

2008

## Trade, Empires, and Subjects--China-Africa Trade

Uche E. Ofodile

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Human Rights Law Commons](#), and the [International Trade Law Commons](#)

---

### Recommended Citation

Uche E. Ofodile, Trade, Empires, and Subjects--China-Africa Trade, 41 *Vanderbilt Law Review* 505 (2021)  
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol41/iss2/4>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# Trade, Empires, and Subjects— China-Africa Trade: A New Fair Trade Arrangement, or the Third Scramble for Africa?

*Uche Ewelukwa Ofodile\**

## ABSTRACT

*Since 2000, the interest of the People's Republic of China (China) in Africa has grown steadily. Trade between China and Africa has grown exponentially. China-Africa trade volume increased from \$10 billion to \$18 billion between 2000 and 2003. In 2005, total trade between Africa and China surged to \$40 billion, and in 2006 China-Africa trade was valued at \$55.5 billion. A third of China's crude oil imports come from Africa. In the West, reaction to China's involvement in Africa has bordered on suspicion and paranoia. Policy makers and analysts are concerned that China could gain control over Africa's vast and untapped natural resources. The current struggle over Africa's resources evokes worrying memories of an earlier scramble for pieces of the continent. This Article examines the opportunities and pitfalls that Sino-African trade*

---

\* Associate Professor, University of Arkansas School of Law. S.J.D., Harvard Law School; L.L.M., Harvard Law School; L.L.M. (International Business Law), University College London. Fellow, Carnegie Council on Ethics and International Affairs, 2003-2004. The Author gratefully acknowledges the research assistance of Asia N. Diggs, a student at the School of Law, University of Arkansas, Fayetteville. Special thanks also to Anthony Ofodile, Michael Ofodile, and Josh Ofodile for their unflinching support and encouragement.

There is currently a dearth of systematic data pertaining to China-Africa trade. Regarding Sino-African trade, a World Bank study recently noted that "there is . . . a paucity of systematic data available . . . to carry out rigorous analysis, and from which inferences . . . could be drawn." See Harry Broadman, *AFRICA'S SILK ROAD: CHINA AND INDIA'S NEW ECONOMIC FRONTIER* 3(2007) Ian Taylor, *CHINA AND AFRICA: ENGAGEMENT AND COMPROMISE* (2006) (noting that compared to other area studies on Chinese foreign policy, the study of Sino-African relations has been sparse). Future articles will draw more readily on systematic data from the economic field as they become available. The provisions of trade and investment agreements between China and countries in Africa, as well as the implications of Sino-Africa trade for U.S. security and energy interests and U.S. foreign policy will be critically evaluated in future articles.

*relations present for Africa. Instead of paranoia, this Article calls for guarded optimism regarding the deepening relationship. While there is much that Africa could gain from the relationship, African leaders and Africans must guard against imperialism of any sort and shy away from arrangements that threaten sustainable development or undermine respect for human rights. Most important, African leaders must push past Beijing's rhetoric of anti-hegemonism and develop clear policies to guide the continent's engagement with China. Drawing on the rich but sad lessons from the scramble for Africa in the nineteenth century, African leaders must avoid the economic, political, and legal pitfalls of the past and position the continent to benefit from strategic relations with countries that could become future partners.*

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	507
II.	THE HISTORY AND EVOLUTION OF CHINA-AFRICA TRADE RELATIONS .....	511
	A. <i>The Bandung Conference of 1955</i> <i>(Bandung I)</i> .....	512
	B. <i>South-South Cooperation Discourse</i> .....	516
	1. <i>The First South Summit</i> .....	517
	2. <i>The Second South Summit</i> .....	518
	C. <i>Asia-African Summit 2005 (Bandung II)</i> .....	520
	D. <i>Conclusion</i> .....	521
III.	LEGAL AND POLICY FRAMEWORK OF SINO-AFRICAN TRADE AND INVESTMENT RELATIONS .....	522
	A. <i>The Core Framework Documents</i> .....	523
	B. <i>Patterns of China-Africa Trade and</i> <i>Investment Flows</i> .....	525
IV.	CHINA'S AFRICA POLICY, AFRICA'S CHINA POLICY: A CRITIQUE .....	529
	A. <i>China's Africa Policy</i> .....	530
	B. <i>China's "Real" Interest in Africa</i> .....	532
	1. <i>Political Motivations</i> .....	533
	2. <i>Economic Motivations</i> .....	535
	C. <i>Africa's China Policy</i> .....	536
	1. <i>African Leaders and China</i> .....	537
	2. <i>Africa's Regional Organizations and</i> <i>China</i> .....	539
	D. <i>Conclusion</i> .....	541
V.	THE SCRAMBLE FOR AFRICA: PAST, PRESENT, AND FUTURE.....	543

- A. *The General Act of the Conference at Berlin (The Berlin Act)* ..... 546
- B. *The Period of Treaty-Making* ..... 549
- C. *Response of Africans and African Leaders to the Nineteenth Century Scramble*..... 550
- D. *Lessons Learned*..... 551
- VI. CHINA-AFRICA RELATIONS: CRITICAL APPRAISAL AND A MODEST PROPOSAL ..... 557
  - A. *China-Africa Relations: Potential Gain for Africa* ..... 558
    - 1. Africa’s Need for New Trade Opportunities ..... 558
    - 2. Africa’s Need for New Investment Opportunities ..... 560
    - 3. Africa’s Need for Trade-Related Technical Assistance..... 562
  - B. *Africa’s China Policy: A Modest Proposal* ..... 564
    - 1. Proactivity ..... 564
    - 2. Disaggregated Data ..... 566
    - 3. Interrogate Reciprocity ..... 568
    - 4. Maximizing Opportunities, Addressing Supply-Side Constraints..... 570
    - 5. Private Sector-Led Relationships ..... 571
    - 6. Enabling Environment for Trade and Investment..... 572
    - 7. Respect for Human Rights ..... 574
    - 8. Examining Readiness ..... 577
- VII. CONCLUSION ..... 579

I. INTRODUCTION

The year 2006 was dubbed “China’s Year of Africa.”<sup>1</sup> Since 2000, the People’s Republic of China (China) has become increasingly

1. Jonathan Katzenellenbogen, *Behind the Chinese “Year of Africa,”* BUSINESS DAY (S. Afr.), June 21, 2006, available at <http://www.uofaweb.ualberta.ca/chinainstitute/nav03.cfm?nav03=47295&nav02=43782&nav01=43092> (noting that in Beijing, senior foreign ministry officials call 2006 “China’s Year of Africa,” and that this attention is a strong signal that China is “putting down its marker as a serious player on the continent.”).

There may, of course, be little significance to the fact that 2006 was dubbed China’s Year of Africa. Although the international community named 2005 “the year of Africa,” not much came out of the designation. See World Economic Forum on Africa, Cape Town, S. Afr., May 31–June 2, 2006, *The Year of Africa in Review*, <http://www.weforum.org/pdf/SummitReports/africa2006/review.htm> (last visited Aug. 12, 2007).

interested in Africa.<sup>2</sup> In October 2000, Africa and China created and formally launched the Forum on China-Africa Cooperation (Forum or FOCAC) to serve as a vehicle for promoting China-Africa friendship and cooperation.<sup>3</sup> During the same month Beijing hosted the ministerial conference of the Forum (First Ministerial Conference).<sup>4</sup> The first of its kind in the history of China-Africa relations,<sup>5</sup> the First Ministerial Conference drew over five thousand attendees, including China's Foreign Minister (Tang Jiaxuan), a representative of China's Ministry of Foreign Trade and Economic Cooperation (Shi Guangsheng), and about eighty ministers of foreign affairs, international trade, and economic cooperation from forty-four African countries.<sup>6</sup> Even countries that did not have diplomatic relations with China, such as Malawi and Liberia, sent observers to the meeting.<sup>7</sup> Since 2000, several other conferences have been organized. Addis Ababa, Ethiopia hosted the Second China-Africa Forum on Cooperation on the 15th and 16th of December 2003. More recently, the Beijing Summit and Third Ministerial Conference on China-Africa Cooperation (2006 Beijing Summit) took place in November 2006. The Chinese Government issued an African Policy Paper for the first time in January 2006.<sup>8</sup> Since then, Chinese President Hu Jintao and Premier Wen Jiabao have paid friendly visits to at least

2. HARRY BROADMAN, *AFRICA'S SILK ROAD: CHINA AND INDIA'S NEW ECONOMIC FRONTIER* 1 (2007) (observing that today's scale of China's and India's trade and investment flow with Africa are "wholly unprecedented"); Leni Wild & David Mephan, *Introduction*, in *THE NEW SINOSPHERE: CHINA IN AFRICA* 1 (Leni Wild & David Mephan eds., 2006) (observing that although China is not a new player in Africa, "its economic and political presence on the continent and its impact have grown exponentially in the last few years.").

3. Hu Jintao, President, P.R.C., Address at the Opening Ceremony of the Beijing Summit of The Forum on China-Africa Cooperation (Nov. 4, 2006), available at [http://english.focacsummit.org/2006-11/04/content\\_4978.htm](http://english.focacsummit.org/2006-11/04/content_4978.htm) [hereinafter President Hu Jintao's Address] ("Today, the Forum serves as an important platform and effective mechanism for conducting collective dialogue, exchanging experience in governance and enhancing mutual trust and cooperation in practical terms between China and African countries.").

4. The First Ministerial Conference took place October 10–12, 2000. See *China-Africa Cooperation Forum: Past, Present and Future*, CHINA.ORG.CN <http://www.china.org.cn/english/features/China-Africa82189.htm> (last visited Feb. 8, 2008) [hereinafter China-Africa Cooperation Forum].

5. *Beijing Declaration of the China-Africa Cooperation Forum*, PEOPLE'S DAILY (P.R.C.), Oct. 12, 2000, [http://english.people.com.cn/english/200010/12/eng20001012\\_52436.html](http://english.people.com.cn/english/200010/12/eng20001012_52436.html) (last visited Feb. 8, 2008) (describing the forum as the first in the history of China-Africa trade).

6. China-Africa Cooperation Forum, *supra* note 4.

7. *Id.*

8. China-Africa Forum, *China's African Policy*, Jan. 2006, [http://english.focacsummit.org/2006-09/20/content\\_619.htm](http://english.focacsummit.org/2006-09/20/content_619.htm) (last visited Feb. 9, 2008) [hereinafter China's African Policy].

ten African countries.<sup>9</sup> For example, on January 30, 2007, President Jintao embarked on a twelve-day tour of Africa, his second trip to the continent in less than a year.<sup>10</sup>

Emerging discourse on the China-Africa relationship depicts China as either the new imperial power or as Africa's benefactor.<sup>11</sup> In the West, reaction to China's involvement in Africa has bordered on suspicion and paranoia.<sup>12</sup> Policymakers and analysts in the West are concerned that China could gain control over Africa's vast and untapped natural resources, particularly the continent's energy reserves.<sup>13</sup> The current struggle over Africa's resources<sup>14</sup> evokes worrisome memories of earlier scrambles for pieces of the continent by Western European powers in the late nineteenth century<sup>15</sup> and

9. China-Africa Forum, *China-Africa Cooperation Fruitful over Past 50 Years*, Nov. 1, 2006, [http://english.focacsummit.org/2006-11/01/content\\_4312.htm](http://english.focacsummit.org/2006-11/01/content_4312.htm) (last visited Feb. 9, 2008).

10. Moyiga Nduru, *Africa: Oil, Global Influence Driving Hu Jintao's Trip*, INTER PRESS SERVICE, Jan. 29, 2007, available at <http://allafrica.com/stories/200701291475.html>. The visit took President Hu to Cameroon, Namibia, Mozambique, the Seychelles, Sudan, South Africa, Zambia, and Liberia. *Id.* President Hu's African trips were in February 2004 and April 2006. *Hu's Africa-Asia Tour to Bolster Relations*, CHINA.ORG.CN, <http://www.china.org.cn/english/international/166615.htm> (last visited Feb. 18, 2008).

11. See Elizabeth Sidiropoulos, *Options for the Lion in the Age of the Dragon*, 13 S. AFR. J. INT'L AFF. 97 (2006) (providing an example of the discourse depicting China as a new imperial power or Africa's benefactor).

12. See *id.* (observing that paranoia has often characterized recent discourse in most parts of the world over China's involvement in Africa).

13. Cyril Widdershoven, *Chinese Quest for Crude Increases Focus on Africa*, ENERGY SECURITY, Nov. 15, 2004.

14. See generally, Joshua Eisenman, *Sino-Japanese Oil Rivalry Spills into Africa*, ENERGY SECURITY, Jan. 19, 2006 (discussing the growing competition between China and Japan for energy resources located in Africa); Katzenellenbogen, *supra* note 1 ("Because of China's growing access to oil in Africa, its role could help either set off new, intense power rivalries on the continent, or bring about new forms of constructive engagement. A new scramble for Africa and its resources is no foregone conclusion, but the consequences of a scramble would be damaging for the continent."); Widdershoven, *supra* note 13 (suggesting a growing conflict between Western and Asian countries as they seek to outbid each other for key hydrocarbon assets in Africa).

15. The interest of the imperialist great powers of Europe in the African continent, particularly in the hitherto unexplored region, experienced resurgence in the mid-nineteenth century. See Wikipedia, *Scramble for Africa*, [http://en.wikipedia.org/wiki/Scramble\\_for\\_Africa](http://en.wikipedia.org/wiki/Scramble_for_Africa) (last visited Feb. 9, 2008) (explaining that the Scramble for Africa, also known as the Race for Africa, was the proliferation of conflicting claims to African territory during the period between the 1880s and 1914). Africa's raw materials were eyed for their value to Europe's continuing industrialization, and thus they spurred an intense rivalry and competition for pieces of the continent. The goal of the Berlin Conference, which met at Berlin from November 1884 to February 1885, was to stem the intense international rivalry that had developed, resolve competing claims by European powers and provide for a more orderly division and distribution of the continent. *Id.* A European conference attended only by representatives of countries of Europe (including Turkey and Russia) and the United States, the Berlin Conference led to the adoption of the Berlin Act of 1885. *Id.* In all, fourteen countries were represented at the conference. *Id.* These included (in alphabetical order): Austria-

Eastern powers, principally China and Russia, in the 1950s and 1960s.<sup>16</sup> China's involvement in Africa has serious implications not only for Africa and Africans, but also for the security and energy interests of Africa's traditional trading partners.<sup>17</sup> This Article examines the opportunities and pitfalls of renewed Sino-African trade relations, traces the evolution of discourse concerning the China-Africa partnership, identifies the basic legal and policy frameworks of the unfolding relations, and calls for a clear African policy towards China. This Article will also seek to identify the core characteristics of China's partnership with Africa, with an emphasis on the trade and investment dimensions of Sino-African relations.

Instead of paranoia, this Article calls for guarded optimism regarding the deepening relationship between Africa and China.

Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Portugal, Russia, Spain, Sweden-Norway (unified from 1814-1905), Turkey, and the United States of America. *Id.*

16. In Chapter Four of his book titled "The Second Scramble for Africa," Emmanuel John Hevi describes the competition between China and Russia for Africa in the 1950s and 1960s. He writes:

One very important aspect of the Sino-Soviet dispute is how Africa and other underdeveloped countries are going to be converted to the ideology of those Eastern imperialists. Note carefully that their arguments do not concern *whether* we shall be converted, but only *how*— which means that they have decided *for us* that we must be converted. The Russians and the Chinese are at present on divergent paths, and each side is seeking to establish its own camp. The only question which interests them so far as we are concerned is what part of Africa will belong to which communist camp. In all African countries where there are Soviet and Chinese embassies, special local agents are employed to distribute pamphlets and tracts stating their point of view. On the surface, this seems a good thing because it appears to assume that we can . . . reason and judge what is best for us. But here also you detect the parallel assumption that we *have* to go to one or the other side. *Whether* we shall remain positively neutralists, as we have so often and so loudly proclaimed, does not enter into their dispute.

EMMANUEL JOHN HEVI, *THE DRAGON'S EMBRACE: THE CHINESE COMMUNISTS AND AFRICA* 65–66 (1966). Sadly, the effect of the struggle between China and Russia on the continent was largely ignored by the warring factions. As Hevi notes:

As if it were not enough for [Africans] to have to cope with the conflicting policies in Africa of the two great cold war camps, Western and Eastern, there is the bitter rivalry between the Soviet Union and the Chinese People's Republic. Both rivals are using the African continent as a main arena for their combat.

*Id.* at 70.

17. See generally Ariel Cohen & Rafal Alasa, *Africa's Oil and Gas Sector: Implications for U.S. Policy*, in *BACKGROUNDERS* (Heritage Found., Washington, D.C., No. 2052, July 13, 2007) (noting that the United States consumes 25% of the world's petroleum and 22.5% of the world's natural gas, and that although many Americans do not recognize the importance of Africa, and in particular West African oil, over 18% of U.S. crude oil imports comes from Africa, compared to 17% from the Persian Gulf. Nigeria alone accounts for 47% of African oil exports).

