Spring 2010

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The United States, The European Union, and China: The Triadic Contest for Africa and Its Implications for International Human Rights and Democracy

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Introduction
The African Continent is triangularly situated among the three international actors whose engagement with Africa is inching every day towards a triadic contest: the United States [U.S.], the European Union [E.U.], and China.² In this contest, human rights, the rule of law, and good governance have been increasingly given a secondary status to the consideration of economic gain. If instead these key actors were to give those issues due weight, it would prove to be not only in the best interest of Africa, but also the most secure path to guaranteeing their own long-term vital interests as well.

The U.S. and the E.U. expressly recognize human rights, the rule of law and good governance as key factors to any future economic breakthrough on the African continent. Without conditions of stability, accountability, transparency there can be no secure investment and development.³ Nonetheless, human rights, the rule of law, and good governance are often

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¹ LL.M, JSD. Associate Professor of Law, Ave Maria School of Law. I recognize, with much appreciation, the invaluable assistance of Zachary C. Larsen and Matthew Majkut.
² In fact, a distance calculator from www.indo.com/distance that is based upon the U.S. Geological Survey indicates that Bangui, the capital of the Central African Republic, is nearly equidistant from Beijing and Washington D.C., although much closer to Brussels, the European “capital.”
³ This is not to deny that there are a host of other important actors in Africa, such as Japan, Indonesia, Malaysia.

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HeinOnline -- 3 Nw. Interdisc. L. Rev. 175 2010
relegated in the contest for trade with Africa, a continent that is home to one-third of the mineral resources in the world. Moreover, since the terrorist attacks on America of September 11th, 2001, issues of security have also trumped these concerns for the U.S. Similarly, China—although never outwardly touting these values—has sought its economic interest above the goals of human rights, the rule of law, and good governance in its extensive dealings with Africa. With the end of the Cold War, China’s robust economic growth propelled it in the direction of shedding all ideological strategies in Africa and focusing on business. While China offers irresistible trade terms and is increasingly becoming an important economic player in the world, it nonetheless maintains the policy of business first, and politics remains a secondary concern. China pays little attention to human rights, which it flatly rejects as being inconsistent with the sovereignty principle of noninterference. The approaches of all three of these actors run counter to what is the only viable instrument for bringing about real change in the way most African leaders run their countries: concerted, principled and consistent international pressure focusing on the values central to stable government.

Although some have argued that the African States or African Union [A.U.] should be the mechanism of change for the continent, the reliance upon internal solutions has proven unworkable. The A.U.'s developments at the beginning of the new millennium—such as the emphasis on democratic governance, rule of law and a more robust human rights enforcement mechanism—represented significant steps in the right direction, but in the wake of recent developments, there have been troubling signs that little was realized by the advent of the organization. African leaders have not shown themselves ready to fully embrace democratic governance and accountability, and the A.U. has been unwilling to forcefully defend democratic principles. The result is that a solution from the international community is necessary—particularly, the use of leverage by Africa's main investors to bring about principled change in Africa in the areas of democratic principles (good governance and the rule of law) and human rights.

4 Jan Wouters, The Transatlantic Dialogue on Africa, 5 NW. U. J. INT’L HUM. RTS. 329 (2007) ("geostrategic and geopolitical needs are strongly coming up that may again distract both the U.S. and Europe to more real political approaches vis-à-vis Africa, in spite of all the rhetoric about democracy, human rights, rule of law and good governance.").

This article argues that unless the three primary international actors in Africa restructure their strategy towards the continent in a manner that gives these values preeminence, both the interests of Africa and the business of these countries will suffer, as the two are intimately bound together. The first section discusses the African paradox—a wealthy continent of impoverished people—and claims that the cause of this paradox is the lack of respect for human rights, the rule of law, and good governance. The second section concerns the failure of internal solutions to Africa's problem. The three sections that follow concern the interests of the U.S., the E.U., and China in Africa; the role that each has played in Africa; and the stances they have taken concerning these values. The sixth section expounds the natural relationship between business investment and human rights, the rule of law, and good governance, with particular concern for the present situation of Africa. The final section offers recommendations and conclusions based upon the preceding discussion.

I. The Wealthy Continent and Its Impoverished Inhabitants

In Africa today, the absence of internal adherence to the values of human rights, the rule of law, and good governance has led to paradoxical consequences: a wealthy continent populated by impoverished inhabitants. The blatant human rights violations, corrupt politicians, and the lack of fundamental adherence to the rule of law stunts Africa's potential for growth and undermines the sustainability of business. It is very difficult for business to thrive in countries experiencing extreme violence and civil strife after a fundamentally-flawed electoral process, as is happening in Kenya, and equally impracticable in situations where civilian death is so rampant. Earlier this year, on January 23, 2008, as the forces struggling to pull the Democratic Republic of Congo apart from opposite ends signed an agreement to end fighting in a conflict and humanitarian crisis, a new report by the International Rescue Committee indicated that the lives of some 5.4 million people had been lost since 1998 and that 45,000 people continue to die there every month. Although the Democratic Republic of Congo is home to incredible mineral resources, sustainable investment cannot flourish under these conditions. Further, Congo, Rwanda and

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Uganda are continuing to clash at the border and scavenge over the mineral rich regions of the Congo.\textsuperscript{8} Zimbabwe,\textsuperscript{9} Somalia\textsuperscript{10} and Sudan\textsuperscript{11} similarly exemplify other crisis situations where political turmoil has exacted costs on economic growth.

Because of its inability to subdue such internal turmoil, Africa’s wealthy resources have not translated into the healthy economic growth that would raise the standard of living for ordinary Africans. As former French President Jacques Chirac once remarked, “Africa is rich, but Africans are not. The continent holds one-third of the planet’s mineral reserves. It is a treasure trove. But it must be neither pillaged nor sold off cheaply.”\textsuperscript{12} Africa must tap but not squander its natural resources sought by the biggest economies of the world: most recently China, India and others. African States can only achieve that objective if they combine good governance and human rights protection with the responsible exploitation of such resources. Unfortunately, the wars are fought in Africa. Moreover, the fact that some foreign actors such as the U.S., the E.U., and China compete among themselves for African resources threatens to derail the good intentions of the A.U. experiment in human rights and good governance that are a prerequisite for the eventual coming of age of the African continent.\textsuperscript{13}

Certainly not the least of Africa’s problems, corrupt regimes have also been responsible for the lack of meaningful performance with regard to economic, civil and political rights in Africa. Africa has been monitored by various international agencies which report the levels of corruption within governments. The evidence ties economic growth to African governments that instill anti-corruption practices. Based on data provided by Transparency International’s publication of the 2007 Corruption Perceptions Index (CPI) Regional Highlights: Africa and the


\textsuperscript{10} Mohamed Olad Hassan, Fresh Violence, Political Turmoil in Somalia, Associate Press Worldstream, Oct. 10, 2007.

\textsuperscript{11} UN Suspends Repatriation Process in Abyei Due to Insecurity, BBC Monitoring Middle East, May 27, 2008.

\textsuperscript{12} Leicester, A.U. Bemoans, supra note 5.

\textsuperscript{13} Art. 3 of the Constitutive Act of the A.U. provides, inter alia, that the A.U. aims “to promote and protect human and people’s right in accordance with the African Charter on Human Rights.”
World Bank’s publication of *African Development Indicators Report 2007* the analysis shows a correlation between specific African nations with low levels of corruption and the various indicators which profile their economic health, growth, and stability.\textsuperscript{14} The methodology employed to calculate the respective countries’ CPI score uses data from 14 sources originated from 12 independent institutions.\textsuperscript{15} The six top-ranked countries that Transparency International ranked as least corrupt with the highest level of anti-corruption enforcement in 2007 were Botswana, South Africa, Cape Verde, Mauritius, Namibia and Seychelles.\textsuperscript{16} This conclusion is evident not from the comparatively high growth percentages of these countries’ respective GDP and GNI percentages, but rather in the subtlety of their positive and negative deviations on an annual basis—their internal stability. Inversely, countries which Transparency International ranked as the most corrupt and with the lowest levels of enforcement in 2007, like Somalia, Chad, Sudan, Congo, DR, Guinea, Equatorial Guinea, may have comparatively higher growth percentages of GDP and GNI.\textsuperscript{17} However, there is a trend that follows enormous deviations from one year to the next. These large swings, at times, may reflect great increases. Nevertheless, dramatic increases and decreases reflect poor stability and volatility. Instability, resulting from weak democracies, does not promote long-term growth and does not exhibit attractiveness to foreign direct investment.

