

Europe and the return to 'proper statehood' in Africa — A reply to Strydom

*Magnus Killander**

Researcher and LLD candidate, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa

1 Introduction

In his article 'From mandates to economic partnerships: The return to proper statehood in Africa',¹ Professor Hennie Strydom sets out to show how the Economic Partnership Agreements (EPAs) currently being negotiated between the European Union (EU) and groups of countries belonging to the African, Caribbean and Pacific (ACP) group of states would help establish stronger states in Africa. In this reply to Strydom's article, I set out why the EPAs are unlikely to play the role he foresees.²

In this note, I first briefly discuss the idea, seemingly supported by Strydom, that a new form of trusteeship should be an option in dealing with failed states in Africa. Thereafter I consider the development of the relationship between Europe and Africa, before turning to the present Europe-Africa partnership and the EPA negotiations.

2 The consequences of failure

In his article Professor Strydom states that³

[t]here is a body of opinion that divides itself on the way in which dysfunctional states should be saved by either rejecting most rescue attempts by the West as forms of colonialism in disguise . . . or by unequivocally arguing for rehabilitated forms of trusteeship over African states that face increasing

¹ H Strydom 'From mandates to economic partnerships: The return to proper statehood in Africa' (2007) 7 *African Human Rights Law Journal* 68.

² At the time of writing, the EPAs were still being negotiated with the prospect of comprehensive EPAs being signed before the deadline of the end of 2007 looking increasingly unlikely.

³ Strydom (n 1 above) 69-70.

difficulties in performing basic governmental functions and in delivering essential services to their citizens . . . Grand theories in the former category are often far removed from the needs of those who die at the hands of their own governments and the time has perhaps come to face things as they are.

What is a 'dysfunctional' state? Strydom gives no answer, but gives a definition of a 'functional' state. He cites the stringent criteria set out by the Permanent Mandates Commission in 1931 for granting independence to the territories under the mandates system of the League of Nations.⁴ As Strydom notes, the effectiveness criterion gave way to the notion of juridical statehood, as many of the new states emerging from decolonisation displayed a lack of effectiveness.⁵ Unfortunately, Strydom does not mention which states he considers dysfunctional in Africa today. He only mentions, without any reference, that Africa 'has the largest concentration of states considered weak or dysfunctional'.⁶ His use of South Africa as his only example, when he discusses 'main areas of concern' with regard to government ineffectiveness, indicates an overly broad definition of what should be seen as a dysfunctional state.⁷

A weak or dysfunctional state should be distinguished from a failed state. In his book *State failure, sovereignty and effectiveness — Legal lessons from the decolonisation of sub-Saharan Africa*, Kreijen notes that '[t]he solutions to state failure must . . . be premised on the idea of reintroducing effectiveness. They must aim at filling the empty juridical hull of the failed State with empirical substance'.⁸ The examples of failed states that Kreijen considers in his study are Somalia, 'the *locus classicus* of state failure', the Democratic Republic of the Congo, Liberia and Sierra Leone.⁹ Kreijen argues for a new trusteeship system for failed states which he refers to as 'benign re-colonisation'.¹⁰ Seemingly Strydom supports the idea of a revival of the trusteeship system.¹¹

Trusteeships with an 'effective' state as trustee, as provided for in chapter XII of the United Nations (UN) Charter, have been abolished.

⁴ 'Independent statehood can only be claimed if a political entity is equipped with a properly constituted government and administration capable to ensure the functioning of regular public services, is in a position to maintain its own territorial integrity and political independence, can secure the financial resources needed for the regular functioning of the state, and possess a legislative and judicial organisation that could mete out justice to all on a continuous basis.' Strydom (n 1 above) 72.

⁵ For a discussion on statehood, see J Crawford *The creation of states in international law* (2006). See also G Kreijen *State failure, sovereignty and effectiveness — Legal lessons from the decolonisation of sub-Saharan Africa* (2004).

⁶ Strydom (n 1 above) 69.

⁷ It is worth noting that South Africa scores better than the two new members of the European Union, Romania and Bulgaria, in the *Failed states index 2007*, published by the Fund for Peace, http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=229&Itemid=366 (accessed 4 October 2007).

⁸ Kreijen (n 5 above), 376.

⁹ Kreijen (n 5 above) 64-86.

¹⁰ As above.

¹¹ Strydom (n 1 above) 69-70.