With China's confident emergence onto the global stage as the economic empire of the future, it would be ill-advised for African leaders to turn their backs on the sleeping giant.<sup>18</sup> While there is much that Africa could gain from the relationship, African leaders and their constituents must guard against imperialism of any sort and shy away from arrangements that threaten sustainable development on the continent or undermine respect for human rights and dignity. Most importantly, African leaders must push past Beijing's rhetoric of anti-hegemonism and develop clear policies to guide the continent's engagement with China. Drawing on the rich but sad history of the scramble for Africa in the nineteenth century, African leaders must avoid the economic, political, and legal pitfalls of the past and instead position the continent to benefit from strategic relations with countries that Alpha Oumar Konare, the President of African Union (AU) Commission, rightly refers to as "partners of the future."<sup>19</sup>

This Article has six parts. Part II maps out the history and evolution of Sino-African trade and investment relations.<sup>20</sup> Part III examines the current framework for relations between China and Africa, including the core documents guiding the unfolding relationship. Part IV discusses the motivation behind China's foray into Africa and analyzes China's policy toward Africa. Part V focuses on the present struggle for control of Africa's energy resources and draws lessons from the history of the scramble for Africa in the nineteenth century by the Western European powers. Part VI critically appraises Sino-African trade and investment relations. It evaluates the opportunities that the relationship presents for Africa and offers proposals for maximizing those opportunities. The Article concludes in Part VII with a look at the future of Sino-African trade.

## II. THE HISTORY AND EVOLUTION OF CHINA-AFRICA TRADE RELATIONS

The year 2006 marked the fiftieth anniversary of the onset of diplomatic relations between China and Africa.<sup>21</sup> However, China's

---

18. IAN TAYLOR, *CHINA AND AFRICA: ENGAGEMENT AND COMPROMISE* 1 (2006) (noting that China has become a major global player).

19. See Sidiropoulos, *supra* note 11, at 103 (indicating that by partners of the future, he was referring to countries such as China, Brazil, and India); see also BROADMAN, *supra* note 2, at 1 (observing that India and China, two emerging economic "giants" of Asia, are at the center of the explosion of African-Asian trade and investment).

20. The reason for the focus on trade and investment is that, unlike relations between China and Africa in the 1950s through the 1970s, see *infra* Part II, trade and economic issues now dominate China-Africa interactions. TAYLOR, *supra* note 18, at 71.

21. President Hu Jintao's Address, *supra* note 3.



contact with the continent existed centuries before.<sup>22</sup> Indeed, the idea of a Chinese invasion of Africa is not new. For example, in his 1965 book *East Wind Over Africa*, John K. Cooley announced, "Red China has moved into Africa, and it intends to stay there. By the beginning of this decade, it had become clear that Communist China's moves to win allies, subvert adversaries[,] and gain influence in Africa formed a significant part of its design for global recognition and power."<sup>23</sup> The foundation for China-Africa relations was established at the Asia-African Conference held in Bandung, Indonesia from April 18 to April 24, 1955.<sup>24</sup> Trade agreement between China and Egypt concluded in August of 1955, shortly after the end of the Bandung Conference marked "the beginning of Peking's search for markets and vital raw materials in Africa."<sup>25</sup>

#### A. *The Bandung Conference of 1955 (Bandung I)*

Organized by Egypt, Indonesia, Burma (now Myanmar), Ceylon (now Sri Lanka), India, and Pakistan, the stated objectives of the Bandung Conference (Bandung I) were "to promote Afro-Asian economic and cultural cooperation and to oppose colonialism or neocolonialism by the United States, the Soviet Union, or any other imperialistic nation."<sup>26</sup> Bandung I brought together African and Asian nationalist leaders for the first time, including such prominent personalities as Jawaharlal Nehru, Prime Minister of India; Gamal Abdel Nasser, President of Egypt; Chou En Lai, Premier of China; and Kwame Nkrumah, Prime Minister of the Gold Coast (now Ghana).<sup>27</sup> In all, six African countries sent delegates to Bandung I.<sup>28</sup>

22. BROADMAN, *supra* note 2, at 1 (noting that Chinese trade and investment with Africa dates back several decades); ALAN HUTCHINSON, CHINA'S AFRICAN REVOLUTION 9 (1976) (observing that although contacts between China and Africa were few until after 1955, a historical connection linking the two goes back many centuries); Wild & Mephan, *supra* note 2, at 1 ("China is not a new player in Africa.").

23. JOHN K. COOLEY, EAST WIND OVER AFRICA: RED CHINA'S AFRICAN OFFENSIVE (1965).

24. TAYLOR, *supra* note 18, at 19 (noting that the Bandung Conference was "a seminal event" in Sino-African history because it was at this conference that Communist China first made its tentative links with the African continent); *see also* Wikipedia, Asia-African Conference, [http://en.wikipedia.org/wiki/Bandung\\_Conference](http://en.wikipedia.org/wiki/Bandung_Conference) (last visited Feb. 9, 2008) (providing background information on the Bandung Conference).

25. COOLEY, *supra* note 23, at 13 (noting that in 1955, the total volume of mainland China's trade with Egypt had been only \$9 million in Chinese exports to Egypt and \$24 million in Chinese imports from Egypt, but by 1957, the figures had nearly doubled).

26. *Id.*

27. COOLEY, *supra* note 23, at 10 (noting that the Bandung meeting was the first opportunity for leaders of the six participating African countries to meet the rulers of Communist China); Matthew Quest, *The Lessons of the Bandung Conference:*

China played a prominent part at Bandung I.<sup>29</sup> Significantly, several countries were not invited to the conference: South Africa, Israel, South Korea, North Korea, and—most notably—Taiwan.<sup>30</sup> The Five Principles of Peaceful Co-existence (Five Principles), the cornerstones of diplomatic relations between China and India, were endorsed at the conference.<sup>31</sup> Although the Five Principles originally defined relations between China and India, they eventually became the principles that would guide the conduct of relations between China and countries in Africa.<sup>32</sup> At the conclusion of Bandung I, attendees adopted a Final Communiqué,<sup>33</sup> which included the “Declaration on Promotion of World Peace and Cooperation” and the “Bandung Declaration of 10 Principles.”<sup>34</sup> Bandung I enhanced the

*Reviewing Richard Wright's The Color Curtain 40 Years Later*, <http://www.spunk.org/texts/pubs/lr/sp001716/bandung.html> (last visited Feb. 9, 2008).

28. The six countries are Egypt, Ethiopia, the Gold Coast (now Ghana), Liberia, Libya, and the Sudan. COOLEY, *supra* note 23, at 8–9.

29. *Bandung Conference*, in THE COLUMBIA ENCYCLOPEDIA, (6th ed. 2001-07), available at <http://www.bartleby.com/65/ba/BandungC.html> (noting that China played a prominent role at the conference).

30. *Id.*

31. The Five Principles of Peaceful Coexistence (The Five Principles) are: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. *Five Principles of Peaceful Coexistence*, XINHUA NEWS AGENCY (P.R.C.), June 14, 2004, [http://news.xinhuanet.com/english/2005-04/08/content\\_2803638.htm](http://news.xinhuanet.com/english/2005-04/08/content_2803638.htm). The Five Principles were featured for the first time in a diplomatic agreement on trade and communications between the Chinese region of Tibet and India, which was entered into on April 29, 1954. *Id.* The Five Principles were officially announced as the basic norms to guide the Sino-Indian and Sino-Myanmese relations in the “Joint Declaration of Chinese and Indian Premiers,” issued on June 28, 1954, and the “Joint Declaration of Chinese and Myanmese Premiers,” issued on the June 29, 1954. *Id.* Significantly, the Sino-Indian joint declaration of June 28, 1954, proposed that “these principles not only be applicable to relations between nations, but also to the general international relationship.” *Id.* The Sino-Myanmese joint declaration expressed the hope that “these principles will be observed by all nations.” *Id.*

32. TAYLOR, *supra* note 18, at 18.

33. Asian-African Conference, Bandung, Indon., Apr. 18–24, 1955, *Final Communiqué of the Asian-African Conference*, available at [http://www.iss.co.za/Af/RegOrg/unity\\_to\\_union/pdfs/asiaafrica/bandung55.pdf](http://www.iss.co.za/Af/RegOrg/unity_to_union/pdfs/asiaafrica/bandung55.pdf) [hereinafter Bandung Conference].

34. The Declaration of 10 Principles contains all points in the Five Principles and, in some respects, extended and developed further the Five Principles. The 10 Principles of the 1955 Bandung Conference are: (1) respect for fundamental human rights and for the purposes and principles of the Charter of the United Nations; (2) respect for the sovereignty and territorial integrity of all nations; (3) recognition of the equality of all races and of the equality of all nations, large or small; (4) respect for the right of each nation to defend itself singly or collectively, in conformity with the United Nations Charter; (5) abstention from intervention or interference in the internal affairs of another country; (6) abstention from the use of arrangements of collective defense to serve the particular interests of any of the big powers; (7) refraining from acts or threats of aggression or the use of force against the territorial integrity or political independence of any country; (8) settlement of all international disputes by peaceful means, such as negotiation, conciliation, arbitration or judicial settlement as well as

unity of African and Asian countries and laid the foundation for future cooperation on multiple fronts.<sup>35</sup> Most of the participants at the conference shared a common history of colonization by Western States<sup>36</sup> and a common desire to overcome the legacies of colonialism and forge closer ties with one another.<sup>37</sup>

Trade between China and Africa grew following the conference. Shortly after Bandung I concluded, Chinese officials—headed by Foreign Trade Minister Yeh Chi-chuang and Vice-Ministers Kiang Ming and Lu Hsu-chuang—embarked on trade missions to Africa.<sup>38</sup> Between 1955 and 1965, trade between Africa and China increased nearly sevenfold.<sup>39</sup> The first Chinese trade agreement with an African country was negotiated in August 1955.<sup>40</sup> Diplomatic relations also deepened during this period. The first Afro-Asia People's Solidarity Conference was held in Egypt in 1957.<sup>41</sup> Between

other peaceful means of the parties' own choice, in conformity with the United Nations Charter; (9) promotion of mutual interest and cooperation; and (10) respect for justice and international obligations. *Id.*

35. Quest, *supra* note 27 (observing that "Bandung clearly helped to forge the modern identity politics of race, religion, and nationality.").

36. As Wright aptly described,

The despised, the insulted, the hurt, the dispossessed—in short, the underdogs of the human race were meeting. Here were class and racial and religious consciousness on a global scale. Who had thought of organizing such a meeting? And what had these nations in common? Nothing, it seemed to me, but what their past relationship to the Western world had made them feel. This meeting of the rejected was in itself a kind of judgment upon the Western world!

RICHARD WRIGHT, *THE COLOR CURTAIN* 12 (1994) (emphasis added).

37. *Id.* (observing that the Bandung Conference "enhanced the unity and cooperation of the Asian and African countries, inspired the people to struggle for national liberation and played a significant role in promoting anti-imperialist and anti-colonial struggle of the Asian and African people"); see also *supra* note 36.

The former Indonesian President Sukarno proclaimed:

For long years we Asian and African people have tolerated decisions made in our stead by those countries which placed their own interests above all else. We lived in poverty and humiliation. But tremendous changes have taken place in the past years. Many peoples and countries have awakened from centuries of slumber. Tranquility has given way to struggle and action. This irresistible force is sweeping the two continents.

Zhang Yan, *I Wish I Had Met Richard Wright at Bandung in 1995 (Reflections on a Conference Attended by both Wright and the Author)*, 50 *MISS. Q.* 277 (1997).

38. COOLEY, *supra* note 23, at 13.

39. *Id.* (noting that in 1957, the total of all Communist China's commerce with its African trading partners—Egypt, Algeria, the Union of South Africa, and the Sudan Republic—was under \$60 million, but that by 1965, it had increased nearly sevenfold and had been extended to nearly all of the thirty-five newly independent states in the continent).

40. Under the agreement between China and Egypt, China agreed in the first year to buy 60,000 tons of Egyptian cotton, and Egypt agreed to buy 60,000 tons of Chinese rolled steel. HUTCHINSON, *supra* note 22, at 15.

41. TAYLOR, *supra* note 18, at 21.

1960 and 1965, China entered into relations with fourteen newly independent states in Africa.<sup>42</sup> Despite growing trade relations, China's interest in Africa during the 1950s and 1960s was ideological rather than economic.<sup>43</sup> China's relationship with Africa took a nosedive during the Cultural Revolution in China.<sup>44</sup> However, in the 1970s, China "embarked on an extensive aid programme to Africa."<sup>45</sup> Between 1970 and 1976, China committed about \$1.815 million to Africa.<sup>46</sup> China also sponsored several prestige projects in Africa during this period, such as the Tan-Zam railway between Tanzania and Zambia.<sup>47</sup> Africa was also of some help to China during this

42. China entered into relations with Ghana, Mali, and Somalia in 1960; Zaire in 1961; Uganda in 1962; Burundi and Kenya in 1963; Benin, Central Africa Republic, Tunisia, Tanzania, Zambia, and Congo in 1964; and Mauritania in 1965. *Id.* at 23.

43. The dominant message of communist China during this period was revolution—revolution against colonialism and imperialism. China thought that it was on its way to genuine socialist revolution and saw itself as having a role in furthering this revolution. *Id.* at 24. China even became a member of the Afro-Asian Solidarity Fund Committee, an organization that met for the first time in Conakry, Guinea in 1991, and had as its aim the provision of support for African liberation organizations. *Id.* Cooley has observed that the revolutionary ideology of Marxism-Leninism as interpreted by Mao Tse-Tung was a driving motivation for China's interest in Africa in the 1950s and 1960s. According to him:

In terms of Communist ideology, the third fundamental aspect of Chinese foreign policy, Peking's rulers seek to spread their own brand of world revolution to the exclusion of others. . . . They appear to believe that the triumph of their model in the "intermediate zone" or "storm centers" of Africa, Asia, and Latin America is inevitable. . . . They are willing to do whatever they can to discredit the other models, as well as to eliminate the "neo-colonialist" influence of the West to make way for the inevitable victory of the Leninist-Maoist faith.

COOLEY, *supra* note 23, at 211. See generally BRUCE LARKIN, CHINA AND AFRICA 1949–1970 (1971); ALABA OGUNSANWO, CHINA'S POLICY IN AFRICA 1958–1971, at 59 (1974) (discussing China's effort to influence nationalists' struggles in Africa in the late 1950s and 1960s and observing that Chinese trade and economic efforts were peripheral to the overall political objectives during this period).

44. The Cultural Revolution in China began in 1966 and formally ended at the Ninth Congress of the CPC in April 1969. TAYLOR, *supra* note 18, at 32–33. Experts suggest that the Cultural Revolution signified disaster for Beijing's foreign relations and that China's interest and influence in Africa during this period suffered a major setback. *Id.* (observing that China's image was tarnished and its position eroded internationally during this period and furthermore that all the Chinese embassies in Africa with the exception of the embassy in Egypt, had their ambassadors recalled).

45. *Id.* at 37 (noting that from the end of the Cultural Revolution, nearly half of China's aid was directed towards Africa).

46. *Id.*

47. A joint statement of intent to build a joint railway was issued by Tanzania and Zambia in October 1964. *Id.* The Agreement on the Construction of the Tanzania-Zambia Railway was signed by China, Tanzania, and Zambia (the Three Sides) on September 5, 1967. *Id.* To fund the project, China agreed to an interest-free loan of \$406 million in July 1970. *Id.* The loan was to cover construction and rail stock. See *id.* at 38 (observing that the TanZam loan was "China's biggest aid commitment to date" and "the largest single offer of Communist economic assistance ever made").

period. In particular, Africa was instrumental to China's success in gaining admission into the United Nations in 1971.<sup>48</sup>

### B. South-South Cooperation Discourse

The "South-South cooperation" discourse is essential to an understanding of the unfolding relations between China and Africa.<sup>49</sup> Indeed, Sino-African trade partnership discourse is a logical extension and an example of South-South cooperation. The idea of South-South cooperation developed right after the Bandung Conference but began to influence the field of development studies in the late 1990s.<sup>50</sup> South-South cooperation is fueled by the realization "that poor nations might find appropriate, low-cost[,] and sustainable solutions to their problems in other developing countries rather than in the rich north."<sup>51</sup> Shared concerns about asymmetries of the international economic order,<sup>52</sup> uneven distribution of the benefits of globalization,<sup>53</sup> poverty, and social and economic instability caused by

48. Regarding China's victory in gaining enough votes in favor of its admission into the United Nations, Taylor notes:

This victory for Beijing was won with the vital support of a number of African countries. Over a third of Beijing's votes in favour of the PRC in 1971 were from Africa, including four who still had diplomatic relations with Taipei. . . . It is certain that without the African votes, China would not have succeeded.

*Id.* at 40.