The instability of the African continent wreaks harsh consequences on its people. For a long time Africans have looked on with dismay as they continue to hear promises that their poverty would soon come to an end, that democracy and the rule of law is on the horizon, and that the millennium development goals\textsuperscript{18} will usher in a new era. How much longer must the Africans continue to wait, as their leaders and outside international actors continue with rhetoric that the economic dreams of Africa, respect for human rights and good governance will be theirs


\textsuperscript{15} Prof. Dr. Johann Graf Lambsdorff, The Methodology of the Corruption perceptions Index 2007 (September 2007), See report at: [http://www.transparency.org/policy_research/surveys_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi) [July 27, 2008]


\textsuperscript{17} *Id.*

\textsuperscript{18} The Millennium Development Goals is a United Nations document that set benchmarks for African development in particular areas, including ending poverty and hunger, gender equality, combating HIV/AIDS and other issues.
while there is still nothing to show for it? Against this backdrop, the frustrations of ordinary Africans become reasonable. It is possible to begin to understand the rage of the extremely poor people living in Kibera slums and others across Kenya who have left and continue to leave government offices and infrastructure smoldering and international business paralyzed or folding up in the wake of the December 2007 elections—Kenya’s failed experiment in democracy.\textsuperscript{19} Kenya was once praised as the cornerstone of African stability and, in recent years, the beacon of hope for African democracy, the rule of law and good governance. But the hope was illusory and the beacon became the S.O.S. of Africa’s modern struggle. As long as the Africans at the grassroots see no real change in their lives, there can be no genuine stability in African countries. This frustration can be seen in the Niger Delta of Nigeria, where civil strife rages, as well as in Zimbabwe, Eastern Congo, and the Sudan where comparable turmoil has reigned.

In responding to the issue of how this problem is to be fixed, some would underscore the sovereignty of African States and question the legitimacy of what at first appears to be intrusive intervention by members of the world community insisting on human rights, rule of law and good governance. They would argue that any legitimate intervention should be done by Africans themselves, through the African Union [A.U.]. Parallel logic was asserted during the attempt to send African troops to redress the situation in Darfur, Sudan.\textsuperscript{20} Unfortunately, the A.U., despite its promise, has not sufficiently lived up to the task. Moreover, the U.S., the E.U and China understand that the A.U. can only accomplish what the African leaders who constitute its institutions are willing to let it accomplish. The position of the African people calls for change in

\textsuperscript{20} The international community at first sought and African States seem to have concurred with the characterization of the Darfur conflict as a problem and even praised the “leadership role and the engagement of the A.U. in addressing the situation in Darfur.” See, U.N. Security Council Resolution on the Report of the Secretary-General on the Situation in the Sudan, S.C. Res. 1564, U.N. Doc. S/RES/1564 (Sept. 18, 2004). This hands-off approach would help certain countries, such as China, evade having to explain their non-interference approach to such a problem. The protection force promised by the A.U. would turn out to be awfully insufficient. The tensions within the U.N. Security Council concerning sovereignty of the Sudan if the U.N intervened in the Sudan are clear in its August 31, 2006 resolution in which the Council said that “[r]eaffirming its strong commitment to the sovereignty...of the Sudan, which would be unaffected by transition to a United Nations operation in Darfur...and that a United Nations operation in Darfur shall have, to the extent possible, a strong African participation and character.” See, S.C. Res. 1706 U.N. Doc. S/RES/1706 (Aug. 31, 2006). This same position appears in U.N. Security Council resolution 1679 as well. S.C. Res. 1679 U.N. Doc. S/RES/1679 (May 16, 2006). But that was only another way of the U.N. Security Council endeavoring to evade getting involved and a perpetuation of the hand-off policy. Violence in Darfur simply persisted. Only recently did the U.N. establish a hybrid mission to Darfur (A.U./UN Mission in Darfur, otherwise called UNAMID), S.C. Res. 1769 U.N. Doc. S/RES/1769 (July 31, 2007).
their country's approaches to human rights, the rule of law, and good governance, which can be brought about by a change in the approach of Africa's main investors. The three front-runner international actors in Africa—the U.S., the E.U., and China—do not have identical interests nor, as a consequence, do they have identical approaches to Africa. However, despite their disparate interests, it is certainly in each actor’s interest to have respect for human rights, the rule of law, and good governance take root in Africa. The triadic contest has diverted their attention away from that objective. Both they and Africa would be better served if they were to shift focus to bring those objectives within the purview of their African involvement.

II. The Failure of Internal Solutions

A not entirely inappropriate response to the proposition that outsiders such as the U.S., the E.U., and China have an obligation to “fix” the African problems of human rights violations and the absence of the rule of law is the following argument: given a nation's right to sovereignty, the A.U. and individual African states are more equipped to handle human rights, governance, and rule of law concerns in Africa. This argument, if true, would provide international actors such as the U.S., the E.U., and China with relief from the responsibility to pursue those values in Africa as they engage in trade and seek other forms of collaboration. Unfortunately, neither the A.U. nor individual African states are sufficiently able to supply an answer to Africa’s problems. Individual states remain incapable to participate in a solution, being unstable and in need of help themselves. Moreover, the A.U., despite its best intentions, has not delivered on its promises, and even if it were capable of doing so, in an interconnected world it would still be incumbent on the international community as a whole to work in conjunction with the A.U. to bring about such change.


First, it is important to recognize why the A.U. is still a positive development for Africa. When the Organization of African Unity was created in 1963, the primary concern of African States
was decolonization without concern for human rights. Apart from declaring the right to self-determination, which was important for purposes of decolonization, this charter did not even make a mention of human rights. It was not until 1979 that the Union adopted a Charter on Human and Peoples’ Rights. The Charter established the African Commission on Human and Peoples Rights (Charter on Human Rights). Even in 1981 as the Organization of African Unity (OAU) adopted the Charter on Human Rights, the African leaders’ decolonization mindset was not completely lost on them. Instead of focusing on their own internal conditions relating to the rule of law, good governance, human rights accomplishments or lack thereof, the African leaders continued the diversionary tactic to reiterate and emphasize the need to “eradicate all forms of colonialism from Africa” and “neocolonialism.”

In recent times, particularly near the beginning of the new millennium, the African leaders vowed to start afresh and shed their immediate postcolonial mentality and embrace a new mindset that emphasized Africa’s economic advancement based on good governance, the protection of human rights and the rule of law. In 1998, the United Nations Security Council

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21 See, CHARTER OF THE ORGANIZATION OF AFRICAN UNITY, PREAMBLE (noting that the Organization was formed out of determination “to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neo-colonialism in all its forms” and the conviction that “it is the inalienable right of all people to control their own destiny.”).

22 Id.

23 The OAU’s lack of serious attention and resolve to deal with human rights violations could not have been better expressed than by Ugandan President Museveni’s first address to the OAU General Assembly in 1986. Referring to the regimes of Idi Amin and Obote, he said: “[o]ver a period of 20 years three quarters of a million Ugandans perished at the hands of governments that should have protected their lives...I must states that Ugandans...felt a deep sense of betrayal that most of Africa kept silent ...the reason for not condemning such massive crimes has presumably been a desire not to interfere in the internal affairs of a member state, in accordance with the Charters of the OAU and the United Nations. We do not accept this reasoning because in the same organs there are explicit laws that enunciate the sanctity and inviolability of human life.” But that was in 1986 when Museveni, then a youthful leader, had just become leader and, together with similar-minded new leaders, was heralded by the U.S. and Western Europe as a new-breed of African leaders who would be instrumental to the birth of an African renaissance in governance, human rights protection and the rule of law. Museveni would later amend Uganda’s constitution which stood in the way of his firm grip on State-power through its imposition of presidential term limits.

24 CHARTER OF THE ORGANIZATION OF AFRICAN UNITY, Art. 30

25 See PREAMBLE, AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS [hereafter, African Charter on Human Rights].

26 Id.

27 The lack of democratic governance and respect for human rights would not engender political stability; instead it breed bloody conflicts, political crises and senseless expenditure of African economic resources. The conflict in the Democratic Republic of Congo, the 21-year old Northern Uganda, the genocide in Rwanda, the civil war in Liberia and Burundi, and the wars in Darfur and Somalia are only a few instances of the Continent’s dismal record in this respect.
recognized that Africa had “made significant strides towards democratization, economic reform and the respect for and the protection of human rights.”²⁸ The African leaders adopted a new Charter for the continent—the Constitutive Act of the African Union and established new institutions, which closely paralleled the structures of the E.U. From all appearances, African leaders seemed to have embraced a new paradigm of personal responsibility, mutual criticism and even limited sovereignty in order to achieve the objectives they set out for themselves.

