of the first world to the third world. We shall now describe these antinomies in order to prove these propositions and also to show the possible scope of the future jus gentium.

One current principle of international law is the principle of non-intervention. This principle is immediately contradicted however by the opposing principle, which is more recent in time, of "humanitarian intervention" and the related (possibly independent) concept of droit de l'ingerance. No such norm existed one hundred or even fifty years ago. Where did it come from and to what extent is it valid? Is the principle of "humanitarian intervention" merely an exception to the rule of non-intervention? And if so why is it not an independent prior principle? And how is it justified with the classical view of the state as sovereign autonomous and independent?

A second confused principle of international law is the principle of the self-determination of peoples. This principle is also relatively recent, dating only from the end of the First World War, when United States President Woodrow Wilson declared it as one of his "14 points." However, the question arises: what constitutes the people who enjoy the right of self-determination? To be consistent, this author believes that such a right is the right of a people, i.e. a coherent ethnic and linguistic group. Under such a rule however, Walloons would have the right to their own state -
as would the Welsh. n93 For exactly this reason the right was interpreted to indicate that it would only inhere in former
colonized states and not ethno-linguistic nations. n94 The integrity of the colonial borders would be respected. The
result is that the colonial borders - which have no correspondence at all to the various ethnic groups in Africa - have
been "frozen in time." Eritrea is the only example of a successful African secession (though Tanzania did fuse) with
which the author is familiar - and even Eritrea was a former colony (Italian Somaliland) and is made of not an ethnic
monolith. Thus, was the "right of national self-determination" transformed from a potentially liberating force to merely
one more weapon in the arsenal of tyranny. It is no longer a freedom but merely the right to maintain order. n95 Any
radical and fundamental solution or alternative to the current international law would come about through recognizing
the reality that a people is a common ethno-linguistic unit and the proper basis of sovereignty. Such would however
involve redrawing many borders and so is unlikely barring radical systemic economic failure within the first world
states.

The failure of the question of national self-determination to be properly based on the right of a people, i.e. an
ethno-linguistic continuity, as the proper basis of sovereignty does illustrate one of the important points of the western
conception of international law. At least as currently conceived, the primary objective of international law, positively, is
to maintain order and not to impose justice. Any radical critique must normatively call this principle into question.
Given the admittedly Hobbesian view that "order" is a precondition to "justice," we can at least see some hope in the
fact that principles of justice do become systemic [*204] concerns of systems which are both orderly and prosperous
(which are then beset with the problem of remedying the irremediable past injustices which are the very basis of their
prosperity).

III. RESPONSES

If we have correctly perceived the problems facing Africa, the question now is how can they be solved? Some authors
still speak of "nation building." n96 Such a hope is however misplaced. First, no state in Africa is founded on a unity of
territory and people. Thus, all states in Africa are potentially divisible and cannot become national states but at best
multinational states. Unfortunately, the hope that the reality of interdependence n97 (and dependency on luxuries -
coffee, tea, cocoa - is not the same as dependency on primary necessities - finished goods, wheat, soy, corn, beef ...)
will lead to an "enlightened self interest" that recognizes, for example, that refugees in the first world are the consequence
of poverty in the third world are almost as badly founded. n98 Even making the point that poverty is the seed of Marxism
will not motivate individual capitalists, but only - and only possibly - the governments of capitalist states. n99 It is true
that neoliberalism is unrealistic in countries with no infrastructure, and thus hopes to export capitalism fully grown to
Africa are ludicrous but, the logic of neo-liberalism - greed - indicates that none will seek to better Africa except for
Africans themselves. n100

It is for this reason that the NIEO was overly optimistic. It is not the case that we can expect enlightened
self-interest. However we can and should plan upon the presumption that in capitalist states persons will act on and
probably only on, their immediate self interest. Thus the idea of the "solidarity" of the south, while a wonderful ideal
and a pleasant hope cannot be counted on to help African's escape from the cycle of debt and the oppression that it
entails. n101

What of international connections? Will foreign powers help Africa? Hardly likely, seeing as it is they who have
lent the golden chain of debt and enjoy the interest that it bears. But if first world powers are unlikely to offer real
change there is some hope for coalition politics among the third [*205] world to achieve the goal of stability, peace
and prosperity. So while Lome has not helped n102 - because it is part of a seamless web of imperialist history n103 - it
may still serve as an umbrella for other regional groupings. n104

Some analysts of the failure of the NIEO argue that the NIEO failed because of divisions in the south leading to
strategic paralysis. n105 That analysis however looks to transnational or even global institutions and arrangements as
key to determining the future of African states. n106 Were that hypothesis correct then there would be no success
stories. Restoring domestic order within individual third world countries is the task of those countries individually.
While these strategic difficulties will limit the ability of the South to formulate a coherent "NIEO-II," they do not need to prevent individual states in the South from imposing order needed for development. Thus our criticism of international law for placing order before justice must be tempered: every legal system must impose order before it can do justice. But a legal system that imposes order yet fails to do justice cannot be tolerated. All too often western "solutions" to the third world problems impose order - while doing injustice - according to the logic of profit.