49. BROADMAN, *supra* note 2, at 1 (noting that "[t]he acceleration of South-South trade and investment is one of the most significant features of recent developments in the global economy.>").

50. Chris Melville & Olly Owen, *China and Africa: A New Era of "South-South Cooperation,"* July 7, 2005, [http://www.opendemocracy.net/globalization-G8/south\\_2658.jsp](http://www.opendemocracy.net/globalization-G8/south_2658.jsp).

51. *Id.*

52. Paragraph 45 of the Doha Declaration, adopted following the Second South Summit in Doha, Qatar, states: "We are deeply concerned by the continued marginalization of the LDCs in the global economy and the continued deterioration of their economic and social conditions in spite of the commitments made by developed partners at the Third UN conference on LDCs in May 2001." Second South Summit, Doha, Qatar, June 12–16, 2005, *Doha Declaration*, ¶ 45, G-77/SS/2005/1, available at <http://www.g77.org/southsummit2/en/intro.html> [hereinafter *Doha Declaration*].

The Group of 77 and China Second South Summit convened in Doha from June 12–16, 2005. *Id.* ¶ 1. The first South Summit was held in Havana, Cuba, from April 10–14, 2000. *Id.* ¶ 2.

53. According to paragraph 23 of the Doha Declaration, adopted following the Second South Summit in Doha:

Globalization presents opportunities, challenges and risks for developing countries. We note with deep concern that the processes of globalization and liberalization have produced uneven benefits among and within countries and that the world economy has been characterized by slow and lopsided growth and instability. The income between developed and developing countries has widened, and poverty has increased in many developing countries.

underdevelopment are some of the issues that fuel renewed talks for greater South-South cooperation. Several multilateral organizations now provide the platform for the promotion of South-South cooperation, including the United Nations Conference on Trade and Development (UNCTAD),<sup>54</sup> the United Nations Development Program (UNDP),<sup>55</sup> and the Group of Seventy-Seven (G-77).<sup>56</sup>

### 1. The First South Summit

The First South Summit was held in Havana, Cuba, between April 10 and April 14 of 2000.<sup>57</sup> From July 29-30, 2003, the Asian-African Sub-regional Organizations Conference (AASROC) took place in Bandung, Indonesia. At the Conference, a decision was made to establish a New Strategic Partnership for Promoting South-South Cooperation.<sup>58</sup> From December 16-19, 2003, the High-level Conference on South-South Cooperation was held in Marrakech, Morocco, at which the Marrakech Declaration on South-South Cooperation (Marrakech Declaration) and the Marrakech Framework of Implementation of South-South Cooperation (Marrakech Framework) were adopted.<sup>59</sup> In the Marrakech Declaration, participants pledged to strengthen cooperation in a number of

*Id.* ¶ 23.

54. See United Nations Conference on Trade and Development, <http://www.unctad.org/Templates/StartPage.asp?intItemID=2068> (search "South-South") (last visited Feb. 11, 2008) (providing a variety of information on South-South trade).

55. See United Nations Development Programme, <http://www.undp.org/> (search "South-South") (last visited Feb. 11, 2008) (providing information on South-South cooperation).

56. Established on June 15, 1964, by seventy-seven developing countries that were signatories of the "Joint Declaration of the Seventy-Seven Countries," a document issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva, the Group of 77 (G-77) is the largest Third World coalition in the United Nations. The Group of 77 at the United Nations, About the Group of 77, <http://www.g77.org/doc/> (last visited Feb. 11, 2008). The first Ministerial Meeting of the Group of 77 took place in Algiers in 1967, at which the Charter of Algiers was adopted. *Id.* The stated goal of the G-77 is to provide "the means for the developing world to articulate and promote its collective economic interests and enhance its joint negotiating capacity on all major international economic issues in the United Nations system, and promote economic and technical cooperation among developing countries (ECDC/TCDC)." *Id.*

57. See Third World Network, *G77's South Summit, Havana, Cuba, 10-14 April 2000*, <http://www.twinside.org.sg/title/havana.htm> (last visited Feb. 11, 2008).

58. 26 Asian-African Countries to Attend AASORC in Indonesia's Bandung, PEOPLE'S DAILY (P.R.C.), July 28, 2003, [http://english.peopledaily.com.cn/20030728/eng20030728\\_121096.shtml](http://english.peopledaily.com.cn/20030728/eng20030728_121096.shtml).

59. High-Level Conference on South-South Cooperation, Marrakech, Morocco, Dec. 15-19, 2003, *Marrakech Framework of Implementation of South-South Cooperation*, available at <http://www.g77.org/marrakech/Marrakech-Framework.htm> [hereinafter Marrakech Framework].

different areas, including trade, technology, health, education, and debt management.<sup>60</sup> Pursuant to the Marrakech Framework, G-77 members agreed (among other things) to study the potential of intensifying interactions between business agents in developing countries,<sup>61</sup> to enhance coordination and joint negotiating positions on major issues of the multilateral trading negotiations,<sup>62</sup> and to promote investment among developing countries.<sup>63</sup>

## 2. The Second South Summit

The Second South Summit took place in Doha, Qatar, from June 12-16, 2005, where the Group of 77 and China adopted the Doha Declaration and the Doha Plan of Action.<sup>64</sup> In the Doha Declaration, participants reaffirmed “the role of South-South cooperation in the overall context of multilateralism, as a continuing process vital to confront the challenges faced by the South and as a valuable contribution to development and the need to further strengthen it.”<sup>65</sup> They recognized “the increasing importance of South-South trade and economic cooperation”<sup>66</sup> and called for “a more energetic effort to deepen and revitalize South-South cooperation to take advantage of the new geography of international economic relations.”<sup>67</sup> Participants also reaffirmed that “South-South trade should be enhanced and further market access from developing countries must continue to stimulate South-South trade.”<sup>68</sup>

Today, South-South trade<sup>69</sup> and South-South investment are on the rise.<sup>70</sup> Foreign direct investment (FDI) from developing countries

60. *Id.*

61. *Id.* ¶ 1.

62. *Id.* ¶ 5.

63. *Id.* ¶ 8.

64. *See supra* note 52.

65. Marrakech Framework, *supra* note 59, at ¶ 6.

66. *Id.* ¶ 12.

67. *Id.*

68. *Id.* ¶ 27.

69. [D]eveloping countries are trading and investing more, and doing so increasingly among themselves. In just ten years—between 1995 and 2005—the share of the South in global merchandise trade increased from 27.6% to 36%. Developing countries now account for nearly one fourth of world imports of commercial services and are seeing a large and ever-expanding share of the U.S., Japan and EU export markets.

Supachai Panitchpakdi, Sec’y-General, UNCTAD, New Dynamics of South-South Development, Keynote Address on United Nations Day for South-South Cooperation (Dec. 19, 2006), available at <http://www.unctad.org/Templates/webflyer.asp?docid=7991&intItemID=3549&lang=1>.

In 2004 alone, “South-South trade soared by 14.6%, and has now outpaced total world trade growth.” *Id.* “South-South trade is also becoming more complementary

and transition economies now account for about 17% of the world's FDI flows.<sup>71</sup> The geographical composition of FDI from developing countries and transition economies reveals the growing importance of Asia as a significant source of FDI. In 1980, Asia's share of the total stock of FDI from developing countries and transition economies stood at about 23%; the figures increased to 46% in 1990, and stood at 62% in 2005.<sup>72</sup> Today, China is in the top ten in terms of FDI home countries.<sup>73</sup> According to the 2006 World Investment Report, China and Malaysia are among the top ten sources of FDI in Africa.<sup>74</sup> There is a growing realization that there are many benefits for developing countries associated with increasing South-South relations.<sup>75</sup> The importance of South-South cooperation has been recognized by the international community at various United Nations conferences, such as the 2005 World Summit,<sup>76</sup> the International Conference on

and more diversified, moving from primary commodities to manufactures and high-end services." *Id.*

70. *Id.* (observing that "outward FDI from developing and transition economies is expanding fast—reaching \$133 billion in 2005, the highest level ever—but it is increasingly going into other developing countries").

71. U.N. Conference on Trade & Dev., *World Investment Report 2006—FDI from Developing and Transitioning Economies: Implications for Development*, at 105, U.N. Doc. UNCTAD/WIR/2006 (2006) [hereinafter *World Investment Report*].

72. *Id.* at 112.

73. *Id.* at 114 (noting that in 2005, FDI from China reached \$11 billion, representing the fourth largest outflow from developing and transition economies).

74. *Id.* at 117.

75. According to Supachai Panitchpakdi, Secretary-General of UNCTAD:

For developing countries, increasing South-South relations have many benefits, based largely on complementary environmental, climatic, cultural, economic and social conditions. In the investment arena, for example, South-South FDI brings technology, skills, know-how and business models that are often more suitable for developing country needs than those from the developed world. UNCTAD has conducted Investment Policy Reviews in over 20 developing countries. The evidence emerging from these studies suggest that South-South investment tends to be labour-intensive and create more jobs than the generally capital-intensive FDI from the North. This is certainly the case for Asian investment in Africa.

Panitchpakdi, *supra* note 69.

76. In paragraph 40 of the *2005 World Summit Outcome*, the convened "world Heads of State and Government" stated: "We recognize the achievements and great potential for South-South cooperation and encourage the promotion of such cooperation, which complements North-South cooperation as an effective contribution to development and as a means to share best practices and provide enhanced technical cooperation." 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 40, U.N. Doc. A/RES/60/1 (Oct. 24, 2005), available at <http://www.un.org/summit2005/documents.html>.

"The 2005 World Summit, held on 14-16 September 2005, was a follow-up summit meeting to the United Nations' 2000 Millennium Summit . . ." Wikipedia, 2005 World Summit, [http://en.wikipedia.org/wiki/2005\\_World\\_Summit](http://en.wikipedia.org/wiki/2005_World_Summit) (last visited Feb. 11, 2008). The Millennium Summit had produced the Millennium Declaration of the Millennium Development Goals (MDGs), and at the 2005 World Summit, representatives of the 191 (now 192) member states "met in New York City for what the United Nations described



Financing for Development (held in Monterrey in March 2002),<sup>77</sup> and the World Summit on Sustainable Development (held in Johannesburg in August 2002).<sup>78</sup>

### C. Asia-African Summit 2005 (Bandung II)

President Hu Jintao was present at an April 24, 2005 event commemorating the fiftieth anniversary of the Bandung Conference in Bandung, Indonesia.<sup>79</sup> Also present were President Obasanjo of Nigeria, Prime Minister Singh of India, and President George Maxwell Richards of Trinidad and Tobago.<sup>80</sup> The chairmen of the Asia-Africa Summit, President Susilo Bambang Yudhoyono of Indonesia and President Thabo Mbeki of South Africa, both signed the Declaration on the Asian-African New Strategic Partnership

---

as 'a once-in-a-generation opportunity to take bold decisions in the areas of development, security, human rights and reform of the United Nations.'" *Id.*

77. The International Conference on Financing for Development was a summit-level meeting convened by the United Nations in Monterrey in March of 2002 to address key financial issues related to global development. An important feature of the conference was the involvement of inter-governmental development organization such as the World Bank, the World Trade Organization, and the IMF, as well as representatives of civil society and the business sector. See Financing for Development Office, Overview of Financing for Development, <http://www.un.org/esa/ffd/Monterrey/Conference/index.html> (last visited Apr. 12, 2008).

The conference ended on 22 March 2002 with the adoption by acclamation of the Monterrey Consensus by the heads of state and government in Monterrey, Mexico. U.N. Dep't of Econ. & Soc. Affairs, Div. for Sustainable Dev., *Monterrey Consensus of the International Conference on Financing for Development*, ¶ 1, available at [http://www.un.org/esa/sustdev/documents/Monterrey\\_Consensus.htm](http://www.un.org/esa/sustdev/documents/Monterrey_Consensus.htm) [hereinafter *Monterrey Consensus*]. Paragraph 19 of the Monterrey Consensus reads: "We encourage South-South cooperation, including through triangular cooperation, to facilitate exchange of views on successful strategies, practices and experience and replication of projects." *Id.* ¶ 19. Moreover, paragraph 32 reads:

We also commit ourselves to enhancing the role of regional and subregional agreements and free trade areas, consistent with the multilateral trading system, in the construction of a better world trading system. We urge international financial institutions, including the regional development banks, to continue to support projects that promote subregional and regional integration among developing countries and countries with economies in transition.

*Id.* ¶ 32.

78. See World Summit on Sustainable Development, <http://www.un.org/events/wssd> (last visited Feb. 12, 2008).

79. Ministry of Foreign Affairs of the P.R.C., *Hu Jintao Attends the Commemoration Events of the 50th Anniversary of Bandung Conference*, Apr. 24, 2005, <http://www.fmprc.gov.cn/eng/topics/hjtfw/t193910.htm>.

80. *Id.*

(NAASP).<sup>81</sup> The commemorating event came on the heels of the 2005 Asia-Africa Summit (2005 Summit).

At the 2005 Summit, Asian and African leaders sought to reinvigorate the spirit of Bandung I. In the NAASP, states affirmed that Bandung I “remains as a beacon in guiding the future progress of Asia and Africa”<sup>82</sup> and reiterated their conviction “that the Spirit of Bandung, the core principles of which are solidarity, friendship[,] and cooperation, continues to be a solid, relevant[,] and effective foundation for fostering better relations among Asian and African countries and resolving global issues of common concern.”<sup>83</sup> The NAASP serves as a framework for building a bridge between Asia and Africa and covers three broad areas of cooperation: political solidarity, economic cooperation, and socio-cultural relations.<sup>84</sup> The NAASP builds on the ten principles of Bandung.<sup>85</sup> In the area of trade and economic development, it emphasizes “the need to promote practical cooperation between the two continents in areas such as trade, industry, investment, finance, tourism, information and communication technology, energy, health, transportation, agriculture, water resources[,] and fisheries.”<sup>86</sup>

#### D. Conclusion

Unfolding China-Africa trade must be analyzed within the broader context of the South-South partnership discourse. Undoubtedly, the future will be marked by a reshaping of trade

81. India Ministry of External Affairs, *Declaration on the New Asian-African Strategic Partnership*, Apr. 24, 2005, <http://meaindia.nic.in/declarestatement/2005/04/24jd01.htm>.

82. *Id.*

83. *Id.*

84. *Id.*

85. According to the Declaration on the New Strategic Partnership, the core principles that underlie NAASP are:

- (1) The Ten Principles of Bandung of the 1955 Asian-African Conference;
- (2) Recognition of diversity between and within the regions, including different social and economic systems and levels of development;
- (3) Commitment to open dialogue, based on mutual respect and benefit;
- (4) Promotion of non-exclusive cooperation by involving all stakeholders;
- (5) Attainment of practical and sustainable cooperation based on comparative advantage, equal partnership, common ownership and vision, as well as a firm and shared conviction to address common challenges;
- (6) Promotion of sustainable partnership by complementing and building upon existing regional and sub-regional initiatives in Asia and Africa;
- (7) Promotion of a just, democratic, transparent, accountable, and harmonious society;
- (8) Promotion and protection of human rights and fundamental freedoms, including the right to development;
- (9) Promotion of collective and unified efforts in multilateral fora.

*Id.*

86. *Id.*

relations in a manner not seen since colonial times. Governments and businesses in the global South will increasingly bypass traditional trading relationships developed within the context of European colonial expansion in favor of new relations with other southern states. As of yet, however, there is no evidence that South-South cooperation is more progressive or less selfish than hegemonic North-South relations. The notion of South-South cooperation must be increasingly and continually probed to assess whether its present manifestations advance the vision of the architects of the discourse.

### III. LEGAL AND POLICY FRAMEWORK OF SINO-AFRICAN TRADE AND INVESTMENT RELATIONS

FOCAC serves as the official platform for “collective consultation and dialogue and [as] a cooperation mechanism” between China and cooperating African states.<sup>87</sup> Five core documents (the Framework Documents) spell out the legal and policy framework of unfolding trade and investment relations between China and Africa: the 2000 Beijing Declaration of the Forum on China-Africa Cooperation (2000 Beijing Declaration);<sup>88</sup> the 2000 Programme for China-Africa Cooperation in Economic and Social Development (2000 Programme for Cooperation);<sup>89</sup> the Forum on China-Africa Cooperation Addis Ababa Action Plan 2004-2006 (Addis Ababa Action Plan);<sup>90</sup> the Declaration of the Beijing Summit of the Forum on China-Africa Cooperation (Declaration of the Beijing Summit);<sup>91</sup> and the Forum on China-Africa Cooperation Beijing Action Plan 2007-2009 (2007-2009

87. The two stated purposes of FOCAC are “to strengthen consultation and expand cooperation” and to “promote[] both political dialogue and economic cooperation and trade, with a view to seeking mutual reinforcement and common development.” Forum on China-Africa Cooperation, *Characteristics of FOCAC*, <http://www.fmprc.gov.cn/zflt/eng/gylt/lj/jt/157576.htm> (last visited Feb. 11, 2008).