Without a doubt, the African Union has helped advance human rights protections and economic development throughout the African continent. The new A.U. places emphasis on state responsibility to protect human rights, and its Constitutive Act obliges the Union to intervene²⁹ in a member state to protect human rights. The Constitutive Act further enjoins the A.U. to function with respect for democratic principles, human rights, and rejects impunity, condemning political assassination and unconstitutional changes of government and permitting the suspension of unconstitutional governments from participating in the activities of the Union.³⁰ In accordance with that commitment, most states in Africa are now holding elections, and unconstitutional governments are increasingly isolated. For example, in response to the death of Gnassingbe Eyadema of Togo, on February ⁵ᵗʰ 2005 the A.U. leaders described the naming of his son Faure Gnassingbe by the military as a military coup. A.U.’s protest forced the son of the deceased President to hold elections. Still, there were heavy allegations of election fraud. On August ³ʳᵈ 2005, five months after Togo, a coup transpired in Mauritania that led the A.U. to suspend the country from all organizational activities.³¹ In response, however, the Military Council ruling Mauritania promised to hold elections.³²

²⁹ The Constitutive Act of the African Union provides for limited state sovereignty in light of the mandate of AU to intervene in the internal situation in any A.U. member State under specific grave circumstances, namely, war crimes, genocide and crimes against humanity in order to restore peace and security. CONSTITUTIVE ACT OF THE AFRICAN UNION, Art. 4(H)& J.
³⁰ Id. at Art. 4(m)(o)(p) and Art. 30.
³² Id.
The new A.U. also established an African Court of Human and Peoples’ Rights. The inherent weaknesses of the African Commission on Human and Peoples’ Rights led the OAU Assembly of Heads of States and Governments in June 1994 to seriously consider the idea of an African Court on Human and Peoples’ Rights (hereafter African Court on Human Rights). The Protocol’s preamble attests to that realization where it provides, in part, that the attainment of the objectives of the African Charter requires the establishment of an African court to complement and reinforce the functions of the African Commission. The African Human Rights Court would complement the Commission and would issue legally binding decisions that could be enforced by an executive council of ministers. In addition, the African Human Rights Court is mandated to make reports to the regular session of the Assembly of the African Heads of State and Government on its work from the previous year, specifying in particular the cases in which a

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31 The Protocol to the African Charter on Human and Peoples’ Rights, which establishes the Court, was adopted on June 10th 1998 but only entered into force on January 25th 2004.
32 In a few cases the Commission stood up to African States that it found in blatant disregard of human rights. For example, The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, Comm. 153/96 [finding Nigerian authorities in violation of the Charter in regard to failure of local communities to benefit from natural resources, namely oil, ]; International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr., Civil Liberties Organization v Nigeria, Comm. 137/94; 139/94, 154/96 and 161/97, (condemning the secret and arbitrary executions of Ken Saro-Wiwa and others); Amnesty International v. Malawi, Communication no. 88/93 (finding that political opposition leader Mr. Chirwa “died in circumstances in violation of his right to fair trial, right to liberty and freedom from torture. Consequently his right to life was also violated.”); Civil Liberties Organisation and Media Rights Agenda v. Nigeria, Communications 140/94, 141/94, 145/95 (holding that the proscribing papers without a trial amounted to harassment of the press, and that such actions amounted to hindering the dissemination of their opinions); Sir Dawda K Jawara v The Gambia Comm. 147/95 and 149/96 (finding that the military junta that grabbed power and banned political parties acted in violation of the Charter); Constitutional Rights Project and Civil Liberties Organization v. Nigeria, Communication 102/93 (holding that the annulment of election results by the military government violated the right to vote as guaranteed by the Charter).
33 Id. at Art. 8.
34 In Europe, the execution of judgments of the European Court of Human Rights is the duty of the Committee of Ministers of the Council of Europe. Obviously the realities in Europe cannot be replicated overnight in the African setting merely by the adoption of the Protocol to the African Charter on Human and Peoples’ Rights. The political, economic, social and cultural conditions constitute important factors that are radically different from those in Europe or America. At the same time, Africa is endeavoring to improve its economic welfare. Caught in a situation where the leaders would like to hang on to power and thus tend to be repressive, there is more leap-service to human rights, and it seems logical to assume that given the choice between economic partners who emphasize human rights, good governance and trade and those who emphasize noninterference and business only, that they would choose align themselves more with the latter’s policies than with the former.

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state has not complied with the Court’s judgment. This tactic would mobilize shame in order to compel state compliance with the Court’s decisions.

Yet despite the initial promise of the new A.U., the organization, now in its eighth year, has failed to deliver. Its failure is evident from both reneged and unperformed promises. For example, the A.U. did not provide an African Court that would allow individual complaints without requiring the home State’s prior permission to do so, but allowed the Court to have jurisdiction to hear individual complaints only if the home state has entered an optional declaration accepting such a jurisdiction. This failure unfortunately left it to the discretion of the individual African States when and whether they would be made accountable for human rights violations or not. Moreover, recent developments such as the inability to police and prosecute massive violations of human rights and conflict or to strongly stand up to gross violators of human rights, such as Zimbabwe, as well as botched elections such as in Kenya and Guinea, continue to underscore that African politics remains largely unchanged. The human rights and good governance rhetoric of the new A.U. has not been matched by actions. Instead, all across the continent, dictatorships are still thriving, allegedly flawed electoral

38 PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS, Art.’s 29, 30 & 31.
39 Id. at Art. 34(6).
40 It may be argued, however, that because the African Commission on Human and Peoples’ Rights has jurisdiction to bring cases before the Court (see Article 5 of the Protocol to the African Charter on Human Rights), it may do so on the behalf of individuals and the Commission has the capacity to receive individual complaints. See Charter on Human and Peoples’ Rights, Arts. 55 and 56. However, with all the structural and inherent characteristics of the Commission noted earlier, individuals would probably be better served by providing for direct access to the African Court on Human Rights. In this respect the lack of independence of the Commissioners who are government employees in their own countries and the fact that reports of the Commission must be adopted by the Assembly of African Heads of Government would be particularly pertinent. For example, in communication against Nigeria, the Commission waited until the military government left office to publish decisions against that government. By that time, the decisions were largely obsolete. See generally, Rachel Murray, Recent Decisions of the African Commission on Human and Peoples Rights, 17 S. Afr. J. On Hum. RTS, 119 (2001). Indeed, the “the attitude of State Parties … has been to generally ignore its [Commission’s] recommendations.” See, RACHEL MURRAY, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS AND INTERNATIONAL LAW, 21 (2000). Murray notes that some states have objected to the Commission’s decisions as a violation of their sovereignty. Id. at 56.
41 Guinea erupted into rioting and clashes between protesters and security forces led President Lansana Conte who declared martial law Monday. Guinean human rights group said at least 64 people were killed in the clashes. See, Africa Union Bemoans Continent’s Image, New York Times, Feb. 15, 2007.
42 Constitutive Act of the African Union enjoins the AU to function with respect for democratic principles, human rights, Art. 4(m)(o)(p).
43 The A.U. was founded in July 2002 for a renewed and reinvigorated conglomerate of African States.
processes are the norm, and it is rare for an African incumbent to be defeated.\textsuperscript{44} Wars, although decreasing in number and frequency, continue to rage across the continent, with very little indication that the A.U. is willing or even capable of intervening where Member States fail to protect human rights. In Guinea, all that the A.U. could do was comment that the situation was “ominous” and that the A.U. would provide “ready cooperation and assistance for a quick resolution.”\textsuperscript{45} Similarly, in Darfur and Somalia, the response was too little and too late, and Darfur was abandoned. In the case of Somalia, only a few countries like Uganda were able to commit forces to keep the peace and maintain a weak, but constant and centralized, administration in the otherwise failed horn of Africa State. Additionally, in the Congo, Rwanda and Uganda are continuing to clash at the border and to scavenge on the mineral rich regions of the Congo.\textsuperscript{46} As is readily apparent from these examples, the A.U., while aspiring to good goals, has proven impotent in upholding its ideals for Africa.

\section*{b. The Response of Individual African States: Development at Any Cost}

Similar to the A.U., the individual African states have proven incapable of bringing about change in regards to human rights, good governance, and the rule of law. African leaders in many states, apart from a few isolated cases such as Botswana, do not insist on human rights conditions in their trade agreements with countries like China, particularly neglecting workers' rights. Oftentimes, this is because those African leaders have also themselves failed to respect human rights, the rule of law and good governance and thus lack the requisite credibility. In other cases, it has to do with Africa's pursuit of development at whatever cost. African leaders are glad to look to China for trade for their policy of business first, since they will not have to receive any pressure in regard to their records on human rights good governance and the rule of law. This opportunism means that African leaders will strike a deal wherever they can locate one, whether with the U.S., the E.U. or with China, as long as they are given free rein in their internal policies, without regard to these values.

