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by Gerhard Erasmus

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A new Road to Regional Integration?

by Gerhard Erasmus

Shifts in mega debates often occur gradually and in small steps. The extent of the adjustment will only become clear over time. Things may, however, also move in directions not originally envisaged. In Southern Africa we are in the middle of such a process. It involves a new discourse about regional integration and South Africa's role within that process. It is necessary to ponder what should be discussed and how.

On 16 October 1997 the late President Julius Nyerere gave a speech to the Members of the South African Parliament. On South Africa's future role in Africa he said the following:

With the end of apartheid and South Africa having joined SADC, this area of Africa is a very solid area. It is an extremely solid area. It is strong, it has serious leaders and these leaders know one another..... Mr. President, so let them work together. Deliberately. It should be a serious decision to work together. Why? You have no other choice. You have absolutely no other choice.

South Africa, because of its infrastructure, can attract more investment from Europe, from North America, than Tanzania can. Fine, go ahead. Do it, use your capacity to get as much investment as you can. That's good. But then don't be isolated from the rest of Africa. What you build here because of your infrastructure and the relative strength of your economy, you are building for all of us here.

It is absurd for Africa to think that we, these little countries of Africa, can do it alone. Belgium has 10 million people. Africa south of the Sahara if you exclude South Africa has 470 million Africans. I sit down with the Prime Minister of Belgium, and he talks to me about European unity. I say, "You are small; your country is very small, so how can you talk of European unity with giants like Germany and the others? He says, "This question of the protection of our sovereignty we leave to the big powers. We lost our sovereignty ages ago." These countries are old, their sovereignty is old.

So I'm saying that Africa is changing because the leadership in Africa is changing. Africa is beginning to realise and we should all encourage Africa to get that realisation more and more

that we have to depend upon ourselves, both at national level and at the collective level. Each of our countries will have to rely upon its own human resources and natural material resources for its development. But that is not enough. The next area to look at is our collectivity, our working together. We all enhance our capacity to develop if we work together.

The late President Mandela then responded by noting the following:

The expansion of economic ties of trade and investment between Tanzania and South Africa, and indeed between all the countries of the region, is an objective to which South Africa is firmly committed.

When we promote foreign business interest and investment in South Africa it is not in any spirit of beggar thy neighbour. Indeed South African firms have seized the opportunities that abound in a liberated Southern Africa and we encourage them in this. We do so on the understanding that such investment will be conducted as we expected foreign investors to do in our own country: to promote the transfer of skills and technology; to make a permanent and sustainable expansion in the productive capacity of the host country; and wherever possible in the form of joint ventures to promote the development of local business, especially amongst those previously excluded from such opportunities. Such a development is in the interest of our entire region. In particular we would like to see an expansion of South African business involvement in Tanzania along such lines.....

The ideals of peace, unity and people-centred development for which it stands are essential for our continent's economic and political revival. We can only applaud its intention to promote these goals by drawing on Africa's collective intellectual resources. It is through the upliftment and empowerment of the people of Southern Africa, and indeed the entire continent, that we will achieve the African Renaissance we so strongly desire.

Different winds are now blowing from the South. Perhaps policy makers have become wiser; or perhaps they see the role of states and governments differently.

A new rationality applies to regional integration schemes. South Africa has announced that it wants to change the SACU revenue sharing formula (adopted in 2002 when the new SACU agreement was signed) because of concerns that the BLNS states are being “subsidized” at the expense of the national fiscus. SADC is being redirected into areas of practical cooperation. When South Africa joined this

organization after the first democratic elections of 1994 it was the time of high ambition. SADC had to become, by political fiat, an FTA (by 2008), a customs union (by 2010) and a common market (by 2015). We now look back at those plans in amazement; they were over ambitious and unrealistic. They have been put on the back burner. One of the lessons learned was about the restraining effect on national policy space of legal and institutional disciplines associated with the administration of a common external tariff and a single customs territory. This level of regional integration requires a serious commitment to respect the applicable law.