88. See Forum on China-Africa Cooperation, 1st Ministerial Conference, <http://www.fmprc.gov.cn/zflt/eng/gylt/dyjbzhy/> (last visited Feb. 11, 2008) (providing the framework documents).

89. Forum on China-Africa Cooperation, *Programme for China-Africa Cooperation in Economic and Social Development, Platform for Cooperation*, <http://www.fmprc.gov.cn/zflt/eng/zyzl/hywj/t157834.htm> (last visited Feb. 11, 2008) [hereinafter *Programme for China-Africa Cooperation*].

90. Forum on China-Africa Cooperation, *Forum on China-Africa Cooperation-Addis Ababa Action Plan (2004-2006)*, available at <http://www.china.org.cn/english/features/focac/185197.htm> (last visited Feb. 11, 2008).

91. Beijing Summit & Third Ministerial Conference of Forum on China-Africa Cooperation, Beijing, P.R.C., Nov. 4-5, 2006, *Declaration of the Beijing Summit of the Forum on China-Africa Cooperation* (Draft), available at [http://english.focacsummit.org/2006-11/16/content\\_6586.htm](http://english.focacsummit.org/2006-11/16/content_6586.htm) [hereinafter *Declaration of the Beijing Summit*].

Action Plan).<sup>92</sup> There is not yet any regional free trade agreement between China and countries in Africa, although there are bilateral trade and investment treaties between China and some countries in the continent.<sup>93</sup>

### A. *The Core Framework Documents*

The First Ministerial Conference produced the 2000 Beijing Declaration and the 2000 Programme for Cooperation. Noting “a huge gap between the rich North and the poor South,” the 2000 Beijing Declaration reaffirmed “that the injustice and inequality in the current international system are incompatible with the trend of the times towards world peace and development, hinder the development of the countries of the South[,] and pose threats to international peace and security.”<sup>94</sup> The two sides pledged “to further consolidate and expand China-Africa cooperation at all levels and in all fields and to establish within the framework of South-South cooperation a new-type, long-term[,] and stable partnership based on equality and mutual benefit.”<sup>95</sup>

The 2000 Programme for Cooperation covers a host of issues, including trade and investment, debt relief and cancellation, exploration and use of natural resources and energy, and tourism.<sup>96</sup>

92. See Forum on China-Africa Cooperation, *Forum on China-Africa Cooperation Beijing Action Plan (2007–2009)*, Nov. 16, 2006, <http://www.fmprc.gov.cn/zftf/eng/zyl/hywjt/280369.htm> (last visited Feb. 11, 2008) [hereinafter Beijing Action Plan].

93. *Id.* There is a possibility of a free trade agreement between China and the Southern African Customs Union (SACU, comprising Botswana, Lesotho, Namibia, South Africa and Swaziland) in the near future. See *infra* note 556 and accompanying text. See also Hans Grinsted Jensen & Ron Sandrey, *A possible SACU/China Free Trade Agreement (FTA): Implications for the SA manufacturing sector*, TRALAC Working Papers, No. 8/2006, July 2006.

94. The two sides also stressed that “the establishment of a just and equitable new international political and economic order is indispensable for the democratization of international relations and for the effective participation of developing countries in the international process of decision-making.” Forum on China-Africa Cooperation, *Beijing Declaration of the Forum on China-Africa Cooperation*, available at <http://spanish.10thnpc.org.cn/english/features/focac/185148.htm> (last visited Feb. 11, 2008) [hereinafter Beijing Declaration].

95. According to paragraph 10 of the 2000 Beijing Declaration:

We decide to vigorously promote further China-Africa cooperation in the economic, trade, financial, agricultural, medical care and public health, scientific and technological, cultural, educational, human resources development, transportation, environmental, tourism and other areas on the basis of the principles enshrined in this Declaration and the Program for China-Africa Cooperation in Economic and Social Development adopted at the forum so as to promote the common development of China and Africa.

*Id.* ¶ 10.

96. See *supra* note 89.

Regarding trade and investment, the two sides called attention to the need to move towards balanced and enhanced trade, acknowledged “the need to assist in improving the production capacity in Africa and in diversifying the composition of African exports,” and pledged “to collaborate and share experience in overcoming Africa’s export dependence on primary commodities, single products[,] and raw materials.”<sup>97</sup> The two sides also stressed “the need to harmonize their trade policies and to participate actively in trade negotiations, including within the framework of the WTO, in order to ensure that the multilateral trading system contributes to enhanced competitiveness, economic growth[,] and sustainable development of their countries.”<sup>98</sup> Most important for Africa, the two sides stressed the “importance of providing better and preferential access to the Chinese market for African exports of commercial importance.”<sup>99</sup> With respect to investment, the two sides pledged “to encourage mutual investment by their enterprises, the exchange of experience in business management, the setting up of joint ventures or sole ownership enterprises, including small or medium ones[,] and the establishment of joint business fora.”<sup>100</sup> For its part, China agreed to “set aside special funds to support and encourage investment by well-established Chinese enterprises” in countries in Africa and “to set up joint equity or cooperation projects adapted to local need in terms of job creation and transfer of technologies.”<sup>101</sup> China also agreed “to share with African countries its experience in the field of investment promotion relating to the establishment and management of free and special economic zones.”<sup>102</sup>

The Declaration of the Beijing Summit and the 2007-2009 Action Plan were adopted at the conclusion of the Beijing Summit & Third Ministerial Conference on China-Africa Cooperation (Beijing Summit), which took place November 3-5, 2006.<sup>103</sup> In the Declaration

97. *Programme for China-Africa Cooperation*, *supra* note 89, ¶ 4.1.

98. *Id.* ¶ 4.2.

99. *Id.* ¶ 4.5.

100. *Id.* ¶ 5.1.

101. *Id.* ¶ 5.2.

102. *Id.* ¶ 5.3.

103. The Beijing Summit & Third Ministerial Conference on China-Africa Cooperation brought together the Heads of State and Government of the People’s Republic of China and forty-eight African countries. See China-Africa Forum, *China-Africa Cooperation Fruitful over Past 50 Years*, Nov. 1, 2006, [http://english.focacsummit.org/2006-11/01/content\\_4312.htm](http://english.focacsummit.org/2006-11/01/content_4312.htm) (describing the conference as “the highest-level and the largest meeting between Chinese and African leaders since China and African countries started to forge cooperative ties in the 1950s”). In his address delivered on November 4, 2006, President Hu Jintao identified several fields of cooperation and the fundamental principles that would guide the relationship. The goal, according to Hu, is to “deepen political relation of equality and mutual trust,” “broaden win-win economic cooperation,” “expand exchange for cultural enrichment,” “promote balanced and harmonious global development,” and “strengthen cooperation

of the Beijing Summit, leaders reaffirmed the “establishment of a new type of strategic partnership between China and Africa featuring political equality and mutual trust, economic win-win cooperation[,] and cultural exchanges.”<sup>104</sup> With respect to trade and investment, they purposed to “[d]eepen and broaden mutually beneficial cooperation, encourage and promote two-way trade and investment, explore new modes of cooperation[,] and give top priority to cooperation in agriculture, infrastructure, industry, fishery, IT, public health and personnel training to draw on each other’s strengths for the benefit of our peoples.”<sup>105</sup> To this end, the leaders proposed to “[i]ncrease high-level visits, conduct strategic dialogue, enhance mutual political trust[,] and promote enduring friendship.”<sup>106</sup> With respect to trade, the two sides agreed to “[c]ontinue to work to create a favorable condition to grow China-Africa trade in more balanced manner,” and to “[s]trengthen cooperation in customs, taxation, inspection[,] and quarantine to facilitate healthy and orderly growth of China-Africa trade.”<sup>107</sup> Regarding investment, the two sides also agreed to “facilitate the negotiation, conclusion[,] and implementation of the Agreement on Bilateral Facilitation and Protection of Investment and the Agreement on Avoidance of Double Taxation”<sup>108</sup> and “to strengthen cooperation among their small- and medium-sized enterprises to promote Africa’s industrial development and enhance Africa’s production and export capacity.”<sup>109</sup>

### B. *Patterns of China-Africa Trade and Investment Flows*

Trade between China and Africa has grown exponentially since 2000. China-Africa trade volume increased from \$10 billion to \$18 billion between 2000 and 2003.<sup>110</sup> In 2004, “China’s exports to Africa rose by 36% year-on-year (to \$13.82 billion), while imports . . . surged 81% to \$15.65 billion.”<sup>111</sup> In 2005, total trade between Africa and China surged to \$40 billion.<sup>112</sup> In 2006, China-Africa trade was valued at \$55.5 billion, 40% more than in it was valued in 2005.<sup>113</sup> Of

and mutual support in international affairs.” President Hu Jintao’s Address, *supra* note 3.

104. Declaration of the Beijing Summit, *supra* note 91.

105. *Id.*

106. *Id.*

107. Beijing Action Plan, *supra* note 92, ¶ 3.3.

108. *Id.* ¶ 3.2.2.

109. *Id.* ¶ 3.2.4.

110. Chris Alden, *Leveraging the Dragon: Toward “An Africa That Can Say No,”* EAFRICA, Mar. 1, 2005, available at <http://yaleglobal.yale.edu/display.article?id=5336> [hereinafter *Leveraging the Dragon*].

111. *Factbox: China-Africa Trade Links*, REUTERS, Jan 30, 2007, available at <http://www.alertnet.org/thenews/newsdesk/L3052521.htm>.

112. *Id.*

113. *Id.*

this amount, China's exports to Africa were worth \$26.7 billion, up 43% from 2005, and imports from Africa were worth \$28.8 billion dollars, up 37% from 2005.<sup>114</sup> One-third of China's crude oil imports come from Africa.<sup>115</sup>

Africa's exports to China have grown. However, exports from Africa are mainly comprised of petroleum and raw materials.<sup>116</sup> Oil and natural gas currently account for more than 62% of total African exports to China, followed closely by ores and metals (17%) and agricultural raw materials (7%).<sup>117</sup> There is a noticeable geographic concentration in the source of Africa's exports to China. Three countries—Angola, Sudan, and the Democratic Republic of Congo—supply 85% of African oil exports to China.<sup>118</sup> However, China is also aggressively concluding deals with different countries in Africa. In early 2004, Total Gabon S.A. reportedly signed a contract with China's Sinopec under which Gabonese crude oil would be sold to China for the first time.<sup>119</sup> Also in 2004, following Chinese Vice-President Zeng Qinghong's visit to South Africa, the two countries signed agreements that included a deal paving the way for the export of South African citrus to China.<sup>120</sup>

Since 2002, greenfield FDI projects by Chinese investors have grown.<sup>121</sup> By 2000, there were at least 499 Chinese companies in Africa, with a total contractual investment of \$990 million.<sup>122</sup> At least 750,000 Chinese live and work in Africa today.<sup>123</sup> At the end of 2005, China's investment in Africa totaled \$6.27 billion.<sup>124</sup> It is estimated that Chinese direct investment in Africa reached \$370 million in 2006 and that Chinese-funded projects are now scattered

---

114. *China-Africa Trade Hits US\$55.5 Billion in 2006*, PEOPLE'S DAILY (P.R.C.), Jan. 30, 2007, [http://english.people.com.cn/200701/30/eng20070130\\_346085.html](http://english.people.com.cn/200701/30/eng20070130_346085.html)

115. *China Defends Oil Trade with Africa*, INT'L HERALD TRIB., Mar. 12, 2007, available at <http://www.iht.com/articles/2007/03/12/business/oil.php>.

116. BROADMAN, *supra* note 2, at 80 (observing that oil and natural gas are the single dominant category of products exported from Africa to China.)

117. *Id.* at 80–82 (observing that “China’s oil imports from Africa have been increasing at an annual compounded rate of 30 percent, slightly higher than the growth rate for imports from the rest of the world, which is 26 percent.”)

118. *Id.* at 81.

119. *Fact Box: An Overview of China-Africa Trade Links*, DAILY TIMES (Pak.), Jan. 30, 2007, available at [http://www.dailytimes.com.pk/default.asp?page=2007%5C01%5C30%5Cstory\\_30-1-2007\\_pg5\\_29](http://www.dailytimes.com.pk/default.asp?page=2007%5C01%5C30%5Cstory_30-1-2007_pg5_29). Total, a multinational energy company operating in more than 130 countries, is reportedly, the fourth largest publicly-traded oil and gas company. Total, Presentation, May 10, 2007, <http://www.total.com/en/group/presentation> (last visited Feb. 11, 2008).

120. South Africa Dep't of Foreign Affairs, Deputy President Jacob Zuma to Co-Chair Second South Africa- People's Republic of China Binational Commission, <http://www.dfa.gov.za/docs/2004/chin0621.htm> (last visited Jan. 25, 2008).

121. BROADMAN, *supra* note 2, at 97–99.

122. TAYLOR, *supra* note 18, at 70.

123. *Chinese Flocking in Numbers to a New Frontier: Africa*, INT'L HERALD TRIB., Aug. 17, 2007, <http://www.iht.com/articles/2007/08/17/news/malawi.php>.

124. *China-Africa Trade Hits US\$55.5 Billion in 2006*, *supra* note 114.

across forty-nine African countries.<sup>125</sup> China now has several Investment Development and Trade Promotion Centers in Africa,<sup>126</sup> and the country has undertaken to “establish a China-Africa Joint Business Council in coordination with the Chambers of Commerce of African countries”<sup>127</sup> and to “establish a China-Africa Products Exhibition Center in China to promote two-way trade and facilitate access for African products to the Chinese market.”<sup>128</sup>

Three Chinese entities play critical roles in the unfolding relations: the China National Petroleum Corporation (CNPC), the China Petroleum and Chemical Corporation (Sinopec), and the China National Offshore Oil Corporation (CNOOC). All three corporations are located within the State Economic and Trade Commission and have the mandate to establish overseas oil exploration and buy operating rights abroad.<sup>129</sup> In exchange for a contract to supply 10,000 barrels of crude oil per day, China extended a \$2 billion loan to Angola in 2004.<sup>130</sup> During Vice Premier Zeng Peiyang’s visit to Angola in March 2005, China agreed to provide the Angolan government with development aid in the form of a \$6.3 million interest-free loan, as well as an additional \$2.2 billion in soft loans in early 2006.<sup>131</sup> It has been reported that China and Angola have signed agreements pertaining to the telecommunications sector under which China pledged “to invest \$400 million in Angola’s Telecom and a further \$100 million to upgrade Angola’s military communications.”<sup>132</sup> Chinese companies are also winning lucrative

---

125. *Id.*

126. In the Declaration of the Beijing Summit, China pledged to “strive to make its investment and trade centers in Africa a success, and to facilitate the establishment of similar centers of African countries in China.” *Programme for China-Africa Cooperation*, *supra* note 89, ¶ 4.4.2.

127. *Id.* ¶ 4.4.3. In 2005, a three-year United Nations Development Programme (UNDP) project named “Support to Establishing the China-Africa Business Council (CABC)” was launched with an initial funding of \$1 million. The project is a joint initiative between UNDP, the Chinese Ministry of Commerce, and China Society of Promotion for the Guangcai Programme (Guangcai). CABC will be established between China and a first group of six African countries: Cameroon, Ghana, Mozambique, Nigeria, Tanzania, and Kenya. The CABC Secretariat was officially established in Beijing in August 2005. It is believed that CABC is the first Public-Private Partnership (PPP) initiative between China and Africa under the South-South Cooperation Framework. See United Nations Development Programme, *Support to Establishing the China Africa Business Council (CABC)*, [www.undp.org.cn/projects/43576.pdf](http://www.undp.org.cn/projects/43576.pdf) (last visited Jun. 10, 2008).

128. *Id.* ¶ 4.4.4.

129. See CINDY HURST, CHINA’S OIL RUSH IN AFRICA 5 (2006) (noting that China’s three largest oil companies, CNPC, Sinopec, and CNOOC, boosted spending by at least nine percent in 2004 on oil exploration and production worldwide.).

130. Don Lee, *China Barrels Ahead in Oil Market*, L.A. TIMES, Nov. 13, 2004, available at [www.energybulletin.net/3159.html](http://www.energybulletin.net/3159.html).

131. Loro Horta & Ian Storey, *China’s Portuguese Connection*, YALEGLOBAL, June 22, 2006, <http://yaleglobal.yale.edu/display.article?id=7634>.