\textsuperscript{45} Leicester, \textit{Africa Union Bemoans Continent’s Image}, supra note 5.
\textsuperscript{46} The connection between the exploitation of mineral resources of the Congo and the exacerbation of human rights violations was recognized by the U.N. Security Council and the International Court of Justice. \textit{See}, note 8, \textit{supra}.
Unfortunately, there has been no trickle-down effect with regard to that much-sought-after development at any cost. By failing to insist on human rights, rule of law and good governance and focusing on dealing with the leaders, only a few corrupt, unaccountable and undemocratic elites in governments have benefited from such investments, and probably a few foreign banks. The result has been frustration among many people in those countries. In Nigeria for instance, a rebellion rages in the Niger Delta precisely for those reasons. President Mwai Kibaki, although credited with some economic growth, continues to look on as Nairobi continues to host the largest slum in Africa. The German companies are now trying to pull out of Kenya. All of this could be avoided. Unfortunately, however, the most appropriate solution is unlikely to be an African one. The international actors interested in trading with the resource-wealthy African continent must be willing to engage African States in a way that will hold them accountable to higher standards, promoting acceptable human rights records, good internal governance, and the rule of law for all African nations.

III. The Relevance of Rights, Rule of Law and Good Governance to African Business

Ignoring human rights, the rule of law and good governance not only has a negative impact on Africa, but also ultimately hurts the vital interests of the U.S., the E.U., and China. As the following discussion indicates, these values are not simply a code of diplomatic morality, but have important implications for economic growth and foreign investment. The U.N., for instance, acknowledges that there is a dynamic relationship link between human rights, the rule of law, democratization and business or economic development. Consequently, countries engaging in foreign investment need to pay particular attention to the record of the countries in which they are investing. Since neither the U.S., the E.U., nor China is exempt from this concern, it is in their interest to apply the principle to their investments in Africa.

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a. Business and Human Rights

In the present era, business is certainly not isolated from human rights issues. For one, corporate responsibility to and recognition of international human rights is increasing. John Ruggie notes that, traditionally, businesses have at most been indirectly responsible to international human rights via the domestic incorporation of a States' international obligations.\(^5\) However, Ruggie argues that the growing attention given by the United Nations and other human rights bodies to business responsibility acknowledges the capability of business to breach or contribute to the protection of human rights.\(^5\) Moreover, businesses have also been increasingly held responsible for crimes defined by the ICC as well as regional \textit{ad hoc} tribunals.\(^5\) Whether as a direct result of these pressures or on their own, corporations now have internal awareness of the need to comply with human rights norms. Ralph Steinhardt notes that “[m]any multinational corporations now voluntarily proclaim some commitment to human rights, even if the record of their compliance is mixed,”\(^5\) sometimes developing their own corporate codes of conduct that articulate their business practices in respect to human rights.

The awareness of human rights at the cross section of corporate business is not misguided as the connection between the two is by no means spurious. Human rights are important to business in at least two ways. First, it is clear that a poor human rights record can hurt a business as its public perception becomes tainted by its disregard for human impact.\(^5\) Second, businesses that disregard human rights ultimately hurt themselves by contributing to the financial costs of human rights, the most obvious cost being that exacted by war, regional conflict, and genocide.

This second connection is one that is particularly important to international business in Africa. As African wars come to an end, more African resources will be able to be devoted to the building of African infrastructure. If the trend continues, this could lead to better economic times.

\(^{51}\) \textit{Id.} at 833.
\(^{52}\) \textit{Id.} at 830.
\(^{54}\) \textit{Id.} at 939-940 (describing the efforts of businesses to label products as compliant with human rights for the assurance of concerned consumers).
for Africa. The fewer wars Africa is involved in, the less the continent will be dependent on the foreign aid that often funds such wars. Consequently African states will be able to produce more and will be less likely to view its trade interactions with world powers as predatory and parasitic. Historically, there is more than enough reason to warrant that conclusion.

b. The Rule of Law and Secure Investment

There is also wide recognition that economic success in general and transnational business in particular is dependent upon the commitment to the rule of law by the governments in which the businesses intend to engage in economic transactions. The idea is not foreign to the internal policies of the U.S. and the E.U. alike, both of which implicitly recognize the necessity of rule of law to their own structuring of government. Likewise, China’s developmental experience demonstrates the rule of law’s centrality to its economic growth. This foundational acknowledgment stems from the fact that economies do not function well and business cannot be transacted where obligations are disregarded. Nor does business benefit from the disruption of warfare. The rule of law is essential to “securing investment, defining property rights, forming contracts, and preventing default on debts, and otherwise to aid[ing] in reducing the avoidable


56 John Adams, for instance, a founding father of America, had remarked that America would be established as “a government of laws, and not of men.” John Adams, The Works of John Adams, 106 (Charles Francis Adams ed., Little Brown 1850)(1774). Arguably, the Preamble of the Constitution, which states as a purpose “insuring domestic tranquility,” also reflects the importance of rule of law given the Constitution’s status as the “supreme law of the land.” The E.U. as well recognizes commitment to rule of law in its foundational documents. The Preamble to the Treaty on European Union references such a commitment. Treaty on the European Union, Preamble (“CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law.”). Additionally, the substance of the Common Foreign and Security Policy states it as an objective, as do several other provisions. See, Common Foreign Security Policy, Title V, Art. J.1 (“to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms”).


risks of investment.” Accordingly, a stable legal environment is prerequisite to profitable investment.

The establishment of the rule of law requires both fair and just laws as well as the impartial administration of justice in the legal system. More importantly, however, there is an interpersonal element to this practical problem: the establishment of the rule of law requires the promotion of a legal culture “comprised of persons who habitually comply with rules even when it is not always in their obvious or short-term interests do so.” Hence, implementing the rule of law is both a legal and cultural challenge. Were the “contest” nations willing to exert principled pressure to enforce the rule of law, the cultural foundations or the rule of law in Africa could be laid.

c. Good Governance and A Stable Economic Environment

As previously noted in this paper, there is a high correlation between corruption and instability, particularly in Africa and, correspondingly, countries that have the most difficulty subduing internal corruption tend to do the poorest economically. One reason for the correlation between corruption and stunted economic growth (or outright loss) is the inefficiency of corrupt practices. One scholar notes that “a strong argument [can be made] that most value-defined corrupt practices are, in fact, inefficient practices.” The author further explains that “[a]s institutional inefficiency persists over time, bad institutions in the past may have played a considerable role in bringing about low economic growth, thus leading to poverty today.”

In addition to economic inefficiency, corrupt practices, like the absence of the rule of law, lead to instability, and instability itself deters economic growth. Substantial increase of risk

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60 *MODERN DICTIONARY FOR THE LEGAL PROFESSION*, THIRD ED. “Rule of Law.” (“Philosophical view of law emphasizing the supremacy of the legal system over the discretionary power of public officials. This view is based on the principle that state power should not be exercised against individual citizens except in accordance with objectively defined rules or standards, and that these rules take the force of positive law which may be enforced only by the judicial system.”)
62 See, Section I (discussing the correlation between corruption and instability as studied by the Corruption Perceptions Index and the African Development Indicators Report).
will, at some point, outweigh the potential benefit to be gained by the investor. Hence, the corrupt practices of African leaders perpetuate poverty on the continent and the risk of investment for the foreign actors interested in African resources. If the U.S., E.U. and China are willing to exert pressure on African leaders who engage in such practices and thereby reduce the levels of corruption in African governments, they can be assured that there actions can only correspond to increased stability and economic growth.

IV. China and Africa: Business First, Values Later

Napoleon once compared China to a sleeping giant who is awakening and is going to shake the world. With the end of the Cold War, China abandoned its ideological approach to Africa and embraced the policy of business first, politics—and by extension human rights, rule of law and good governance—later. This model of foreign relations has been exemplified in recent years as China has stepped up its commercial and diplomatic contacts with Africa. In October 2006, China held a historic summit of the Forum on China-Africa Cooperation (FOCAC), which brought together almost 50 African heads of State and ministers to Beijing. China’s strategic partnership with Africa unveiled at FOCAC was enthusiastically embraced by 43 African nations. Prior to and after that summit, high-ranking Chinese officials had visited virtually all of the African States, forging economic and strategic objectives. After the summit, senior Chinese officials visited 15 African countries. China's presence in Africa poses the following question: Is its strategy of business without values viable in the long-term and what implications will Chinese influence have for the war-torn continent?

a. China’s Commitment to Business

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China’s growing presence in Africa is quite possibly the most important development in African history since the end of the Cold War. Oil and high commodity prices are the key drivers of China’s vigorous attention to Africa. Some commentators maintain that China and its companies remain minor actors in Africa, compared to the dominant influence of the U.S. and the E.U., and, indeed, China’s trade with Africa remains proportionally small—only 3 percent of its international trade. However, China’s influence in Africa is growing and rapidly so, particularly in the oil and infrastructure sector. In 2003, China became the world’s second-largest consumer of oil behind the U.S. In 2004, although slipping marginally, it remained the number three importer of oil behind the U.S. and Japan. Furthermore, the Chinese demand on oil is forecast to more than double by 2025, to 14.2 million barrels a day from the current 7 million a day. The Chinese also offer package deals that include infrastructure development or long-term low-interest loans in exchange for oil and other forms of business. China’s increasingly pivotal role as a global manufacturer of practically everything has ensured that demand will continue to grow.