Instead, the UN has established its own protectorates, for example in Kosovo. Apart from principled objections to 'benign re-colonisation', the experiences so far do not bode well for such an experiment. The most elaborate recent human trial of 'benevolent autocracy' is the United Nations Mission in Kosovo (UNMIK), which has been fraught with a lack of accountability, corruption and mismanagement.¹²

3 Europe and Africa — A brief historical overview

Europe's relationship with Africa has for centuries been one of domination. For a long time, this European domination was limited to the coast through either formal or informal empire.¹³ European traders on the coast used African intermediaries to trade with the interior. In the late 1800s, the tales of explorers such as Livingstone led to calls for opening up the interior for the three Cs: commerce, Christianity and civilisation.¹⁴ The result was the scramble for Africa. The European powers concluded treaties with local chiefs to expand their empires and when the treaty route did not work, used force to get what they wanted, adding a fourth C, conquest.¹⁵ The aim of the scramble was not philanthropy: 'Europe is in Africa for the mutual benefit of her own industrial classes, and of the native races in their progress to a higher plane.'¹⁶ Today Africa is governed by 3Gs: globalisation and good governance. Globalisation is the new word for commerce and the language of good governance is similar to the discourse of civilisation of the past.¹⁷

Strydom's description of the problematic structure of the African state is probably accurate for many states.¹⁸ However, many of the problems are hardly unique to Africa, and the use of South Africa as his only specific example is not very convincing. African leaders have recognised the problem of bad governance for as long as it has been on the international agenda.¹⁹ There is, of course, a big difference between

¹² S Chesterman *You, the people — The United Nations, transitional administration and state-building* (2004) 126-127. See also M Zaremba 'Report from Unmikistan, land of the future' <http://www.dn.se/DNet/jsp/polopoly.jsp?d=2502&a=664639> (accessed 2 October 2007).

¹³ T Pakenham *The scramble for Africa, 1876-1912* (1991) xxiii.

¹⁴ Pakenham (n 13 above) xxiii.

¹⁵ Pakenham (n 13 above) xxv.

¹⁶ FD Lugard *The dual mandate in British Tropical Africa* (1926) 617, quoted in Chesterman (n 12 above) 11.

¹⁷ DP Fidler 'International human rights law in practice: The return of the standard of civilisation' (2001) 2 *Chicago Journal of International Law* 137.

¹⁸ Strydom (n 1 above) 80-87.

¹⁹ *Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World* adopted by the OAU Assembly of Heads of State and Government in July 1990.

rhetoric and reality, but a distinction must be drawn between regimes which lack the political will to work for the realisation of the human rights of their citizens and states which simply lack adequate resources. It must also be recognised that it is the lack of fulfilment of promises of both African and Western governments that contributes to the desperate situation that many Africans are facing.

4 The Cotonou Agreement and the Economic Partnership Agreements

Strydom sets out the history of the relationship between the EU and the ACP group of states, and it need not be repeated here.²⁰ The Cotonou Agreement between the EU and ACP, adopted in 2000 and amended in 2005, will remain in force until 2020. As is the case with previous agreements between the EU and ACP, the Cotonou Agreement gives the ACP countries preferential access to EU markets. Other states have argued that this system discriminates against them and should therefore not be allowed. A waiver given by the World Trade Organization (WTO) expires at the end of 2007. Under WTO rules, preferential access should be reciprocal. The negotiations for EPAs are thus aimed at establishing free trade areas.²¹ This means that the ACP countries under the EPAs must gradually open up their markets to EU products and not apply tariffs or other trade barriers. Admittedly these states can expect to have many years to gradually introduce free access to EU products, but the loss of revenue and increased competition that such a move entails must be addressed if it should not mean falling deeper into the economical abyss.²² An interim EPA concluded between the EU and the members of the East African Community (EAC) in November 2007 gave the EAC member states 15 years to remove 80% of its tariffs on goods from the EU.²³ Negotiations on issues not required for WTO compatibility, such as trade in services, intellectual property, services and government procurement, will continue. Many ACP countries oppose the inclusion of these issues in EPAs and argue that they should rather be discussed in WTO negotiations.

Strydom sees the future EPAs as 'instruments of sustainable development', which will 'have a clear disposition towards state-institutional

²⁰ Strydom (n 1 above) 90-98.

²¹ On the EPA negotiations, see eg the EPA project of the Trade Law Centre for Southern Africa <http://epa.tralac.org/> (accessed 4 October 2007).

²² Trade Justice Movement 'Economic Partnership Agreements (EPAs): Sustainable development in jeopardy' Policy Briefing (August 2007 update), <http://www.tjm.org.uk/briefings/epasbriefing.pdf> (accessed 4 October 2007).