132. *Id.*



contracts such as the construction of railroads, housing projects, and oil refineries.<sup>133</sup> On May 10, 2006, Sonangol, Angola's state-owned oil company, and Sinopec reportedly launched a \$2.2 billion joint bid for oil blocks 17 and 18.<sup>134</sup> It is believed that the new blocks have estimated reserves of 3 billion barrels and 1.5 billion barrels, respectively.<sup>135</sup> Sinopec secured a 40% stake in offshore oil block 18 after proposing a \$1.1 billion government signature bonus out of a total investment amounting to more than \$1.4 billion.<sup>136</sup>

In July 2005, China and Nigeria signed an \$800 million crude-oil sale deal involving Petrochina International and the Nigerian National Petroleum Corporation (NNPC).<sup>137</sup> Under the arrangement, NNPC will supply 30,000 barrels of crude oil per day to China for one year.<sup>138</sup> In January 2006, CNOOC agreed to pay \$2.3 billion for a stake in a Nigerian oil and gas field.<sup>139</sup> Also in 2006, China secured a \$4 billion deal for drilling licenses in Nigeria.<sup>140</sup> Moreover, China has concluded an offshore exploration deal with Kenya that allows CNOOC to explore six blocks covering 115,343 square kilometers (44,500 square miles) in the north and south of Kenya.<sup>141</sup> Chinese

133. *Id.*

134. Lora Horta, *China and Angola Strengthen Bilateral Relationship*, PINR, June 23, 2006, [http://www.pinr.com/report.php?ac=view\\_report&report\\_id=516&language\\_id=1](http://www.pinr.com/report.php?ac=view_report&report_id=516&language_id=1).

135. *Id.*

136. Neil Breslin, *Angola Set to "Turn East" with China PM Visit*, REUTERS, June 19, 2006, available at <http://www.uofaweb.ualberta.ca/chinainstitute/nav03.cfm?nav03=47148&nav02=43782&nav01=43092> (last visited Feb. 11, 2008).

137. *China-Nigeria Sign Oil Supply Pact*, XINHUA NEWS AGENCY (P.R.C.), July 9, 2005, [http://news.xinhuanet.com/english/2005-07/09/content\\_3195552.htm](http://news.xinhuanet.com/english/2005-07/09/content_3195552.htm).

138. *Id.*

139. In January 2006, CNOOC announced that the company had agreed to pay nearly \$2.3 billion in cash to acquire a large stake in a Nigerian oil and gas field. David Barboza, *Chinese Oil Firm to Invest Billions in Nigerian Field*, INT'L HERALD TRIB., Jan 9, 2006, <http://www.iht.com/articles/2006/01/09/business/cnooc.php>. The deal is one of the biggest overseas acquisitions ever by a Chinese company. As part of the deal, CNOOC would get a big stake in the oil field located in the Niger Delta. *Id.* It is reported that CNOOC has committed to spend \$2.25 billion over the next few years to help develop the Nigerian project. *Id.*

140. *China and Nigeria Agree Oil Deal*, BBC NEWS, Apr. 26, 2006, <http://news.bbc.co.uk/2/hi/business/4946708.stm> (reporting that in return for investing \$4 billion (£2.25bn) in oil and infrastructure projects in Nigeria, China secured four oil drilling licenses from Nigeria. China will buy a controlling stake in Nigeria's 110,000 barrel-a-day Kaduna oil refinery and build a railroad system and power stations).

141. During President Hu's 2006 visit to Kenya, the two countries signed a deal that would allow CNOOC to prospect for oil off of Kenya's coast. Cathy Majtenyi, *China Signs Deal for Kenya Oil Exploration*, VOICE OF AM., Apr. 28, 2006, <http://www.voanews.com/english/archive/2006-04/2006-04-28-voa19.cfm?CFID=126228082&CFTOKEN=74026830>. The deal allows VNOOC to source for oil in six areas covering more than 100,000 square kilometers in the Indian Ocean area. *Id.* Surprisingly, the oil agreement was not mentioned in a joint statement listing agreements signed during Hu's visit to the country. *Id.* As he read from the joint statement, Kenyan Foreign Minister Raphael Tuju reemphasized Kenya's position regarding Taiwan. According to the Minister, "The Kenyan government expressed its

foreign direct investment in Mozambique in 2005 stood at \$9 million, up from \$436,000 in 2004.<sup>142</sup> In 2004, the volume of trade between China and Mozambique stood at \$120 million, up by 66%.<sup>143</sup>

#### IV. CHINA'S AFRICA POLICY, AFRICA'S CHINA POLICY: A CRITIQUE

Why is China interested in Africa? Does China have a clearly identifiable policy for Africa?<sup>144</sup> And why is Africa returning China's advances? Does Africa have a clear policy to guide the unfolding relations with China? These questions are addressed in Part IV. Regarding China's Africa policy, prior to 2006, China made general reference to the Five Principles of Peaceful Coexistence.<sup>145</sup> Traces of China's Africa policy could also be found in statements by Chinese leaders, particularly statements at diplomatic conferences and in the course of their tours of Africa.<sup>146</sup> Issued for the first time in January 2006, the Africa policy paper attempts to formally and concretely address China's interests and goals in Africa, as well as the means for achieving these goals.<sup>147</sup> While African governments have warmly embraced China, Africa has yet to develop a coherent and clearly articulated strategy to guide its engagement with China. It appears that African leaders are approaching China from "a residual liberation paradigm" rather than "a contemporary economic paradigm" that would require them to actively and strategically

opposition to Taiwan independence in any form and expressed its support for China's efforts to realize national reunification." *Id.*

142. Horta & Storey, *supra* note 131.

143. TAYLOR, *supra* note 18, at 103.

144. These questions which first surfaced following China's engagement with Africa in the 1960s persist today. In his 1974 book, Alaba Ogunsanwo asks:

Why is China interested in Africa? Has there been a coherent policy towards Africa in the period under consideration or is it simply a policy of fomenting revolutions everywhere and especially in places where revolution is detrimental to the interests of imperialism? Is there a genuine desire for the independence and welfare of the African people or is there a grand strategy aimed at bringing the whole continent under the aegis of China.

OGUNSANWO, *supra* note 43, at 1.

145. See *supra* text accompanying note 31 (describing the history of the Five Principles of Peaceful Coexistence).

146. Tours of Africa by Chinese leaders are not new. Beginning in 1963, successive leaders have made historic tours of parts of the continent, including Zhou Enlai's ten-nation tour in 1964, Vice Premier Li Xiannian's tour in 1979, Premier Zhao Ziyang's eleven-nation tour in 1982, and President Hu Jintao's eight-nation tour in 2006.

147. One of the stated goals of issuing the African Policy Paper, according to the Chinese Government, is "to present to the world the objectives of China's policy towards Africa and the measures to achieve them, and its proposals for cooperation in various fields in the coming years." China's African Policy, *supra* note 8.

preserve Africa's interest.<sup>148</sup> Thus, areas where Africa's interests diverge from Beijing's interests are yet to be clearly identified and addressed.<sup>149</sup>

### A. China's Africa Policy

In the Africa Policy Paper, China promises to proceed to establish a strategic partnership with Africa that emphasizes political equality and mutual trust, economic win-win cooperation, and cultural exchange.<sup>150</sup> The general principles and objectives of China's Africa policy, according to the Policy Paper, are "[s]incerity, friendship[,] and equality";<sup>151</sup> "[m]utual benefit, reciprocity[,] and common prosperity";<sup>152</sup> "[m]utual support and close coordination";<sup>153</sup> and "[l]earning from each other and seeking common development."<sup>154</sup> Part IV of the Policy Paper outlines four key areas of cooperation: (1) politics; (2) economics; (3) "education, science, culture, health and social aspects"; and (4) "peace and security." In economics, China outlines plans for cooperation in a host of areas, including trade, investment, financial cooperation, agriculture, infrastructure, tourism, and resource cooperation.<sup>155</sup> Regarding trade and investment, China's agenda is five-fold: increased market access for African commodities,<sup>156</sup> extension of duty-free privileges,<sup>157</sup> pacific

148. *Leveraging the Dragon*, *supra* note 110.

149. *Id.* (noting that African leaders "need . . . to recognise that there are important areas where their national interests diverge from Beijing's," and citing, as an example, China's status as a global leader in attracting foreign direct investment, which clearly and directly competes with Africa's own needs for FDI).

150. China's African Policy, *supra* note 8, part 3.

151. *Id.* ("China adheres to the Five Principles of Peaceful Coexistence, respects African countries' independent choice of the road of development and supports African countries' efforts to grow stronger through unity.").

152. *Id.* ("China supports African countries' endeavor for economic development and nation building, carries out cooperation in various forms in the economic and social development, and promotes common prosperity of China and Africa.").

153. *Id.* ("China will strengthen cooperation with Africa in the UN and other multilateral systems by supporting each other's just demand and reasonable propositions and continue to appeal to the international community to give more attention to questions concerning peace and development in Africa.").

154. *Id.* ("China and Africa will learn from and draw upon each other's experience in governance and development, strengthen exchange and cooperation in education, science, culture and health. Supporting African countries' efforts to enhance capacity building, China will work together with Africa in the exploration of the road of sustainable development.").

155. *Id.* part 4.

156. *Id.* ("The Chinese Government will adopt more effective measures to facilitate African commodities' access to Chinese market.").

157. *Id.* ("The Chinese Government will adopt more effective measures to . . . fulfill its promise to grant duty-free treatment to some goods from the least developed African countries.").

settlement of trade disputes,<sup>158</sup> private sector involvement,<sup>159</sup> and a future possibility of negotiating Free Trade Agreements (FTAs) with African countries.

The Africa Policy Paper is vague on some important issues. For example, regarding the possibility of FTAs between China and countries in Africa, the Policy Paper merely states that “[w]hen conditions are ripe, China is willing to negotiate Free Trade Agreement [sic] (FTA) with African countries and African regional organizations.”<sup>160</sup> It is unclear what indicators will announce when the conditions are ripe or who will be making that determination. Regarding the promise of duty-free treatment, the Policy Paper states that the Chinese government “will adopt more effective measures to . . . fulfill its promise to grant duty-free treatment to *some goods* from the least developed African countries.”<sup>161</sup> However, many questions remain unanswered. What goods will qualify for duty-free treatment? What is the time-frame for fulfilling this promise? How might tariff peaks and escalations erode the value of this promise? In the same vein, China’s promise to “adopt more effective measures to facilitate African commodities’ access to Chinese markets” is vague with respect to the concrete steps that China will adopt to meet its specified goal, and it does not indicate what constitutes an effective market access measure.

Regarding investment, the Chinese government plans to encourage and support the investment and business of Chinese enterprises in Africa, and “to provide preferential loans and buyer credits to this end.”<sup>162</sup> The Chinese Government is also ready “to explore new channels and new ways for promoting investment cooperation with African countries”<sup>163</sup> and “to formulate and improve relevant policies, provide guidance and service[,] and offer convenience.”<sup>164</sup> While the Chinese government expressed a keen interest in protecting investments—observing that “[t]he two sides should work together to create a favorable environment for investment and cooperation and protect the legitimate rights and interests of investors from both sides”—it is completely silent on the potential human rights obligations of Chinese businesses operating in

158. *Id.* (“[China] intends to settle trade disputes and frictions properly through bilateral or multilateral friendly consultation, mutual understanding and mutual accommodation.”).

159. *Id.* (“Efforts will be made to encourage business communities on both sides to set up China-Africa Joint Chamber of Commerce and Industry.”).

160. *Id.* (emphasis added).

161. *Id.* (emphasis added).

162. *Id.*

163. *Id.*

164. *Id.*

Africa.<sup>165</sup> The Policy Paper is mute regarding how the Chinese government will address existing barriers to investment in China, and it fails to address the ethical responsibility of Chinese investors operating in Africa.

What, then, is the legal status of the African Policy Paper? Will China keep its numerous promises to Africa? Only time will tell. China's African Policy is not a treaty and thus is not recognized as binding under international law.<sup>166</sup> Countries in Africa will have no legal recourse should China renege on its promises. If the Policy Paper was issued simply to silence critics, as some observers suggest, it may be no more than a public relations campaign and a weapon in the broader (though unacknowledged) struggle between the United States and China over Africa's resources.<sup>167</sup> Moreover, China's numerous promises may be inimical to the interests of ordinary Africans in that its promises prompt the leaders of Africa's undemocratic states to offer reciprocal promises that have not been vetted by the general public in those countries. The need for free trade agreements between China and regions in Africa thus become readily apparent. The process of negotiating an FTA, if transparent, could at least give Africans the opportunity to voice opposition to any aspects of the agreement they perceive to be negative. Whether trade agreements (once negotiated) will be in the interest of African peoples is debatable, despite the promise made in the Africa Policy Paper that China will proceed "from the fundamental interests of both the Chinese and African peoples."<sup>168</sup>

### B. China's "Real" Interest in Africa

China's Cold War relations with Africa "w[ere] driven mainly by anti-capitalist ideologies of Marx and Mao, as well as by the Party

165. *Id.* ("The Chinese Government will continue to negotiate, conclude and implement the Agreement on Bilateral Facilitation and Protection of Investment and the Agreement on Avoidance of Double Taxation with African Countries.").

166. The Vienna Convention on the Law of Treaties defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." Vienna Convention on the Law of Treaties art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331.

167. Barry V. Sautman, *Friends and Interests: China's Distinctive Links with Africa* 1 (Center on China's Transnational Relations, Working Paper No. 12, 2005–2006) (suggesting that China's African policy was announced in response to a 2005 publication by the U.S. Council on Foreign Relations (CFR). The publication, *More than Humanitarianism: A Strategic U.S. Approach to Africa*, is critical of China's engagements in Africa.); see also Vijay Prashad, *A New Cold War Over Oil*, FRONTLINE, Aug. 11, 2007 available at <http://www.globalpolicy.org/empire/intervention/2007/0812newcw.htm> (suggesting that a new Cold War over oil has begun in Africa and that the new players are the United States and China).

168. *China's African Policy*, *supra* note 8, part 3.

leadership's effort to counter Soviet influences in states like Angola and the Congo."<sup>169</sup> In contrast, China's post-Cold War African policy is shaped primarily by economic and diplomatic concerns.<sup>170</sup> Growing mutual needs clearly drive the present China-Africa relationship.<sup>171</sup> China has much to gain from its relationship with Africa, both politically and economically.<sup>172</sup> However, as Chris Alden rightly warns, "it would be a mistake to ascribe a single motive to China's growing interest in Africa."<sup>173</sup>

### 1. Political Motivations

On the political front, China's concerns regarding Taiwan's political ambitions, its endeavors for international significance, and its need for strategic partners drive the country's foray into Africa. Regarding Taiwan, China has not hidden the fact that one of the reasons for pursuing relations with African states is to influence the relationship of those states with Taiwan.<sup>174</sup> Stronger relations with Africa would go a long way in thwarting Taiwan's effort to gain

169. *China's Influence in Africa—Implications for U.S. Policy: Testimony Before the Subcomm. on Africa, Human Rights, and International Operations of the H. Comm. on International Relations*, 109th Cong. 6 (2005) (statement by Ernest J. Wilson III) [hereinafter Wilson Testimony]; see also Richard J. Payne & Cassandra R. Veney, *China's Post-Cold War African Policy*, 38(9) ASIAN SURV. 867, 867 (1998) (observing that during the Cold War, Beijing's influence in Africa was constrained not only by Moscow and Washington but also by China's internal weaknesses, and that China's foreign policy "was shaped significantly by its relationship with the superpowers").

170. Wilson Testimony, *supra* note 169, at 7 (noting that in the post-Cold War era, market motives are up and Marxism is down); Chris Alden, *China in Africa*, SURVIVAL, Oct. 2005, at 147, 147–48 (2005) (observing that in contrast to the period between 1963 and 1976, when ideological considerations shaped China's Africa policy, "[t]here was now a shift towards 'diversity of form and mutual benefit' accompanying the economic reforms of the post-Mao era").

171. Alden, *supra* note 170, at 153 (observing that today, China and Africa have complementary economic and commercial needs).

172. President Hu Jintao's Address, *supra* note 3 (observing that China and Africa "share increasing common interests and have a growing mutual need," and that building strong ties between China and Africa will promote development of each side); see Sidiropoulos, *supra* note 11, at 101 (observing that "Africa's importance to China is multi-layered"); see also Payne & Veney, *supra* note 169, at 867 (observing that Africa plays a crucial role in China's achievement of its foreign policy goals and that relations between China and Africa are likely to be expanded as an important component of China's emergence as a global power).

173. Alden, *supra* note 170, at 147; Katzenellenbogen, *supra* note 1 ("Africa has an elevated importance to China because of Beijing's raised global role, its need for energy and resources, but also because the continent's low per-capita income is an ideal market for cheap Chinese goods.").