Additionally, the Chinese business of exporting weapons to Africa has been plentiful, and China has not imposed political, human rights or humanitarian conditions on arms sales. Countries like Sudan and Zimbabwe are reportedly major recipients of Chinese weapons. Between 1955 and 1977, Le Monde reported, China sold $142 million worth of military

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69 Council on Foreign Relations; Erica Strecker Downs, *The Fact and Fiction of Sino-African Energy Relations*, 3 CHINA SECURITY 42, at 59 (2007), http://www.wsichina.org/cs7_3.pdf. Accessed: Jan. 17, 2008. Erica is a Fellow at the John L. Thornton China Center at the Brookings Institute. Erica Strecker Down argues that while China National Petroleum Corporation (CNPC) dominates the oil sector in Sudan, China's NOCs currently are minor actors among the foreign investors in Africa's largest reserve holders, including Libya, Nigeria, Algeria and Angola (see Figure 1). With the exception of a handful of projects in Sudan (Heglig and Unity fields), Nigeria (Akpo field), and Angola (Greater Plutonio fields), most of the African assets held by China's NOCs are of a size and quality of little interest to international oil companies (IOCs). In fact, many of these assets were relinquished by the IOCs.

71 Id.
72 Id.
73 Id. (citing the Chinese Energy Information Administration).
74 Id.
75 China has reportedly supplied 12 fighter jets and 100 trucks to the army in Zimbabwe, a country subject to an arms embargo by the U.S. and the E.U.. China has supplied the Sudanese government with arms since at least 1985, with transfers between 1985 and 1989 totaling $50 million. China is Sudan’s principal arms’ supplier. It is estimated that as much as 80 percent of the revenue generated by Sudan’s oil fields has been invested in fighting its wars. *See*, Alex Vines, *China in Africa*, supra.
equipment to Africa, and the pace of sales has picked up significantly since then. The U.S. Congressional Research Service reported that China's arms sales to Africa made up 10 percent of all conventional arms transfers to the continent between 1996 and 2003. Since the early 1990s, China has been one of the largest suppliers of military equipment and arms to Sudan. The small arms China trades range from rifles to shotguns and handguns and the major military equipment consists of Chinese manufactured Z-6 helicopters along with technical repair services provided by Harbin-Dongan Engine, a Chinese-manufacturer. Experts say that any military air presence exercised by African governments—including the helicopter gunships reportedly used to terrorize civilians in Darfur—comes from China. The link between the Chinese exported weapons and human rights violations, despotism, lack of accountability, and political instability is not difficult to establish and has been a topic of controversy in the international community.

b. China's “No Values Added” Approach

China's foreign policy is non-prescriptive; it stresses the importance of internally-driven development and promotes sovereignty-based order. As this paper has labeled it, it is a “no-values added” approach, where business concerns predominate and human rights and democratic principles figure in only where the negative results in the world community vastly outweigh business concerns. China is not reticent, for example, to outbid the U.S. and European companies for infrastructure projects in Africa by employing political means or to increase its leverage in Africa by using its position on the U.N. Security Council.

This policy recently played out with disastrous results in Sudan. In 2007, China had sold weapons and $100 million worth of Shenyang fighter planes, including twelve supersonic F-7 jets to the Sudanese government and provided military training and heavy military equipment

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77 Council on Foreign Relations, supra note 69.
79 Arming Sudan, supra note 78 at 30.
80 Id. at 30 (citing NIF and SPLA Carve Up Sudan, Jane’s Intelligence Review, Jan. 7, 1998).
81 Council on Foreign Relations, supra note 69.
82 Council on Foreign Relations, supra note 69.
training by Chinese specialists to the leaders of the tiny West African nation, whose oil reserves per capita approach and may even exceed those of Saudi Arabia. Moreover, China began investing in Sudanese oil fields at a time when many other developed countries were severing ties with Sudan for reasons of human rights abuses. In summer 2004, Zhou Wen-Zhong, China's then-deputy minister of foreign affairs, invoked the longstanding Chinese foreign policy principle of noninterference to justify their hands-off approach to Darfur. Wen-Zhong explained that “[b]usiness is business […] we] try to separate business from politics,” and commented that the “situation in Sudan is an internal affair, and we are not in a position to impose on them.” While international concern grew, China repeatedly obstructed the U.N. Security Council in its efforts to impose economic sanctions over the Darfur issue and threatened to use its veto on the Security Council to protect Khartoum from proposed oil sanctions. China was successful in diluting every resolution on the killing in Darfur in order to protect its interests. In response, the United Nations Security Council froze the financial assets of certain Sudanese individuals suspected of committing violations of human rights.

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83 Council on Foreign Relations, supra note 69.
85 Strecker Downs, Fact and Fiction, supra note 69 at 59.
88 The assistant Foreign Minister Zhai Jun put it this way: “[u]sing pressure and imposing sanctions is not practical and will not help settle the issue.” Alex Vines, China in Africa, supra note 70. The international community at first sought and African States seem to have concurred with the characterization of the Darfur conflict as an problem and even praised the “leadership role and the engagement of the A.U. in addressing the situation in Darfur.” See, U.N. Security Council Resolution on the Report of the Secretary-General on the Situation in the Sudan, S.C. Res. U.N. Doc. 1564 S/RES/1564 (Sept. 18, 2004). This hands-off approach would help certain countries, such as China, evade having to explain their non-interference approach to such a problem. The protection force promised by the A.U. would turn out to be awfully insufficient. The tensions within the U.N. Security Council concerning sovereignty of the Sudan if the U.N intervened in the Sudan are clear in its August 31, 2006 resolution in which the Council said that “[r]eaffirming its strong commitment to the sovereignty…of the Sudan, which would be unaffected by transition to a United Nations operation in Darfur…and that a United Nations operation in Darfur shall have, to the extent possible, a strong African participation and character.” See, S.C. Res. U.N. Doc. 1706 S/RES/1706 (Aug. 31, 2006). This same position appears in U.N. Security Council resolution as well. S.C. Res. U.N. Doc. 1679 S/RES/1679 (May 16, 2006). But that was only another way of the U.N. Security Council endeavoring to evade getting involved and a perpetuation of the hand-off policy. Violence in Darfur simply persisted. Only recently did the U.N. establish a hybrid mission to Darfur (AU/UN Mission in Darfur, otherwise called UNAMID), S.C. Res. 1769, U.N. Doc. S/RES/1769 (July 31, 2007).
But Beijing rapidly received a lesson that separating business from politics is easier said than done.⁹⁰ The international perception was that Chinese companies were facilitating the Sudanese government in their disastrous campaign.⁹¹ The damage done to China’s international reputation over the atrocities in Darfur and the consequences for the region⁹² could not be ignored. China was being blamed for filling Khartoum’s coffers with oil revenues and selling arms that the government would then indiscriminately use against the Darfur rebels as well as civilians.⁹³ China had to briefly move off of its principle of noninterference by incorporating some pressure. There was also a campaign to boycott the 2008 Summer Olympics in Beijing if China did not change its policies.⁹⁴ China became aware that many African countries were upset over the situation in Sudan and did not want to risk more.⁹⁵ Leveraging its business relations with the country, China persuaded Sudan to cooperate with the United Nations. China’s international reputation and the realization that China could not deter Western governments from increasing pressure on Khartoum prompted Beijing to play a more active role in finding a solution to the crisis in Darfur.

A parallel situation concerns China’s involvement in Zimbabwe. Despite Beijing’s growing concerns about Zimbabwean President Robert Mugabe’s repressive tactics—most notably his willingness to literally starve his opposition and destroy the Zimbabwean economy—China has continued to sell the Zimbabwean government technology that enables it to monitor electronic communications. China could have refused to sell censoring technology to Mugabe,

⁹³ The Darfur conflict threatened peace and human rights in the neighboring countries as well. As the U.N. Security Council acknowledged in its August 31, 2006 resolution that the “ongoing violence in Darfur might negatively affect the rest of the Sudan as well as the region, particular Chad and the Central African Republic.” S.C. Res. 1706, U.N. Doc. 1706 S/RES/1706 (Aug. 31, 2006).
⁹⁶ Strecker Downs, *The Fact and Fiction*, supra note 69 at 60.
who uses it to brutally repress his real and imaginary opponents. China provided a radio jamming device to Zimbabwe that allows the Mugabe’s regime to block broadcasts of independent news sources like Radio Africa from a military base outside Harare. In addition, the autocratic government of Robert Mugabe ordered 12 FC-1 fighter jets and 100 military vehicles from China in late 2004 in a deal worth $200 million. In May 2000, China reportedly swapped a shipment of small arms for eight tons of Zimbabwean elephant ivory. Beijing’s non-interventionist approach is music to the ears of African despots like Mugabe, for it separates business and politics, eschewing the imposition of economic sanctions, diplomatic isolation or condemnation, and other forms of international pressure that can effectively bring about internal change.