²³ 'Oxfam warns EU-East Africa trade deal may cause revenue loss' AFP, 28 November 2007 http://afp.google.com/article/ALeqM5j_IGMkEI3S0OtjVXVmlBquoH5xBw (accessed 1 December 2007).

capacity building'.²⁴ However, assistance for institution building is regulated in the Cotonou Agreement and implemented through the European Development Fund (EDF). The ninth EDF (2002-2007) had a budget of €13,5 billion for support to the ACP countries and the tenth EDF (2008-2013) will have a budget of €22,6 billion.²⁵ The aid component of the EPA negotiations instead focuses on adjustment costs, such as loss of tariff revenues.

Strydom notes, with regard to regional integration, that '[s]trong and effective regional institutions are unthinkable without national states that have the capacity and will to work towards the common good at the regional level'.²⁶ This lack of capacity also weakens the African side in the EPA negotiations, allowing the EU to press for concessions, in particular, as the deadline for the conclusion of the negotiations draws closer.²⁷ There are also indications that the EPAs themselves could weaken regional integration.²⁸

Strydom quotes the European Security Strategy as aiming at 'better governance through assistance programmes, conditionality and targeted trade measures'.²⁹ Conditionality is another word for sanctions in the form of a denial of market access or denial of disbursement of already agreed aid if a state does not conform. Economic sanctions, as has been proven over and over again, only make the situation worse for the ordinary citizen, while rarely affecting the regime elite.³⁰

5 Conclusion

The heading of Strydom's article is 'The *return to proper statehood in Africa*' (my emphasis). This implies that most African states have exercised what he would define as proper statehood at some point in their existence. Otherwise, there would be no 'proper statehood' to return to. To take the examples of failed states given by Kreijen, Somalia, DRC, Liberia and Sierra Leone, of these at least Liberia and Sierra Leone seem at the present moment to be on the path to 'proper statehood'. Perhaps the DRC is also heading in the same direction. Even one part of Somalia, Somaliland, has ostensibly exercised 'proper statehood' for

²⁴ Strydom (n 1 above) 98.

²⁵ European Development Fund (EDF) <http://europa.eu/scadplus/leg/en/lvb/r12102.htm> (accessed 4 October 2007).

²⁶ Strydom (n 1 above) 89.

²⁷ Trade Justice Movement (n 22 above) African Trade Policy Centre 'EPA negotiations: African countries continental review' Review Report 19 February 2007 6.

²⁸ C Stevens 'The EU, Africa and Economic Partnership Agreements: Unintended consequences of political leverage' (2006) 44 *Journal of Modern African Studies* 441.

²⁹ Strydom (n 1 above) 99.

³⁰ S Chesterman & B Pouligny 'Are sanctions meant to work? The politics of creating and implementing sanctions through the United Nations' (2003) 9 *Global Governance* 503.

many years. A state with 'proper statehood' can collapse, but this is nothing unique to Africa and has occurred also among states that were once seen as epitomising effectiveness and stability.³¹

There is universal agreement about the goal: the realisation of the Millennium Development Goals.³² That many African states would have problems reaching many of these goals, even if they displayed 'proper statehood', is clear. However, there is no denying that the existence of an effective state would contribute to their realisation. To make states more effective will not be easy. A national leadership that takes an interest in building the state, rather than their personal empire, will be required. Unfortunately, all experience indicates that such a leadership cannot be imposed from abroad. There are indications that some countries are on the right track and they should be encouraged, through economic assistance and by other means.³³ For those leaders who neglect their citizens, sanctions that could effect the general population should be avoided. Regime-targeted sanctions should be considered, though such sanctions are likely to be effective only if implemented by all other states.

Europe's relationship with Africa has always been a mix of exploitation and philanthropy. There is a clear risk that the EPAs, with their focus on increased EU access to the markets of the ACP countries, will further weaken rather than strengthen African states. Perhaps the EPAs will be accompanied with a bit more charity in the form of aid to cushion the adjustment. However, an effective state is more likely to materialise as a result of less exploitation rather than more philanthropy.

³¹ Eg, China and Spain in the 1930s and Yugoslavia in the 1990s.

³² New Partnership for Africa's Development (NEPAD) October 2001 para 68; EU Strategy for Africa, cited by Strydom (n 1 above) 89.

³³ On aid effectiveness, see D Ehrenpreis (ed) 'Does aid work? — For the MDGs' *Poverty in Focus*, International Poverty Centre, October 2007 http://www.undp-povertycentre.org/pub/1_PovertyInFocus12.pdf (accessed 4 October 2007).