174. Phillip Liu, *Cross-Strait Scramble for Africa: A Hidden Agenda in China-Africa Cooperation Forum*, 5 HARV. ASIA Q. (2001), available at <http://www.asiaquarterly.com/content/view/103/43/>.

diplomatic recognition and independence.<sup>175</sup> According to the Policy Paper:

The one China principle is the political foundation for the establishment and development of China's relations with African countries and regional organizations. The Chinese Government appreciates the fact that the overwhelming majority of African countries abide by the one China principle, refuse to have official relations and contacts with Taiwan[,] and support China's great cause of reunification. China stands ready to establish and develop state-to-state relations with countries that have not yet established diplomatic ties with China on the basis of the one China principle.<sup>176</sup>

Although not expressly stated in the African Policy Paper, the consequence of African countries' cooperation with China is that those African countries must cut their ties to Taiwan.<sup>177</sup> In November 2006, China pledged "to . . . increase from 190 to over 440 the number of export items to China eligible for zero-tariff treatment from the least developed countries in Africa *having diplomatic relations with China.*"<sup>178</sup>

China is also in need of diplomatic allies and strategic partnerships.<sup>179</sup> Relations with Africa guarantees China more than fifty allies in key multilateral institutions such as the World Trade Organization.<sup>180</sup> As Alden correctly notes, "[a]s a significant player in multilateral organizations . . . China recognizes that it needs to court votes to protect and promote its interests. African states have the largest single bloc of votes in multilateral settings."<sup>181</sup>

175. As Payne & Veney note:

The second overriding objective of China's foreign and domestic policies is the restoration of its dynastic borders. With the return of Hong Kong to Chinese control on July 1, 1997, Taiwan remains the most important part of China that is not politically integrated into the mainland. Preventing Taiwan's independence is one of the most significant goals of China's foreign policy.

Payne & Veney, *supra* note 169, at 868.

176. China's African Policy, *supra* note 8, part 3.

177. See President Hu Jintao's Address, *supra* note 3 (promising to "cancel debt in the form of all the interest-free government loans that matured at the end of 2005 owed by the heavily indebted poor countries and the least developed countries in Africa that have diplomatic relations with China").

178. Beijing Action Plan, *supra* note 92, ¶ 3.3 (emphasis added).

179. At the United Nations and other multilateral institutions such as the World Trade Organization (WTO), China's quest for respect, recognition, and dominance requires that China cultivate strong alliances with other developing countries. Sidiropoulos, *supra* note 11, at 101 (noting that China has "very important political objectives" that are linked to the country becoming a great power and playing more prominent roles on the global stage).

180. *Id.* (observing that on the political front, Africa is significant for the number of countries it comprises).

181. Alden, *supra* note 170, at 153 (stating that to date, "African votes have been crucial to Beijing's multilateral diplomacy, whether it be blocking resolutions as

China's foray into Africa is also fueled by its concerns about dominance by the superpowers and by its desire to bolster its own position in the international system. In the past, China has criticized the hegemonism of Washington and Moscow, and it continues to express opposition to expansionism by any power.<sup>182</sup> For example, General Secretary Hu Yaobang has previously asserted:

The main forces jeopardising peaceful coexistence among nations today are imperialism, hegemonism[,] and colonialism. True, the old system of colonialism has disintegrated with the successive winning of independence by nearly one hundred former colonial and semi-colonial countries. Yet its remnants are far from being eliminated. The Superpowers that practice hegemonism pose a new threat to the peoples of the world.<sup>183</sup>

## 2. Economic Motivations

Economic considerations also motivate China's increasing involvement in Africa. Pragmatism has replaced ideology. Africa offers China access to natural resources (principally oil, gas, and solid minerals), access to raw materials, a market for China's products, and an opportunity to employ China's surplus labor in manufacturing.

China's energy need is no secret. Double-digit economic growth,<sup>184</sup> an automotive revolution, growing industrial production, and a rising standard of living for China's middle class all combine to fuel China's demand for oil and strategic minerals.<sup>185</sup> China became a net importer of oil for the first time in a quarter-century in November 1993.<sup>186</sup> In 2005, China overtook Japan to become the

the UN Commission on Human Rights . . . or garnering sufficient support to win a second bid to host the Olympics in 2008.”)

182. TAYLOR, *supra* note 18, at 1 (observing that “[b]ecause of its self-perceived position in the international system, China has constructed a fairly consistent foreign policy aimed at preventing or limiting the development of ‘hegemony,’ whilstwhist at the same time trying to carve out space for itself as its economy continues to grow.”).

183. *Id.* at 56 (quoting DIPLOMACY OF CONTEMPORARY CHINA 560 (Han Nianlong et al eds., (1990))).

184. Payne & Veney, *supra* note 169, at 869 (noting that between 1978 and 1994, China's foreign trade grew more than 16% per year).

185. Alden, *supra* note 170, at 148 (noting that “China's dynamic economic growth fuels an ever-increasing need for energy and strategic minerals.”); Payne & Veney, *supra* note 169, at 869 (noting that rapid economic growth is fueling China's need for oil and other natural resources). According to Alden, “the two decades of sustained near-double-digit growth in the Chinese economy have increased its appetite for a range of commodities, from iron ore to titanium, and in so doing have provided producers based in Africa with a growing market as well as a much needed boost in prices.” Alden, *supra* note 170, at 148.

186. Payne & Veney, *supra* note 169, at 869–70.



second-largest importer of African oil after the United States.<sup>187</sup> Africa offers China access to relatively unexploited oil and strategic natural resources. The continent currently supplies China with about 30% of its oil imports.<sup>188</sup> Beijing's oil purchases from African nations constitute "a significant share of African oil producers' export," thus making China an increasingly important actor on the continent.<sup>189</sup> According to sources from the Chinese Ministry of Commerce, China's dependency on import oil rose to 47% of its annual demand in 2006, an increase of 4.1 percentage points from the previous year.<sup>190</sup> In 2006, China produced 183.68 million tons of crude oil (up 1.7%), while the country's net oil imports exceeded 162.87 million tons, an increase of 19.6%.<sup>191</sup> Experts predict that China's demand for oil is bound to increase.<sup>192</sup> It is estimated that in 2007, China's crude oil output will grow less than 2%, while the country's demand for both crude and other oil products will increase by more than 6%.<sup>193</sup> Relations with Africa will give China vital access to cheap sources of raw materials.<sup>194</sup> Overall, while China is of value to Africa, Africa is of immense value to China, both "for its resources and for the market it represents for cheap exports and Chinese infrastructure investments."<sup>195</sup> In the unfolding interest-based relationship, Africa need not bargain from a position of weakness. Africa is in a position to reject terms of engagement that do not advance the continent's interest.

### C. Africa's China Policy

African leaders have enthusiastically welcomed China.<sup>196</sup> Lesotho Prime Minister Pakalitha Mosisili called the 2006 Beijing

187. Eisenmann, *supra* note 14; see Alden, *supra* note 170, at 148 (noting in 2005 that "China was consuming 5.46 million barrels per day (bbl/d), outstripping Japan's 5.43m bbl/d, but still some distance from the United States's 19.7m bbl/d").

188. Eisenmann, *supra* note 14.

189. *Id.* ("Beijing imports a quarter of Angola's oil, 60% of Sudan's and an increasing percent[age] from Equatorial Guinea, Nigeria and Gabon.")

190. *China's Oil Dependency to Continue to Rise This Year*, XINHUA NEWS AGENCY (P.R.C.), Feb. 13, 2007, <http://english.mofcom.gov.cn/aarticle/newsrelease/commonnews/200702/20070204382842.html>.

191. *Id.*

192. *China's Oil Imports Surge as Country Begins Filling Strategic Reserves*, SINA, Oct. 12, 2006, <http://english.sina.com/business/1/2006/1012/91636.html>.

193. *China's Oil Dependency to Continue to Rise This Year*, *supra* note 190.

194. Sidiropoulos, *supra* note 11, at 101 (identifying access to raw materials as one of the key motives for China's involvement in Africa).

195. Alex Vines, *The Scramble for Resources: African Case Studies*, 13 S. AFR. J. INT'L AFF. 63, 63 (2006).

196. *Id.* at 64 (observing that African governments "have not hesitated to supply Chinese Entrepreneurs with licenses to enable investment in their countries").

Summit a “landmark full of hopes.”<sup>197</sup> The response from regional organizations within the continent has also been warm.<sup>198</sup> Nevertheless, Africa has yet to develop a coherent and clearly articulated strategy to guide its future engagement with China.<sup>199</sup> At the High-Level Dialogue and the Second Conference of Chinese and African Entrepreneurs, Prime Minister Pakalitha Mosisili, representing the Southern African Development Community (SADC), openly welcomed China to Africa: “We can take this opportunity to tell China that the SADC and Africa are opportune destinations for Chinese investment.”<sup>200</sup>

## 1. African Leaders and China

Why have African leaders extended a warm reception to Beijing? There are several factors that come into play: the shared history of colonial domination,<sup>201</sup> China’s identification of itself as a developing country, and Beijing’s emphasis on cooperation and respect rather than subordination in its pursuit of relations with Africa.<sup>202</sup> As

197. *Lesotho PM: China-Africa Summit “A Landmark Full of Hopes,”* XINHUA NEWS AGENCY (P.R.C.), Nov. 4, 2006, [http://english.focacsummit.org/2006-11/04/content\\_5065.htm](http://english.focacsummit.org/2006-11/04/content_5065.htm).

198. See, e.g., Wild & Mephan, *supra* note 2, at 1–4 (observing the acceptance of the Southern African Development Community).

199. *Id.* (observing that the world has “seen China’s strategy for Africa but that Africa now needs to assert its own strategy for China”).

200. *Id.*

201. Regarding the warm reception of the Chinese by Africans in the 1960s, Hutchinson writes:

In political terms, the Chinese were regarded with favour by Africans, for China had never been associated with any scramble for Africa; the Chinese were non-white and non-imperialist. Equally the Chinese had never been humiliated by any African nation, and indeed the common suffering of Africa and China at the hands of white imperialists was often stressed by both sides.

HUTCHINSON, *supra* note 22, at 178.

202. Even in the area of foreign aid, China still stresses the principles of mutual benefit and respect. During his tour of ten African countries from December 1963 to February 1964, Premier Zhou Enlai announced the eight principles Governing Red Chinese Foreign Aid. Most of the eight principles ring true today. Cooley, *supra* note 23, app. B, at 224–25 (“The Eight Principles Governing Red China Foreign Aid”). According to Principle One, “In the assistance it furnishes to other countries, the Chinese government consistently observes the principles of equality and mutual benefit. It never considers this assistance as a type of unilateral charity but rather as mutual aid.” *Id.* Principle Two states: “In furnishing aid to other countries, the Chinese Government strictly respects the sovereignty of the recipient states. It never asks for any privilege and never poses conditions.” *Id.* According to Principle Four, “In furnishing economic aid . . . the Chinese government does not seek to place the recipients in a state of dependency on China but rather to aid them to move forward, step by step, on the pathway of self-sufficiency.” *Id.*

China is not a former colonial power,<sup>203</sup> many leaders see Beijing's model of development as one that could be replicated successfully in Africa, and recognize the possibility that economic ties with China could expand the market for Africa's raw materials and natural resources.<sup>204</sup> China's policy of noninterference in internal affairs and its failure to insist on stringent conditions also attract African leaders.<sup>205</sup> China represents an alternative market and an alternative source of aid for states in Africa, particularly those states that have troubled relations with Western governments or are tired of being ignored or neglected by the West.<sup>206</sup> Few leaders have offered a clear policy statement on the future of trade and investment relations with China, and even fewer have made the issue of whether to trade with China a matter for public discussion and deliberation. By contrast, civil society activists are very critical of China's foray into Africa. China's relations with Africa generated considerable debate at the Seventh World Social Forum (WSF), held in Nairobi, Kenya, in late January 2007.<sup>207</sup> At a panel discussion organized by the semi-official Chinese NGO Network for International Exchanges, attention was given to the fact that China's involvement in Africa may negatively affect local manufacturers and may not address unemployment problems in the continent.<sup>208</sup>

---

203. Sidiropoulos, *supra* note 11, at 100 (noting that China has "no colonial baggage" and "no residual political affiliations remaining from the Cold War").

204. *Id.* at 101 (noting that China serves as an example to African state, and observing that China "increased its appetite for natural resources," which has created windfalls for many African countries who base their economies on the production of commodities).

205. Vines, *supra* note 195, at 63 (observing that China is "not vocal about governance and human rights issues" and does not seek much conditionality).

206. *Id.* (observing that "China engagement can provide African governments that have troubled relationship with the West with an alternative axis of investment.").

207. An annual meeting held by members of the movement, the World Social Forum (WSF) is a platform for members and sympathizers to coordinate anti-globalization campaigns, share and refine organizing strategies, and share information. See Wikipeda, World Social Forum, [http://en.wikipedia.org/wiki/World\\_Social\\_Forum](http://en.wikipedia.org/wiki/World_Social_Forum) (last visited Feb. 12, 2008). The meetings are usually in January to coincide and perhaps overshadow the World Economic Forum that meets annually in Davos, Switzerland. *Id.* The first WSF was held from 25 January to 30 January 2001 in Porto Alegre. *Id.*; see also World Social Forum, [http://www.forumsocialmundial.org.br/index.php?cd\\_language=2&id\\_menu=](http://www.forumsocialmundial.org.br/index.php?cd_language=2&id_menu=) (last visited Feb. 12, 2008). See generally JOSE CORREA LEITE, *THE WORLD SOCIAL FORUM: STRATEGIES OF RESISTANCE* (2005); Teivo Teivainen, *The World Social Forum and Global Democratisation: Learning from Porto Alegre*, 23 *THIRD WORLD Q.* 621 (2002).

208. Walden Bello, *China Provokes Debate in Africa, YES!*, <http://www.yesmagazine.org/article.asp?ID=1700> (last visited Feb. 12, 2008).

## 2. Africa's Regional Organizations and China

The regional organizations in Africa have yet to issue clear statements on policies that would guide their relationship with China even though they appear enthusiastic over deepening relationships with Beijing.<sup>209</sup> In its relationship with Africa, China has emphasized bilateralism.<sup>210</sup> Consequently, multilateralism has been somewhat neglected. In his message during the 25th Summit of Heads of State and Government of the Southern African Development Community (SADC) (held in Gaborone, Botswana), Chinese Premier Wen Jiabao stressed China's focus on developing relations with SADC. He "pledged to push 'the cooperation between the two sides to a new high.'"<sup>211</sup> Indeed, China has appointed a permanent representative to the SADC.<sup>212</sup> According to SADC, "the appointment of the permanent representative is aimed at consolidating and enhancing friendly relations and cooperation between China and SADC."<sup>213</sup> China has also expressed support for the New Partnership for Africa's Development (NEPAD),<sup>214</sup> and NEPAD has not hesitated

---

209. Salim Ahmed Salim, the Secretary-General of the Organization of African Unity (OAU), has "hailed China-Africa solidarity and called for concrete follow-up actions to further expand Sino-African cooperation in diverse sectors." *OAU Chief Calls for Expansion of Sino-African Cooperation*, PEOPLE'S DAILY (P.R.C.), Oct. 12, 2000, [http://english.people.com.cn/english/200010/12/eng20001012\\_52437.html](http://english.people.com.cn/english/200010/12/eng20001012_52437.html). In his statement at the closing of the 2000 meeting, Salim welcomed "the decision of the forum to further consolidate China-Africa cooperation in order to establish within the framework of South-South cooperation an enhanced and more dynamic partnership based on equality and mutual benefit," and noted with satisfaction "the agreement of the Ministers to undertake joint efforts to improve trade and investment opportunities between China and Africa." *Id.*

210. China is careful to remain not intrusive in its relationship with African states, instead relying on the Five Principles. See Sidiropoulos, *supra* note 11, at 100-01; see also *supra* note 31.

211. *Chinese Premier Congratulates SADC on Anniversary of Founding*, PEOPLE'S DAILY (P.R.C.), Aug. 17, 2005, [http://english.peopledaily.com.cn/200508/17/eng20050817\\_203051.html](http://english.peopledaily.com.cn/200508/17/eng20050817_203051.html).

212. *China Appoints Permanent Representative to SADC*, NAMIB. ECONOMIST, Apr. 20, 2007, available at <http://www.economist.com.na/content/view/384/33/>.