The links just described between China and African conflicts is by no means exhaustive. For example, China sold to both Ethiopia and its neighbor, Eritrea, an estimated $1 billion worth of weapons before and during their border war from 1998 to 2000. In the Partial Award-Western Aerial Bombardment and Related Claims, the Permanent Court of Arbitration [PCA] Eritrea-Ethiopia Claims Commission found that the aerial bombing attacks by Ethiopia in February 1999 and June 2000 of a water reservoir which Ethiopia knew would serve a civilian population in a desert location was a violation of customary international humanitarian law. The struggle was devastating, despite the fact that both Ethiopia and Eritrea, as the U.N. Security Council noted, were considered some of the more progressive African nations of 1990s. Additionally, China was linked to the conflict in Burundi. In 1995, a Chinese ship carrying 152 tons of ammunition and light weapons destined for the army of Burundi was refused

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97 Council on Foreign Relations, supra note 69.
99 Council on Foreign Relations, supra note 69.
101 The U.N. Security Council noted that the “rehabilitation and reconstruction efforts of both the Ethiopian and Eritrean governments during the last eight years have given hope to the rest of the continent, all of which would be put at risk by armed conflict.” Sec. Res. 1226, U.N. Doc. S/RES/1226 (Jan. 29, 1999).
102 Esther Pan, China, Africa, and Oil, supra note 76.
permission to dock in Tanzania.\textsuperscript{103} The conflict in Burundi could not be sustained by an utterly poor country without offers of military support, and the Chinese had been open to offer this support to the poor African nation.

On the other hand, could China’s involvement be a positive thing, although largely negative from a human rights standpoint as of now? If the economy improves the corresponding conditions could alleviate African human rights problems in the future. Africa registered 5.2 percent economic growth in 2005, its highest level ever, in part because of Chinese investment.\textsuperscript{104} African nations are enthusiastic that Chinese demand has pushed up oil prices.\textsuperscript{105} The roads, bridges, and dams built by Chinese firms are low cost, good quality, and completed in a fraction of the time such projects usually take in Africa, experts say. The UN-supervised China-Africa Business Council, based in China, encourages much-needed trade and development with the continent. In 2004, China contributed 1,500 peacekeepers to UN missions across Africa, including Liberia. It has undertaken or contributed to construction projects in Ethiopia, Tanzania, Zambia, in addition to the countries named above. It has cancelled $10 billion in bilateral debt from African countries, sent medical doctors to treat Africans across the continent, and hosted thousands of African workers and students in Chinese universities and training centers. Critics say these projects are meant to build goodwill for later investment opportunities or stockpile international support for contentious political issues. Lyman says China's interest in Africa has both positive and negative effects.\textsuperscript{106} Overall, experts say, China's involvement could likely jump-start change on the continent. “This is Africa’s internal problem,” proposes Kang, “[h]ow do you build infrastructure without outside investment? And how do you have a stable government with no resources?”\textsuperscript{107} The roads and schools built by Chinese companies didn't exist before, so their presence is an improvement, and the infrastructure improvements help African countries secure other loans and investment opportunities, contributing to an atmosphere of development that may one day change the continent—a welcome, even if unintended, result of China's quest to secure global energy resources.

\textsuperscript{103} Council on Foreign Relations, supra note 69.
\textsuperscript{104} Esther Pan, China, Africa, and Oil, supra note 76.
\textsuperscript{105} Council on Foreign Relations, supra note 69.
\textsuperscript{106} Id.
\textsuperscript{107} Id.
Nonetheless, it is paradoxical to argue that economic growth at the expense of human rights and democratic principles can solve Africa's problems, as the perpetuation of human rights violations in the short term hinders any long-term improvement. China has shown that its no-values added approach has perpetuated both intra-national despotism and international conflicts, shielding African autocrats from political consequences. The reason that China has been so effective is that the no-values added approach enables African dictators who are more than happy to deal with a business partner that is unconcerned with the consequences.

c. China’s Role as a Shield for Autocracy

In light of Chinese willingness to do business without considering the implications of its transactions, it is no surprise that African autocrats would turn to China for refuge. In May 2005, Zimbabwe President Robert Mugabe announced, “[Africa has] turned east where the sun rises, and given our backs to the west, where the sun sets,” during Zimbabwe's celebration of its 25 years of independence.\(^{108}\) While many in the West consider China a threat, there are many African leaders who consider China an opportunity. Ethiopia called China its “most-favored [trading] partner” after Western States condemned the country regarding election irregularities and its border dispute with Eritrea.\(^{109}\) Nigeria’s former President Olesegun Obasanjo also said that they need to follow the “Chinese model,”\(^{110}\) as he contemplated to run for a third term in spite of Nigeria’s constitutional presidential term limits.\(^{111}\) He claimed that the absence of stability and visionary leadership was the principal cause of Africa’s underdevelopment and that these qualities had enabled Singapore and China to become contemporary economic miracles.\(^{112}\) For many African leaders, from Museveni to Mubarak, and Mugabe to Lansana Conte, this same argument has continued to resonate when proposing amendments to remove presidential term

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110 Alex Vines, China in Africa, supra note 70. 
limits and it may well be the reason behind most elections which are mere façades of democracy. Moreover, African countries often prefer to take loans from China rather than the IMF with strict standards of detailed accounting.\textsuperscript{113} For corrupt regimes like that of President José Eduardo dos Santos of Angola, China is a welcome partner as they become more autocratic and seek to escape increasing international pressure, which undoubtedly affects their choice of business partners. For instance, many observers believe that the French oil giant Total lost its lead-operator rights because of France’s criminal prosecution of an oil-for-arms case involving the dos Santos government in the 1990s.\textsuperscript{114}

China’s strong economic involvement but simultaneous claim of non-intervention appears disingenuous. In reality, there is no such notion as absolute sovereignty in international human rights law\textsuperscript{115} in spite of the attractiveness of the notion of noninterference. Nor is it a viable long-term strategy for the African continent or even for the health and protection of Chinese business investment. If China prizes economic growth, it cannot do so at the expense of African human rights. The two must work together as a partnership will be mutually beneficial.

V. The United States and Africa: Business, Security and Values

Like China, the U.S. is in the midst of an expanding phase of engagement in Africa.\textsuperscript{116} The tripling of U.S. foreign assistance levels to Africa in public health, economic development and good governance, the substantial enlargement of military commitment since 9/11, and the increasing volume of two-way trade\textsuperscript{117} in the private sector, concentrated in the energy field, reflect rising U.S. interests in the continent. In 2006, the Administration of President George W. Bush declared that “Africa holds growing geo-strategic importance and is a high priority of this Administration.”\textsuperscript{118} Simultaneously, the Administration recognized that the “[m]ost effective

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\bibitem{113} Strecker Downs, \textit{The Fact and Fiction}, supra note 69 at 56.
\bibitem{114} See, Alex Vines, \textit{China in Africa}, supra note 70.
\bibitem{115} Article 2(7) of the U.N. Charter that “[n]othing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” And then added that: “but his principle shall not prejudice the application of enforcement measures under Chapter VII.”
\bibitem{117} See, Africa Growth Opportunity Act (AGOA), 19 U.S.C. 3721(c).
\end{thebibliography}
long-term measure for conflict prevention and resolution is the promotion of democracy.” As the White House's statement indicated, the U.S. has certainly committed itself rhetorically to the promotion of democracy, human rights and improvement of governance in Africa, but has yet to demonstrate this commitment overtly in its conduct. Despite its inaction, the U.S. has strong interests, both economically and in regards to security that would be benefited by following through on this rhetorical commitment.

a. U.S. Economic Interests in Africa

The economic interests of the U.S. in Africa are unambiguous, and the Bush Administration has many times pursued Free Trade Agreements with various African governments. Since 2001, the U.S. has increased trade with sub-Saharan Africa through the African Growth and Opportunity Act (AGOA) and pursued other initiatives through the Generalized System of Preferences. Moreover, the west coast of Africa is strategically important to the U.S. since West Africa provides U.S.A with 15 percent of its oil imports. Within West Africa, Nigeria is the most significant oil producer and averages 2.6 million barrels per day (bbl/d), which makes it one of the most heavily traded countries in West Africa for the U.S. Angola is another significant country for the U.S. as the third largest oil producer in Africa behind Nigeria and Libya after joining OPEC in 2007, and its production capacity is expected to exceed 2 million barrels per day in 2008 with exploration within the country and also through offshore drilling.