CONCLUSION

This paper has attempted to show that a correct appreciation of the plight of third world states generally is dependant upon an understanding of the historical presumptions inherent in international law and also upon an appreciation of the challenges of the transformation of the state through disintegration into subnational and privatised entities which occurs simultaneously with an integration of macro state functions into transnational entities. We have presented the position that the plight of third world states is not necessarily irremediable, but that implementing remedies will be no easy matter. We have argued that such remediation will be contingent upon responsible and realistic economic policies which must be implemented by governments that are themselves responsible and as free of corruption as possible. The transformations of the international system, which exacerbate challenges to the third world, could even present opportunities for such remediation. While the NIEO has failed and the NWO has long been emptied of whatever idealism it may have had, the ["206] possibility nevertheless exists for reconceptualization of the international order due to certain contradictions which exist in that order and which are a result of economic and technical changes. While it would be too much to expect those changes to allow Africans to draw new borders which reflect actual ethno-linguistic realities, it is entirely conceivable that multinational states governed by the rule of law could be created which would also be associated via regional accords and conventions to address the problems of economic development. Whether this will happen is not however predetermined. If it occurs it will be due to Africans working together autarchically. One lesson of the failure of NIEO and humanitarian peace making: Africa must depend on itself to create any solution to its problems.

Legal Topics:

For related research and practice materials, see the following legal topics:
Energy & Utilities Law Exploration, Discovery & Recovery General Overview International Law Sovereign States & Individuals Human Rights Terrorism Criminal Law & Procedure Criminal Offenses Miscellaneous Offenses Cruelty to Animals General Overview

FOOTNOTES:

n1. Mark Weisbrot, Robert Naiman & Joyce Kim, The Emperor Has No Growth: Declining Economic Growth Rates in the Era of Globalization, Ctr. for Econ. and Pol'y Res., available at http://www.cepr.net/IMF/The_Emperor_Has_No_Growth.htm (Nov. 27, 2000). "In Latin America, Gross Domestic Product ("GDP") per capita grew by 75% from 1960-1980, whereas from 1980-1998 it has risen only 6%. For sub-Saharan Africa, GDP per capita grew by 36% in the first period, while it has since fallen by 15%." Id.


n5. See Mutua, supra note 3, at 31.


n8. Delgado, supra note 6, at 291-95.

n9. Id. at 294-95.


n11. See Mutua, supra note 3, at 36.

n12. See id. at 31.

n13. See Delgado, supra note 6, at 289-90.
n14. See Mutua, supra note 3, at 36.


n16. See Varges, supra note 4, at 1-2.


n19. Id. at 33.


n21. Id.

n22. Id. at 123-26.


n27. See Nigoul & Torrelli, supra note 7, at 9.

n28. See Varges, supra note 4, at 54-55.


n30. Id. at 27.

n31. See id. at 28.

n32. See id. at 24-25.

n33. See id. at 35.

n34. See id. at 22.
n35. See Drumbl, supra note 26, at 1246.

n36. See id. at 1236.

n37. See Nigoul & Torrelli, supra note 7, at 105.

n38. See Abusharaf, supra note 29, at 20-22.

n39. Id.

n40. Id.

n41. Id.

n42. Id.


n44. See id. at 402.

n45. See id.
n46. See Vargas, supra note 4, at 17.

n47. See id. at 35.

n48. See Rivero Oswald, New Economic Order and International Development Law, 5 (1980) [hereinafter Oswald].

n49. See Vargas, supra note 4, at 1.

n50. See Oswald, supra note 48, at 123.

n51. See Vargas, supra note 4, at 5.

n52. See id.

n53. See id. 13.

n54. See id. at 15-16.

n55. See id. at 19.

n56. See id. at 20.
n57. See id. at 57.


n59. See id. at 176-77.

n60. See, e.g., Medhanie, supra note 43, at 404.

n61. Id. at 403.

n62. See Nigoul & Torrelli, supra note 7, at 108-09.

n63. See id. at 123.

n64. See id. at 104.

n65. Daniel Thurer, Modernes Volkerrecht Ein System Im Wandel und Wachstum - Gerechtigkeitsgedanke als Kraft der Veranderung” 60 [hereinafter Thurer].

n66. See Correll, supra note 25, at 8.

n67. See id. at 13.
n68. See id. at 15.


n70. Id.

n71. See Hans Correll, supra note 25, at 19 (because of its capitalist and individualist tones).


n73. See Th<um u>rer, supra note 65, at 568.

n74. See id. at 586-88.

n75. See id. at 590-95 (discussing the limitation of sovereignty with respect to the use of nuclear weapons).


n77. See Th<um u>rer, supra note 65, at 597-99.

n78. Oliver Gerstenberg, Justification (and Justificability) of Private Law in a Polycontextual World, 9 Soc. & Legal Stud. 421 (2000) [hereinafter Gerstenberg].

n80. See Correll, supra note 25, at 15.

n81. See Gerstenberg, supra note 78, at 421.


n83. See Th<um u>rer, supra note 65, at 557.

n84. See Drumbl, supra note 26, at 1231.

n85. Id.

n86. Id. at 1227.


n89. See id. at 264.

n91. See Rothert, supra note 88, at 265.

n92. See Nigoul & Torrelli, supra note 7, at 39.

n93. See id. at 40.

n94. See id.

n95. See id. at 9.

n96. See Drumbl supra note 26, at 1289.

n97. See Nigoul & Torrelli, supra note 7, at 69.

n98. See Integration, supra note 87, at 33.

n99. See Nigoul & Torrelli, supra note 7, at 30.

n100. See Integration, supra note 87, at 32.
n101. See Nigoul & Torrelli, supra note 7, at 123.

n102. See Integration, supra note 87, at 29.


n104. See Integration, supra note 87, at 30.

n105. See Nigoul & Torrelli, supra note 7, at 85, 118.

n106. Id. at 118.