213. *Id.*

214. The New Partnership for Africa's Development (NEPAD) is a "vision and strategic framework for Africa's renewal." The New Partnership for Africa's Development, NEPAD in Brief, <http://www.nepad.org/2005/files/inbrief.php> (last visited Feb. 12, 2008) [hereinafter NEPAD in Brief]. NEPAD "is designed to address the current challenges facing the African continent. Issues such as the escalating poverty levels, underdevelopment and the continued marginalization of Africa needed a new radical intervention, spearheaded by African leaders, to develop a new Vision that would guarantee Africa's Renewal." *Id.*

China was very supportive at the high-level plenary meeting of the UN General Assembly (held in New York on September 16, 2002), which convened to consider how to support the New Partnership of Africa's Development (NEPAD). Tan Jiaxuan, Chinese Foreign Minister, High-level Plenary Meeting of the UN General Assembly to Consider How to Support The New Partnership for Africa's Development (NEPAD):

to accept the offer of economic aid from China. On July 26, 2006, the Chinese Government handed a check for \$500,000 to the CEO of the NEPAD Secretariat, Professor Firmino Mucavele, at a handover ceremony in Midrand, South Africa.<sup>215</sup> The grant money will be used to support the Post-Graduate Training Program of African Nurses and Midwives, to be launched in Tanzania and Kenya.<sup>216</sup> For China's Ambassador to South Africa, Ambassador Liu, the handover ceremony marked the first step of cooperation between China and NEPAD.<sup>217</sup> In turn, Professor Mucavele—along with Madam Xu of FOCAC—signed the *Memorandum of Understanding of Strengthening Consultation and Cooperation between NEPAD Secretariat and Secretariat of the Chinese Follow-up Action Committee of the Forum on China-Africa Cooperation (FOCAC)*.<sup>218</sup> In his November 4 address, President Hu Jintao promised that China would continue to support Africa in implementing NEPAD and will “support African countries in their efforts to strengthen themselves through unity and support the process of African integration.”<sup>219</sup>

---

Permanent Mission of the People's Republic of China to the United Nations (Sept. 16, 2002), available at <http://www.china-un.org/eng/ldhy/57/t28500.htm>. In a speech delivered at the meeting, Chinese Foreign Minister Tang Jiaxuan noted: “The state of peace and development in Africa has its profound and complicated historical and practical reasons and is largely due to the many unfair and unreasonable factors in the current international political and economic order.” *Id.* The Chinese Foreign Minister also called on the international community to “create a sound international environment for the economic development of African countries.” *Id.* In his words:

The international community, especially the developed countries, have [sic] the responsibility and obligation to adopt more active and effective measures to reform the existing international economic, trading and financial systems, so as to create a sound international environment for the economic development of African countries. . . . In the process of the NEPAD's implementation, the international community, developed countries in particular, should fully respect African countries' own choice and reverse the trend of declining development assistance as soon as possible. They should work to ensure that their official development assistance account for 0.7% of their GNP, and should reduce or cancel the debts of African countries, expand and improve the market access for African countries and transfer applicable technologies to Africa.

*Id.*

215. Ministry of Foreign Affairs of the P.R.C., *The Chinese Government Grants \$500,000 to Support NEPAD Nurses and Midwives Post-Graduate Training Program*, <http://www.fmprc.gov.cn/eng/wjz/wjz/wjz/t265182.htm> [hereinafter Chinese Government's \$500,000 Grant].

216. *Id.*

217. *Id.*

218. *Id.*

219. President Hu Jintao's Address, *supra* note 3.

#### D. Conclusion

Issued in early 2006, the coverage of China's Africa policy is impressive. China's promise of a "win-win" relationship is tantalizing to a continent with a long history of imperialism and exploitation.<sup>220</sup> A process of aggressive implementation of China's Africa policy has already begun. In an address on November 4, 2006, President Hu Jintao committed to take eight bold steps towards achieving the goals enumerated in the Policy Paper.<sup>221</sup> Despite the opportunities that a relationship with China presents for Africa, there is a need for caution. African leaders must articulate the policies that will guide this unfolding relationship and identify strategies that will enable the continent to maximize the opportunities that such a relationship presents. There is clearly a need to go beyond the rhetoric of mutual support, equality, solidarity, and independence—to critically evaluate what China-Africa relations hold for Africa and how Africa might maximize this new opportunity.<sup>222</sup> A serious review of Sino-African

220. *Id.*

221. He committed to: doubling China's 2006 assistance to Africa by 2009; providing US\$3 billion of preferential loans and US\$2 billion of preferential buyers' credits to Africa in the next three years; establishing "a China-Africa development fund which will reach US\$5 billion to encourage Chinese companies to invest in Africa and provide support to them"; building a conference centre for the African Union; cancelling debt "in the form of all the interest-free government loans that matured at the end of 2005 owed by qualifying heavily indebted poor countries and the least developed countries"; opening up China's market to Africa "by increasing from 190 to over 440 the number of export items to China receiving zero-tariff treatment from the least developed countries in Africa having diplomatic ties with China"; establishing three to five trade and economic cooperation zones in Africa in the next three years; and providing aid to help train professionals, address health problems, and establish scholarship for African students to train in China. *Id.*

Over the next three years, he pledged to train 15,000 African professionals; send 100 senior agricultural experts to Africa; set up ten special agricultural technology demonstration centres in Africa; build thirty hospitals in Africa; provide a grant of 300 million renminbi (RMB) to provide artemisinin (a drug used to treat malaria) and build thirty malaria prevention and treatment centres to fight malaria in Africa; dispatch 300 youth volunteers to Africa; build 100 rural schools in Africa; and increase the number of Chinese government scholarships to African students from the current 2000 per year to 4000 per year by 2009. *Id.*

222. Faced with strong Chinese interest in Africa in the 1960s, African nationalist leaders had to respond pragmatically and strategically. As Ogunsanwo notes, "Their response to Chinese initiatives . . . depended on how far they considered their national interests would be served by dealing with China; what concessions the Chinese were demanding and how compatible these were with their own aspirations; how they perceived the 'real' interests of China in offering them economic and technical aid; their own philosophy of development[,] and evaluation of the adequacy or inadequacy of the Chinese model of development for their countries." OGUNSANWO, *supra* note 143, at 2.

Commenting on the overall response of African leaders to Chinese interest in the 1960s, Hutchinson states: "Africans have shown tact and subtlety in their dealings with China, and have made their own contributions to the relationship." HUTCHINSON, *supra* note 22, at xii. He notes further:

trade arrangements is somewhat complicated by the fact that China often presents its trade agreements, credit arrangements, and development aid in a single package, wrapped in the friendly tissue paper of “mutual support,” “peaceful co-existence,” and “non-interference.”<sup>223</sup>

There is also a need to address the legal and institutional foundations of this unfolding relationship. An institutional mechanism is needed to ensure that promises are translated into action and that disputes are resolved equitably and in a timely fashion. Although the two sides have agreed to “set up joint follow-up mechanism[s] at various levels,” much more is needed.<sup>224</sup> Pursuant to the 2007-2009 Action Plan, the two sides have agreed to establish new consultation and cooperation mechanisms<sup>225</sup> and to strengthen existing mechanisms (such as bilateral commissions) between China and Africa.<sup>226</sup> The two sides also agreed to “[p]roperly address, in a spirit of mutual understanding and accommodation, trade disputes and frictions through bilateral or multilateral friendly

The European powers still felt they “knew what was best” for their former colonies, that they would “rue the day” they had asked the Chinese in and that nothing good could possibly come from a relationship with such dangerous and unstable partners. They ignored the fact that leaders, who were successfully able to manipulate them, the colonialists, out of power, were quite politically mature enough to deal with the Chinese. At worst, the Chinese could be asked to leave—as they were from a number of countries.

*Id.* at 106–07.

223. COOLEY, *supra* note 23, at 187 (noting that in the 1960s, Peking and Moscow presented their trade agreements and medium-term credits in a “single, businesslike package, wrapped in the friendly tissue paper of “peaceful coexistence” and “non-interference in internal affairs” and that the impact of such offers can be strong in a new country that is short on capital and is generally getting unfavorable terms for its export sales in the West).

224. *Programme for China-Africa Cooperation*, *supra* note 89, ¶ 20.1.

225. Beijing Action Plan, *supra* note 92, ¶ 2.2.2.

The two sides agreed to set up a mechanism of regular political dialogue between foreign ministers of the two sides within the FOCAC framework. In the following year of every FOCAC Ministerial Conference, foreign ministers from the two sides will hold political consultation in New York on the sideline of the UN General Assembly to exchange views on major issues of common interest.

226. *Id.* ¶ 2.2.3.

The two sides resolved to strengthen and give full play to existing mechanisms between China and Africa, such as bilateral commissions, foreign ministries’ political consultation, mixed commissions on economic and trade cooperation, and joint commissions on science and technology[;] expand their cooperation in the United Nations, the World Trade Organization and other international and regional organizations[;] and actively explore ways of pragmatic cooperation with third parties on the basis of equality, mutual benefit and win-win result.

consultations.”<sup>227</sup> These provisions are extremely vague and raise serious concerns. There are currently few rules stipulating the legal obligations of the two sides, and no transparent review process is in place to investigate and correct infractions when they occur.

## V. THE SCRAMBLE FOR AFRICA: PAST, PRESENT, AND FUTURE

There is an ongoing struggle for control of Africa’s resources. Media reports suggest a frenzied competition over access to the continent’s resources.<sup>228</sup> Think tanks based in the West also report an ongoing struggle between China and the West.<sup>229</sup> The driving force behind this struggle is oil. As *The Guardian* reported in 2005, “A new ‘scramble for Africa’ is taking place among the world’s big powers, who are tapping into the continent for its oil and diamonds.”<sup>230</sup> According to a 2005 *Mail & Guardian* report, “China is prowling the globe in search of energy resources. Oil executives and diplomats have signed a flurry of deals, from Canada to Kazakhstan. The scramble has triggered unease in Washington, where American conservatives worry about China’s growing economic muscle.”<sup>231</sup>

227. *Id.* ¶ 3.3.

228. See generally Charlotte Denny, *Scramble for Africa: Fear of Corruption and Chaos in Oil Rush*, GUARDIAN UNLIMITED (U.K.), June 13, 2003, <http://www.guardian.co.uk/oil/story/0,11319,979053,00.html> (noting that: “Washington’s determination to find an alternative energy source to the Middle East is leading to a new oil rush in sub-Saharan Africa which threatens to launch a fresh cycle of conflict, corruption and environmental degradation in the region, campaigners warn today”); Pascal Fletcher, *China Muscles in to Africa Oil Scramble*, REUTERS, Dec. 15, 2005; Christopher Thompson, *The Scramble for Africa’s Oil*, NEW STATESMAN, June 14, 2007, <http://www.newstatesman.com/200706180024> (discussing plans within the Pentagon to reorganise military command structure in response to growing fears that the United States is seriously ill-equipped to fight the war against terrorism in Africa and noting that “[s]uddenly the world’s most neglected continent is assuming an increasing global importance as the international oil industry begins to exploit more and more of the west coast of Africa’s abundant reserves.”). See also JOHN GHAZVINIAN, *UNTAPPED: THE SCRAMBLE FOR AFRICA’S OIL* (2007); Rob Griffin, *The Economic Scramble for Africa*, INDEP. (U.K.), Aug. 9, 2007, [http://news.independent.co.uk/business/analysis\\_and\\_features/article2846539.ece](http://news.independent.co.uk/business/analysis_and_features/article2846539.ece).

229. See, e.g., COUNCIL ON FOREIGN RELATIONS, REPORT NO. 56, MORE THAN HUMANITARIANISM: A STRATEGIC U.S. APPROACH TOWARDS AFRICA 49–54 (2005), available at [http://www.cfr.org/content/publications/attachments/Africa\\_Task\\_Force\\_Web.pdf](http://www.cfr.org/content/publications/attachments/Africa_Task_Force_Web.pdf) [hereinafter MORE THAN HUMANITARIANISM]; HURST, *supra* note 129; *China’s Influence in Africa: Hearing Before the Subcomm. on Africa, Global Human Rights, and International Operations of the H. Comm. on International Relations*, 109th Cong. 5 (2005) (statement of Rep. Christopher Smith, Chairman, Subcomm. on Africa, Global Human Rights, and International Operations).

230. David Leigh & David Pallister, *Revealed: The New Scramble for Africa*, GUARDIAN UNLIMITED (U.K.), June 1, 2005, <http://www.guardian.co.uk/print/0,,5205602-115645,00.html>

231. *The Global Sweep to Mop up the World’s Oil Resources*, MAIL & GUARDIAN (U.K.), Nov. 14, 2005.



Reports published by U.S.-based think tanks also point to an ongoing scramble for Africa's resources. These reports typically announce China's recent foray into Africa with alarm and trepidation, suggest that China is motivated by less-than-humanitarian ideals, and charge that China's involvement will likely undermine human rights and governance in Africa—ideals that Western governments, presumably, are trying to institute in the continent.<sup>232</sup> The reports usually conclude with calls for a revised U.S. strategy in Africa.<sup>233</sup>

A July 2006 report by the Institute for the Analysis of Global Security (IAGS) takes such an approach.<sup>234</sup> Authored by Cindy Hurst, a Lieutenant Commander in the United States Navy Reserve, the report, *China's Oil Rush in Africa*, describes the activities of China's oil companies throughout Africa and devotes a section to examining the possible implications for the United States of China's activity in Africa.<sup>235</sup> *China's Oil Rush in Africa* suggests that there are positive and negative ramifications of China's increased involvement in Africa. On the positive side, the report asserts that China's involvement in oil exploration in Africa could lower oil prices<sup>236</sup> and bring revenue and expertise to underdeveloped countries in the region.<sup>237</sup> On the negative side, the report claims that "China's involvement in some countries could contribute to instability by further enabling these countries to violate human rights and partake in corrupt activities."<sup>238</sup> More directly related to the scramble, the report charges that "China's growing influence is . . . counterproductive to western objectives of promoting human rights and abolishing corruption"<sup>239</sup> and concludes that "[s]hould

232. See, e.g., Peter Brookes, *Back to the Maoist Future: China's African Ambitions*, Apr. 17, 2006, available at <http://www.heritage.org/Press/Commentary/ed041706a.cfm?RenderforPrint=1>.

233. See *id.* ("What is needed is a comprehensive U.S. strategy that encourages democratic principles, human rights, free markets, and cooperation in regional security and energy development in concert with like-minded partners, looking beyond traditional European friends to democratic Asian and Latin American nations for support.").

234. See generally HURST, *supra* note 129 (relying on such an approach). The IAGS describes itself as "a Washington-based non-profit public educational organization dedicated to research and public debate on issues related to energy security." See Institute for the Analysis of Global Security, <http://www.iags.org> (last visited Feb. 12, 2008).

235. See generally HURST, *supra* note 129 (discussing China's oil-related activities in Africa).

236. *Id.* at 14 ("China's engagement in oil production in the region and its investment in high risk countries could add new capacity to the world's tight energy market and hence drive prices down.").

237. *Id.* (noting that "the revenue and expertise that China brings could be highly beneficial to underdeveloped countries in Africa" and that without this aid and technology "some of those countries would be unable to realize the financial gain from oil within their boundaries.").

238. *Id.*

239. *Id.*

Countries in Africa choose to do business with China over the U[nited] S[tates], it could have an impact on future U.S. oil imports.”<sup>240</sup>

Another report published by the U.S. Council on Foreign Relations (CFR)—*More than Humanitarianism: A Strategic U.S. Approach Toward Africa*—aims at identifying ways in which the U.S. influence in Africa could be enhanced.<sup>241</sup> The report devotes one chapter to the energy sector and another chapter to China. The report notes that Africa “holds steadily increasing significance for future U.S. energy supplies,”<sup>242</sup> and that “[i]t is increasingly in the U.S. interest to locate new oil sources outside the Middle East.”<sup>243</sup> The report charges that China “is acquiring control of natural resource assets, outbidding Western contractors on infrastructure projects, and providing soft loans and other incentive[s] to bolster its competitive advantage.”<sup>244</sup> The report further charges that China “contributes to serious environmental damage in Africa,”<sup>245</sup> undermines Africa’s growth in the textile sector,<sup>246</sup> and offers protection to rogue states.<sup>247</sup>

Reports that foster the notion that China is bad for Africa and that Western governments are good for the continent are myopic at best and largely unhelpful.<sup>248</sup> Moreover, such reports ignore Africa’s dark history, particularly the continent’s history of invasion, annexation, and exploitation in the nineteenth century and the continuing struggle between local communities and transnational oil corporations based in the West. Barry Sautman has noted, “While [China’s] support for Sudan and Zimbabwe is much discussed in the West, less is said about U.S. support for authoritarian African states, especially oil producers such as Gabon, Cameroon, Angola, Chad and

240. *Id.* at 16.

241. *See* COUNCIL ON FOREIGN RELATIONS, *supra* note 229.

242. *Id.* at 28.

243. *Id.*

244. *Id.* at 40.

245. *Id.*

246. *Id.*

247. *Id.* at 41 (“Perhaps most disturbing to U.S. political objectives is China’s willingness to use its seat on the UN Security Council to protect some of Africa’s most egregious regimes from international sanction, particularly Sudan and Zimbabwe.”).

248. *See, e.g.*, Brookes, *supra* note 232 (“Across the planet, China is aggressively seeking new friends and allies, and proving to be a less-demanding alternative to the more scrupulous United States and European nations. Africa’s traditional European colonial and American partners now find their vision of a continent governed by free-market democracies and the rule of law challenged by Beijing’s scramble for influence and resources.”); Peter Brookes & Ji Hye Shin, *China’s Influence in Africa: Implications for the United States*, in BACKGROUNDERS (Heritage Found., Washington, D.C., No. 1916, Feb. 2006) (observing that as China gains a foothold in Africa, “America and its allies and friends are finding that their version of a prosperous Africa governed by democracies that respect human rights and the rule of law and that embrace free market is being challenged by the escalating Chinese influence in Africa.”)