Reciprocally, Africa's economies are increasingly tied to—and in fact dependent upon—the performance of the U.S. markets. The troubled stock market across the globe that we have witnessed in recent years illustrates that the global economy and welfare, including the economies of developing countries, are still very much affected by the U.S. economy. The “umbilical chord” has not been cut and any “de-coupling” from the U.S. by global economies

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119 Id.
120 19 U.S.C. 3721(c).
123 Id.
124 Id.
has yet to happen. It is therefore imperative to take the economic activities of the U.S. in Africa with all the seriousness it deserves.

Thus, both the U.S. and Africa have critically important mutual economic interests. It would be reasonable to expect that because Nigeria and Guinea produce so much oil, there is much at stake for the U.S. One might expect that there would be an effort to ensure that economic engagement with Africa makes a difference in the lives of the African peoples—the best way to protect such interests. But in these countries, there has been very little trickle-down effect to date as well as a lack of deliberate engagement with ordinary Africans or ground rules for business that would ensure stability and thereby offer avenues for improved conditions.

b. U.S. Security Interests in Africa

U.S. interest in Africa is also strategically focused upon security concerns. The U.S. understands that "[U.S.] security depends upon partnering with Africans to strengthen fragile and failing states and bring ungoverned areas under the control of effective democracies."125 Even with respect to this aspect of U.S.-African relations, it is imperative to make the observation that the best way to ensure security is through the promotion of a culture of human rights, rule of law, accountability, and good governance in Africa. With security too, however, the U.S. is in a triadic contest with other international actors. While engaged with Africa, the U.S. has tended to permit its attention to be diverted away from the equally important matters of human rights, democracy and rule of law, despite their central importance to U.S. security interests. One particularly important aspect of U.S. security is the global struggle against terrorism. Africa is critically important in this regard. As an example, Somalia, a failed state, clearly demonstrates the urgency of ensuring that no more such states develop on the African continent.126

The U.S. has engaged in a number of ventures in seeking to protect its security interests in Africa. In October 2001, the U.S. endeavored to create a parallel and more U.S.-friendly organization to the A.U. and instituted the New Partnership for African Development

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125 National Security Strategy of the U.S. of America (March 16, 2006)
NEPAD’s African allies included such nations as South Africa, Algeria, Senegal, Nigeria, and Egypt in order to counter the A.U., which was largely the initiative of the then U.S. enemy Libya’s Colonel Muammar al-Gaddafi. NEPAD’s emphasis was on free market economics—not human rights. The U.S. continued to build a broad framework for long-term engagement with Africa that would secure its strategic and security interests. Evidence of that can be seen in the 2006 U.S. executive decision to establish the new, unified combatant command for Africa (AFRICOM).

The U.S. security interests also extend to African commercial seaports. Gordon S. Magenheim has made the argument that in a time of regional crisis these seaports might be hampered by the growing economic and political clout of China. Africa is unique in that, at least for sub-Saharan Africa, there is an unusual shortage of natural ports along the coastline. Accordingly, where seaport locations are available, they become major points of access into the African continent for both imported goods and exports. U.S. military operations in the future would have to compete for these few seaports and any significant military operation requiring projection of American presence into Africa would require the use of a commercial seaport. That access may be denied due to conflict with commercial ventures of China, which is forging deep economic, political, and military ties with most of the African countries.

c. American Values: Needing to Teach by Example

In consideration of these strategic concerns, the U.S. has often in its dealings with Africans allowed national security to take precedent over exemplifying the values that they pay service to. The choices it has made to do so often make the U.S. look duplicitous in the eyes of African leaders who are ready to gain any advantage they can in order to escape accountability to the world community. Instead of continuing its current strategy, the U.S. needs to change course and teach by example, respecting the values that the African States desperately need to respect themselves.

127 NEPAD would replicate the idea of the U.S.-sponsored Conference for Security and Cooperation in Europe. NEPAD’s emphasis was on free market economics not human rights.
129 Id. at 23.
Principled exertion of pressure by the U.S. on African leaders with respect to human rights, good governance and the rule of law is often relegated to second place. Recent events, however, indicate that the U.S. prefers to look the other way at human rights violations or condone them for their own gain. For instance, although Uganda was condemned by the International Court of Justice for violating international law, particularly international human rights law, through its invasion of and operations in the Democratic Republic of Congo, the world community permitted President Museveni to act tyrannically without real consequence. Museveni amended the Ugandan Constitution to remove all presidential term limits and locked up the leader of the opposition in prison on the basis of trumped up charges during a hotly contested election, and the U.S. did next to nothing to exert meaningful pressure on the Museveni administration. There were a few expressions of concern, but African leaders understood that this was mere rhetoric that would not be accompanied by real action. They understand that these international actors give primacy to their geopolitical interests before the rule of law, human rights, and good governance. The U.S., like the E.U., knows that Museveni is critically important to its Great Lakes interests. In a recent visit by President George W. Bush to Egypt, he strikingly avoided criticism of the autocratic leader of Uganda, Museveni, who has held power since 1986 and arrested several political dissidents, exiled others and imposed severe political restrictions on the opposition. Instead, President Bush chose to lavish praise on Egyptian President Mubarak for his country’s role in regional security.

Another aspect of the perceived U.S. duplicity is the bilateral immunity agreements that African States signed with the U.S. so that an American caught in an African State does not have to be handed over to the International Criminal Court [ICC]. The agreements do not augur
The U.S. is remarkably silent on human rights, good governance and the rule of law when it comes to the pursuit of security interests, even though it understands that effective democracy is an important prerequisite for security. However, in order to build a stable continent—a goal in line with U.S. security concerns—it needs to be willing to step up and hold Africa accountable. If it does not do so, both its economic and security interests will be hurt in the long term.

VI. The European Union and Africa: Business and Values

In recent times, the E.U. has attempted to reconfigure its relationship with Africa based on equality and to move away from the colonial paradigm. However, the Europeans want, at the same time, to promote a human rights and democracy agenda in Africa. As they try to do that, the African leaders are often resentful of being “dictated to.” They consider that as being as much a violation of their internal sovereignty as that of the old colonialism. The African leaders consider the European attitude as being the same old patronizing paradigm. In a recent meeting in Portugal, the E.U. sought to forge better relations with African countries. Unfortunately, the response was mixed. Overall, African leaders see a bit of hypocrisy and/or self-interest, but to make the best case out of a bad situation, they look to the option that best serves their own self-interest and, unfortunately, in most cases that does not advance human rights and governance.

a. The E.U. and Economic Partnership in Africa

The E.U. presence as an investor in African business has been consistently important to the African continent and recently shows signs of growing. The E.U. is and has always been sub-

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134 The Sudanese case is interesting in this regard. For many years, the Sudan regime has refused to hand over the persons indicted by the ICC at the behest of the United Nations Security Council. By resolution 1593, the U.N. Security Council referred the situation in Darfur to the Prosecutor of the International Criminal Court. S.C. Res. 1593 U.N. Doc. S/RES/1593 (Mar. 31, 2005). Because of their distaste for the ICC, the U.S. alone abstained from the vote.
Saharan Africa’s biggest trading partner, receiving half of its exports. In 2000, the E.U. expanded its economic involvement in Africa when the Contonou Agreement between the E.U. and the ACP (“African, Caribbean and Pacific,” although primarily affecting Africa) was signed in Contonou, Benin. The Contonou Agreement aims at “fostering the smooth and gradual integration of the ACP States into the world economy” and the development of trade relationships “based on a true, strengthened and strategic partnership.” The focus of development is on the E.U.’s “supporting the ACP States’ efforts to strengthen their capacity in the supply of services.”