Pretoria's new regional role will be undertaken by a 'developmental state'. Opting for that description and orientation is the easy part. The difficult part will be the delivery of development, improvement of services, eradication of inequality and promoting regional industrial development (often called 'equitable industrialization'). If the developmental state assumes a government which can gather enough information to make the right choices and an effective bureaucracy to implement the ensuing policies, we are ignoring the often repeated admissions that South Africa faces severe technical skill shortages; while labour unrest and the quality of education are major concerns. The better approach will be to ensure that official policies and government inputs into infrastructure will make it possible for entrepreneurs and investors to grow businesses and create new jobs; at home and in the region. The interaction with the private sector involves a crucial choice for implementing the new national and regional policy objectives.

Another area calling for careful choices concerns the inter-state level. African governments guard their sovereignty quite vigorously and sometimes in a manner which fails to recognise that sovereignty is an attribute of states, not governments. When regional tribunals do what they have been set up to do; to rule about the consequences of violations of binding regional instruments, they will suspend them; at least in SADC. Compliance with legal obligations is highly problematical and often impossible. This is the result of the absence of a proper rules-based culture, made worse by the lack of the required technical and institutional capacity. African states also do not litigate against each other and do not support the development of community law and jurisprudence. Their regional integration endeavours mostly function in a legal vacuum.

The business of blending separate states into genuinely integrated economic arrangements is a very complicated business. It requires effective regional institutions with powers to speak and regulate on behalf of the collective and to monitor compliance with the applicable legal norms. The governments within the Regional Economic Communities (RECs) have little appetite for that. They have apparently also lost the appetite for new and ambitious trade negotiations. That is why the Tripartite FTA has

become a rather lean exercise for concluding a few bilateral market access deals. It will definitely not be the single FTA comprising of the 26 members of COMESA, EAC and SADC, as originally contemplated. The latter will continue to exist as separate entities and will endeavour to consolidate their arrangements. This might not be a bad thing right now; provided the push by the African Union for a Continental Free Trade Area is also scaled down to more realistic proportions and time frames.

What considerations should guide the new approach to regional development and integration? One obvious requirement will be buy-in. These new plans will have to be widely shared in order to prevent fragmentation, and to ensure legitimate and effective outcomes. This requires a proper regional discourse, which should include the private sector.

The new protocol now being drafted for the SADC Tribunal should be a matter of careful consideration. African regional integration can benefit in a major way from a rules-based *modus operandi*. It brings certainty, predictability and respect for rights and obligations. And it is about more than the traditional view that only matters of high politics (e.g. border disputes) should be the stuff of international litigation. It is crucial to protect the rights of firms doing business across borders. Business entities are not parties to international agreements but, as the ultimate traders, investors and drivers of commerce, they should be able to ascertain what is legally permissible. They must be able to rely on the agreed arrangements and the remedies provided for.

The unwillingness of governments to protect the rights of their nationals against unlawful actions by foreign states results in legal uncertainty. It is short-sighted to deny private sector players international protection by arguing that sovereign states are the only parties involved in international disputes. To mention one obvious counter example: the dispute settlement system of the WTO is generally recognised as the most successful manifestation of international dispute settlement, although African states do not figure there. These disputes are formally between states, which defend the rights and interests of their business communities. The majority of cases decided in Geneva are e.g. about trade remedies; which involve national measures taken to protect domestic business against unfair trade practices by foreigners.

Regional trade and industrialization will lack a vital component if it is considered the exclusive domain of elderly statesmen; who will “consult” each other should a dispute arise. The practice in SADC is a clear example why this approach will not generate respect for the law or effective integration. The willingness of governments to protect the rights of the generators of economic energy and wealth is vital for healthy regional inter-action and the achievement of the ideals now put forward

by South African policy makers. These issues belong on the agenda of the new mega debate, together with some of the advice uttered on that memorable day in October 1997.

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