As the European Union pursues the objectives of the Contonou Agreement, especially in regard to trade with Africa, the political reality of how they respond to individual crises in Africa will be key. The next section describes the E.U.’s strong focus on values. However, it is not sufficient for the E.U. to talk about values if its implementation does not come in the form of consistent pressure against African leaders and governments that is designed to bring about real change.

b. The Importation of European Values

The German Development Minister Heidemarie Wieczorek-Zeul articulated the E.U.’s approach to Africa in these words: “[S]upporting reform-minded African countries through a partnership for development aimed at creating the basis for an increase in sustainable investment: good governance, an adequate infrastructure and combating corruption.” The E.U., in comparison to the U.S. in its approach to human rights, good governance and the rule of law, has an important additional element—their embrace of international jurisdiction. Many Member States of the E.U. have statutes that permit universal jurisdictions and most European states are parties to the Statute of the International Criminal Court. This warm embrace of international jurisdiction sets

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136 CONTONOU AGREEMENT, Art. 34.
137 Id. at Art. 35.
138 Id. at Art. 41.
the E.U. apart from the U.S.\textsuperscript{140} Additionally, it has important implications for their approach to human rights, good governance and the rule of law as they relate to Africa. African leaders, who have largely frustrated their nationals in their aspirations for human rights, democracy and the rule of law, understand that such an embrace of international jurisdiction represents a potential risk that some day they may come under the purview of international jurisdiction unless they cling to power until their death—the strategy of many African leaders, including President Robert Mugabe of Zimbabwe.\textsuperscript{141} It seems reasonable, therefore, that most African leaders will follow the example of Mugabe and defend against European pressures as they have a lot in common in regard to their own record on human rights, rule of law, and good governance, to a lesser or greater extent.

In light of those realities, it is imperative to examine how the E.U. has responded—whether they have consistently pursued their stated goals of pushing for democracy, human rights and the rule of when faced with a united African leadership that resists such pressure in a concerted manner or have abandoned those objectives in part due to that pressure and in part due to the contest from the U.S. and China in the global context. Clearly, the contest is a factor that European nations and the E.U. consider and that has led them to compromise on sanctions they previously imposed on human rights violators such as President Mugabe. Just before the 2007 G8 Summit at Heiligendamm, Germany, the E.U. finance ministers and Germany’s Chancellor Angela Merkel, in particular, expressed concern about a $20 million loan promised by the Beijing government to cash-strapped African states.\textsuperscript{142} China’s growing role in African public life created nervousness among the G8 countries. “We Europeans,” said German Chancellor Angela Merkel in November 2006, “should not leave the commitment to Africa to the People’s Republic of China...we must take a stand in Africa.”\textsuperscript{143} Following hot on the heels of a conference China had convened for African leaders in Beijing, E.U. held their own E.U.-Africa

\footnotesize{\textsuperscript{140} The U.S. instead has signed bilateral immunity agreements with many African countries that are parties to the Statute of the International Criminal Court, although when the United Nations Security Council voted to refer the Darfur situation to the International Criminal Court the U.S. did not vote to opposed but only abstained. S.C. Res. 1593 U.N. Docs. S/RES/1593 (Mar. 31, 2005).
\textsuperscript{143} Alex Vines, China in Africa, supra note 70.}
Summit under the Portuguese presidency in December of 2007. At the time Merkel told leading German business leaders that “[w]hoever accepts Africa as an investment location today will reap the rewards tomorrow.”

The E.U.-Africa Summit yielded the Action Plan (2008-2010) [hereafter Action Plan] and a Strategic Partnership which continues to emphasize, in addition to trade, the values of peace and security, democratic governance and human rights. The Action Plan aligns itself with the Millennium Development Goals. The Plan expressly mentions that the partnership will endeavor to support the African Charter on Democracy, Elections and Good Governance. The action plan also aims at enhancing cooperation in the fight against corruption under the U.N Convention on Anti-Corruption and the AU Convention on Preventing and Combating Corruption and in the fight against international terrorism, as it seeks to enhance the exchange of information. The plan singles out the African Commission/NEPAD, Pan African Parliament, the African Court of Justice, African Commission on Human and Peoples’ Rights as potential actors in that regard. These initiatives would be financed in accordance with the European Instrument for Democracy and Human Rights. Additionally, the Action Plan clearly acknowledges that “Democratic Governance and Human Rights are key for sustainable development” and that it is important to enhance “cooperation in the fight against corruption.” These initiatives would be financed in accordance with the European Instrument for Democracy and Human Rights. At the same time, the Action Plan acknowledges that the global concerns on energy security and energy access have reinforced the links between the energy future of Africa and Europe.

Not surprisingly, the E.U. buckled under the African leaders’ insistence that President Mugabe should attend the E.U.-Africa Summit. From the African vantage point, actions like this have served to convey to their leaders that they are free from consequences and international

144 Merkel Urges Investment in Africa, supra note 140. The understanding is that China’s $20 billion loan could bring a return of the debt woes that have plagued the continent in the past. Peer Steinbrück, the German Finance Minister and the host of the G8 preparatory meeting in Potsdam, said that China appeared to be “willing to relaunch what we wanted to break, with our debt relief.” See, Gabriel Rozenberg, G8 critical of China’s $20bn loan package for Africa, The Times London, May 21, 2007. http://business.timesonline.co.uk/tol/business/economics/article1816579.ece. Accessed: Jan. 16, 2008.
146 First Action Plan, 10.
responsibility. It is extremely difficult to see how the E.U.'s acknowledged goals of promotion of democracy, human rights and rule of law can be insisted on in light of such a compromise—one indicative of an absence of standards or hypocrisy. The pressure is very much on the E.U., as it is on the U.S., to compromise on human rights if vital economic and geopolitical or security interests are at stake.

It might be suggested that the power of the U.S. and the E.U. is diminished because African leaders can afford to ignore them, since they have other options, such as China. However, African leaders understand that they cannot abruptly sever historical relations with Europe or the U.S. so easily. Several Member States of the E.U. maintain deep cultural connections with African States, even if those relations have come under severe strain in recent times. Thus, the Action Plan includes cooperation in cultural goods and activities. Probably Britain maintains the strongest cultural connections with its former colonies, but the other countries’ connections are not to be quickly dismissed either. In light of that, the E.U., if it so desired, could put to good use such important leverage to improve human rights, rule of law and governance conditions in Africa. Moreover, it is imperative the E.U. does so—both for its own sake and for the sake of Africa.

VII. Recommendations and Conclusion
While the U.S promises aid to Africa and condemns several governments with poor human rights records wars are still waged incessantly in Africa, lives are lost, and resources are taken. Although few African nations produce weapons domestically China’s booming economy and arms trade is only too ready to supplant the Europeans and the Americans supply of arms to the Africans. The Africans seem to have found a new partner in a ‘mutual beneficial’ relationship with the Chinese, but how truly ‘benevolent’ are the Chinese intentions for this relationship? The African States have signed many treaties with the Chinese and are also looking north to sign

148 Britain can still rely on the U.S., Canada, Australia, New Zealand, and its former colonies generally for support at the international level. In fact, former Portuguese or French colonies have applied for and have been granted membership of the Common Wealth, Rwanda being the latest such entrant into the organization. That is why E.U. is particularly important for the other European powers to project themselves to the world and have leverage. Each European nation left to itself might not be able to compete internationally.

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more treaties with the E.U., as they also look west to sign treaties with the U.S. How does Africa benefit from signing these treaties and what is the implication for human rights? Will the three parts of the triad passively allow human rights violations of Africans to continue, allowing Mugabe or others such as Congo warlord General Nkunda to thrive in this new century? Or shall we see more situations like the genocide and murder over blood diamonds in Sierra Leone where the international community intervened?

If everybody insists on the pragmatism of business first, politics—and by extension human rights, rule of law and democracy—later, everyone loses. The good intentions of the U.S., the E.U. and China may not yield their results, at least not as fast as it was hoped, because wars threaten investment, unaccountable dictatorships continue to siphon away the proceeds of trade and investment and frustrate the people. These international actors must adopt a broader view of Africa that lays priority on the nationals of those countries and not only the leaders. A new strategy in which all actors focus on the people must be pursued. The Africans are unlikely to turn away from the E.U. or the U.S. if these actors insist on human rights, for they simply cannot afford to do so—global economies are clearly tied either to the E.U. or to the U.S. and only increasingly so to the Chinese. As long as that is the case, these actors must endeavor to use the leverage that they still have to bring change in Africa. Only that can work and it is in the long term interest of everybody—Africa, the U.S., the E.U. and even China.

The Chinese have to understand that they cannot ignore human rights and good governance, as they remain part and parcel of business and trade. Similarly, the rule of law should be important to Asian investments. The Chinese should be concerned that Africans have the protection of the rule of law because it is important to business. The rule of law is important for long-term investment. Europe and the U.S. need to develop a more consistent approach and unity among themselves in their advocacy for human rights and democracy and respect for international jurisdiction. Short of that, their insistence on human rights and democracy, although in itself a positive strategy and indispensable for the protection and promotion of human rights, cannot be effective because to the extent the U.S. reluctantly supports international jurisdiction, they cannot be effective in bringing about change in the lives the Africans.
All three countries of the triad have important responsibilities towards Africa and the potential to make a difference on the troubled continent. A consistent, coherent, and therefore legitimate engagement with Africa by the U.S., the E.U and China can and must make real change in the lives of ordinary Africans. Africa cannot emerge into a new era of stability and prosperity without such international engagement.