Equatorial Guinea, support that extends even to Sudan through US-Sudan intelligence cooperation.”<sup>249</sup> Given the stiff competition over Africa’s resources, what lessons may be learned from the history of the earlier scramble for Africa in the nineteenth century? The period between 1880 and 1930 was a tumultuous time in the history of Africa. During that period, imperial powers conquered, occupied, and eventually colonized almost the entire continent.<sup>250</sup> Although the Berlin West Africa Conference of 1884-1885 (Berlin Conference) is often seen as marking the onset of the scramble for Africa, by 1880, European powers had already acquired spheres of influence in the continent and were quite interested in its commercial possibilities.<sup>251</sup> Through explorations, settlement, the establishment of commercial posts, treaty-making with African leaders, and occupation of strategic areas, European powers acquired considerable influence in the region but did not as yet exercise political power.<sup>252</sup>

Part V takes a brief look at the European scramble for Africa in the nineteenth century and attempts to identify useful lessons that may guide Africa and its leaders as the continent forges new interest-based relationships today.

#### A. *The General Act of the Conference at Berlin (The Berlin Act)*<sup>253</sup>

The Berlin Conference took place between November 15, 1884, and November 26, 1885.<sup>254</sup> The primary aim of the conference was to address territorial disputes and other issues that arose as a result of

249. Sautman, *supra* note 167, at 7.

250. A. Adu Boahen, *Africa and the Colonial Challenge*, in GENERAL HISTORY OF AFRICA. VII: AFRICA UNDER COLONIAL DOMINATION 1880–1935, at 1, 1 (A. Adu Boahen ed., 1985) (observing that “[n]ever in the history of Africa did so many changes occur and with such speed as they did between 1880 and 1935.” He notes that by 1880, as much as 80% of the continent of Africa was ruled by African kings, clans, and lineage heads and that “within the next thirty years, this situation underwent a phenomenal and indeed a revolutionary change.”); *see also* G.N. Uzoigwe, *European Partition and Conquest of Africa: An Overview*, in GENERAL HISTORY OF AFRICA. VII: AFRICA UNDER COLONIAL DOMINATION 1880–1935, *supra*, at 18, 18 (noting that “[t]he generation following 1880 witnessed one of the most significant historical movements of modern times. During this period Africa, a continent of over 28 million square kilometers was partitioned, conquered and occupied effectively by the industrialized nations of Europe.”).

251. Uzoigwe, *supra* note 249, at 28–29 (observing that “[b]y the early 1880s, the Scramble was well under way” and that “[t]he news that such a conference would be held increased the intensity of the Scramble.”).

252. *Id.* at 31

253. The General Act of the Congress at Berlin, Berlin, F.R.G., Feb. 26, 1885, available at <http://ocid.nacse.org/qml/research/tfdd/toTFDDdocs/4ENG.htm> [hereinafter the Berlin Act].

254. Uzoigwe, *supra* note 250, at 31.

the European scramble for Africa.<sup>255</sup> At the Berlin Conference, the African continent was effectively partitioned and distributed among the European powers; resolutions were adopted regarding freedom of trade and the free navigation of two chief rivers of Africa, the Niger and the Congo; and rules regulating the occupation of territories were established.<sup>256</sup> The Berlin Act, adopted on February 26, 1885, embodied the doctrines of spheres of influence<sup>257</sup> and effective occupation.<sup>258</sup> The welfare of Africans and the slave trade were given only passing thought.<sup>259</sup> Chapter I of the Berlin Act (“Declaration Relative to the Freedom of Trade in the Basin of the Congo”) declared the Congo Basin a free trade zone.<sup>260</sup> This freedom included free

255. *Id.* at 28–29 (noting that Portugal proposed the calling of an international conference to sort out the territorial disputes in the area of Central Africa on fears it was pushed out of Africa).

256. The first preamble of the Berlin Act reads:

WISHING, in a spirit of good and mutual accord, to regulate the conditions most favourable to the development of trade and civilization in certain regions of Africa, and to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean.

Berlin Act, *supra* note 253.

257. Sphere of influence as a term in international politics gained currency in the latter part of the nineteenth century at the peak of European expansion into Africa and Asia. See Daniel H. Deudney, *Sphere of Influence*, in ENCYCLOPEDIA BRITANNICA ONLINE, <http://www.britannica.com/eb/article-9042397/sphere-of-influence> (last visited Feb. 16, 2008). Sphere of influence refers to “the claim by a state to exclusive or predominant control over a foreign area or territory.” *Id.* According to the Encyclopedia Britannica, the term “may refer to a political claim to exclusive control, which other nations may or may not recognize as a matter of fact, or it may refer to a legal agreement by which another state or states pledge themselves to refrain from interference within the sphere of influence.” *Id.* As between the European powers, agreements on spheres of influence were legal devices to ensure that the competition for the colonies was carried out peacefully through agreed-upon procedures. The term first appeared in a May 1885 agreement between Great Britain and Germany. *Id.* The agreement provided for “a separation and definition of their respective spheres of influence in the territories on the Gulf of Guinea.” *Id.*; see also Wikipedia, Sphere of Influence, [http://en.wikipedia.org/wiki/Sphere\\_of\\_influence](http://en.wikipedia.org/wiki/Sphere_of_influence) (last visited Feb. 12, 2008) (noting that a sphere of influence “is an area or region over which an organization or state exerts some kind of indirect cultural, economic, military or political domination”).

258. Defined as *uti possidetis* (Latin for “as you possess”), effective occupation is an international law principle “that territory and other property remains with its possessor at the end of a conflict, unless provided for by treaty.” Wikipedia, *Uti Possidetis*, [http://en.wikipedia.org/wiki/Uti\\_possidetis](http://en.wikipedia.org/wiki/Uti_possidetis) (last visited Feb. 12, 2008). For more information on “effective occupation,” see generally Yekutiel Gershoni, *The Drawing of Liberian Boundaries in the Nineteenth Century: Treaties with African Chiefs Versus Effective Occupation*, 20 INT’L J. AFR. HIST. STUD. 293, 293–307 (1987).

259. Uzoigwe, *supra* note 250, at 29 (noting that the Berlin Conference “passed empty resolutions regarding the abolition of the slave trade and the welfare of Africans”). Out of a total of thirty-eight articles, only one article (Article IX) was devoted to issues relating to the slave trade, and only one article (Article VI) addressed the welfare of natives. Berlin Act, *supra* note 253.

260. According to Article 1 of the Berlin Act:

access to the whole of the coastline of specified territories,<sup>261</sup> freedom from taxes,<sup>262</sup> and freedom from import and transit dues.<sup>263</sup>

Chapter VI of the Berlin Act ("Declaration Relative to the Essential Conditions to be Observed in Order That New Occupations on the Coasts of the African Continent May be Held to be Effective") legitimized and legalized the doctrines of effective occupation and spheres of influence.<sup>264</sup> Regarding the doctrine of effective occupation, the Signatory Powers of the Berlin Act recognized "the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African continent sufficient to protect existing rights, and, as the case may be, freedom of trade and

The trade of all nations shall enjoy complete freedom—

1. In all the regions forming the basin of the Congo and its outlets. This basin is bounded by the watersheds (or mountain ridges) of the adjacent basins, namely, in particular, those of the Niari, the Ogowé, the Schari, and the Nile, on the north; by the eastern watershed line of the affluents of Lake Tanganyika on the east; and by the watersheds of the basins of the Zambesi and the Logé on the south. It therefore comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika, with its eastern tributaries."

Berlin Act, *supra* note 253, art. I(1).

261. *Id.* art. II.

All flags, without distinction of nationality, shall have free access to the whole of the coastline of the territories above enumerated, to the rivers there running into the sea, to all the waters of the Congo and its affluents, including the lakes, and to all the ports situated on the banks of these waters, as well as to all canals which may in the future be constructed with intent to unite the watercourses or lakes within the entire area of the territories described in Article I. Those trading under such flags may engage in all sorts of transport, and carry on the coasting trade by sea and river, as well as boat traffic, on the same footing as if they were subjects.

262. *Id.* art. III.

Wares, of whatever origin, imported into these regions, under whatsoever flag, by sea or river, or overland, shall be subject to no other taxes than such as may be levied as fair compensation for expenditure in the interests of trade, and which for this reason must be equally borne by the subjects themselves and by foreigners of all nationalities. All differential dues on vessels, as well as on merchandise, are forbidden.

*Id.*

263. *Id.* art IV ("Merchandise imported into these regions shall remain free from import and transit dues.").

264. *Id.* art. XXXIV.

Any Power which henceforth takes possession of a tract of land on the coasts of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

of transit under the conditions agreed upon.”<sup>265</sup> The Berlin Act was significant for the scant attention it paid to the interests, rights, and welfare of Africans, as well as for the absence of Africans at the negotiating table.

### B. *The Period of Treaty-Making*

In the period immediately following the Berlin Conference, European powers extended and consolidated their influence in Africa through military conquest and treaty-making. The treaties took two forms: those between Africans and Europeans, and those between the European powers themselves.<sup>266</sup> The African-European treaties were of two kinds. First, there were the commercial treaties and the slave trade treaties.<sup>267</sup> Second, there were the political treaties “by which African rulers either purportedly surrendered sovereignty in return for protection, or undertook not to enter into treaty obligations with other European nations.”<sup>268</sup> One example of an African-European treaty is the treaty between the Imperial British East African Company (IBEAC) and Buganda.<sup>269</sup> The African sovereign, Kabaka Mwanga II, actively sought the protection and help of the IBEAC in his struggle for power.<sup>270</sup> Although unwilling to give up his throne,

265. *Id.* art. XXXV.

266. Uzoigwe, *supra* note 250, at 31. Article VII of the agreement between Great Britain and Germany of July 1, 1890, concerning East Africa, provided thus:

The two Powers engage that neither will interfere with any sphere of influence assigned to the other by Articles I to IV. One Power will not in the sphere of the other make acquisitions, conclude Treaties, accept sovereign rights or Protectorates, nor hinder the extension of influence of the other. It is understood that no Companies nor individuals subject to one Power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter.

Anglo-German Agreement of 1890, art. VII. See generally Chanan Singh, *The Republican Constitution of Kenya*, INT’L & COMP. L.Q. 878, 881 (1965).

267. Uzoigwe, *supra* note 250, at 31

268. *Id.* Of the political treaties, Uzoigwe observed:

They were made either by representatives of European governments or by those of private organizations who later transferred them to their respective governments. If a metropolitan government accepted them, the territories in question were usually annexed or declared a protectorate; protectorate, if, on the other hand, it suspected their authenticity, or if it felt constrained . . . to exercise caution, these treaties were used for bargaining purposes during the bilateral European negotiations.

*Id.*

269. Uzoigwe, *supra* note 250, at 32.

270. In his letter to the company, he asked, “[B]e good enough to come and put me on my throne.” *Id.* In return he promised to repay the company with “plenty of ivory and you may do any trade in Uganda and all *you like* in the country under me.” *Id.*

Kabaka Mwanga II was willing to grant the Europeans unfettered freedom to engage in commercial activities in his territory.<sup>271</sup> Territories were often fraudulently obtained.<sup>272</sup> In return for false promises of protection, African rulers signed away their kingdoms and mortgaged their peoples for generations to come. The protection treaties were so lopsided that Captain F.D. Lugard, a British colonial administrator, wrote this letter in his diary:

No man if he understood would sign it, and to say that a savage chief has been told that he cedes all rights to the company in exchange for nothing is an obvious untruth. If he has been told that the company will protect him against his enemies, and share in his wars as an ally, he has been told a lie, for the company ha[s] no idea of doing any such thing and no force to do it with if they wished.<sup>273</sup>

### C. *Response of Africans and African Leaders to the Nineteenth Century Scramble*

Historians are divided on their interpretation of the attitude of Africans towards the establishment of colonialism. Some historians assert that many African tribes and rulers welcomed European rule because of the peace that resulted. Noted African historian Margery Perham writes:

[M]ost of the tribes quickly accepted European rule as part of an irresistible order, one which brought many benefits, above all peace, and exciting novelties, railways and roads, lamps, bicycles, ploughs, new foods and crops, and all that could be acquired and experienced in town and city. For the ruling classes, traditional or created, it brought a new strength and security of status and new forms of wealth and power. For many years after annexation, though, there was much bewilderment, revolts were very few, and there does not *appear* to have been much sense of indignity at being ruled.<sup>274</sup>

Other historians forcefully argue that “an overwhelming majority of African authorities and leaders were vehemently opposed to this change and expressed their determination to maintain the status quo and, above all, to retain their sovereignty and independence.”<sup>275</sup> The response of Prempeh 1 of Asante of Gold Coast (present day Ghana) is a case in point. When the British offered him protection in 1891, he replied:

271. In his instruction to his emissaries to IBEAC, Kabaka Mwanga II stated, “I do not want to give them . . . my land. I want all Europeans of all nations to come to Uganda, to build and to trade as they like.” *Id.*

272. *See id.* (discussing how treaties were fraudulently obtained).

273. 1 THE DIARIES OF LORD LUGARD, EAST AFRICA, NOVEMBER 1889–DECEMBER 1890, at 318 (Margery Perham & Mary Bull eds., 1963).

274. M. Perham, *Psychology of African Nationalism*, OPTIMA, X, I, at 27–36 (1960), *reprinted in* BOAHEN, *supra* note 250, at 9.

275. BOAHEN, *supra* note 250, at 3.

The suggestion that Asante in its present state should come and enjoy the protection of her Majesty the Queen and Empress of India I may say is a matter of very serious consideration, and which I am happy to say we have arrived at this conclusion, that my kingdom of Asante will never commit itself to such policy. Asante must remain as of old at the same time to remain friendly with all white men. I do not write this in a boastful spirit but in the clear sense of its meaning . . . [T]he cause of Asante is progressing and there is no reason for any Asante man to feel alarm at the prospects or to believe for a single instant that our cause has been driven back by the events of the past hostilities.<sup>276</sup>

Wobogo, the Moro Naba (King of the Mossi), was even more forthright in his rejection of an offer of protection. In 1895, he told Captain Destenave, the French officer:

I know that the whites wish to kill me in order to take my country, and yet you claim that they will help me to organize my country. But I find my country good just as it is. I have no need of them. I know what is necessary for me and what I want: I have my own merchants: also, consider yourself fortunate that I do not order your head to be cut off. Go away now, and above all, never come back.<sup>277</sup>

What is evident is that while some African rulers forcefully resisted European annexation and domination, others unwittingly welcomed Europe's offer of protection and friendship. However, as Boahen rightly notes, "[W]hatever strategy the Africans adopted, all of them—with the sole exception of the Liberians and Ethiopians—failed . . . to maintain their sovereignty."<sup>278</sup>

#### D. Lessons Learned

If not exactly a scramble, there is presently a strong competition to secure Africa's natural resources, principally oil.<sup>279</sup> While military conquest was used to further the goal of annexation and domination of the continent in the nineteenth century,<sup>280</sup> military conquest is not an overt part of the equation today.<sup>281</sup>

276. WEST AFRICAN RESISTANCE: THE MILITARY RESPONSE TO COLONIAL OCCUPATION 43–44 (Michael Crowder ed., 1971).

277. MICHAEL CROWDER, WEST AFRICA UNDER COLONIAL RULE 97 (1968).

278. BOAHEN, *supra* note 250, at 13. Uzoigwe has asked, "Why were European powers able to conquer Africa?" He attributes the victory to military superiority. According to Uzoigwe, "European powers were able to conquer Africa with such relative ease because in virtually every respect the dice was so heavily loaded in their favour." Uzoigwe, *supra* note 250, at 38. Some of the factors that worked in the favor of the Europeans included military superiority, overwhelming material and financial resources, and superior knowledge about Africa and its interiors (thanks to the activities of European missionaries and explorers). *Id.* at 38–39.

279. Sautman, *supra* note 167, at 7 (observing that Africa is the "most resource-laden continent" and is blessed with "light, sweet, highly profitable crude oil" and that there is a strong competition to secure African oil).

280. Uzoigwe, *supra* note 250, at 35–39 (observing that between 1885 and 1902, European powers, particularly the French, pursued a policy of military conquest in



In the nineteenth century, Western corporations and governments often colluded with African chiefs to exploit Africa's resources.<sup>282</sup> Similar practices continue today. Although much is made of China's lack of scruples in its search for oil, Western corporations are not innocent when it comes to a willingness to engage in corrupt business practices in Africa. According to Simon Taylor, director of Global Witness, "Western companies and banks have colluded in stripping Africa's resources. We need to track revenues from oil, mining[,] and logging into national budgets to make sure that the money isn't siphoned off by corrupt officials."<sup>283</sup> According to Charlotte Denny, economics correspondent with *The Guardian*:

The new scramble for Africa risks bringing more misery to the continent's impoverished citizens as Western oil companies pour billions of dollars in secret payments into government coffers throughout the continent. Much of the money ends up in the hands of ruling elites or is squandered on grandiose projects and the military.<sup>284</sup>

The economic concerns of the colonial Western powers prompted them to meet at the Berlin Conference.<sup>285</sup> At the conference, and in the resulting Berlin Act, the human rights and interests of Africans were

Africa. He notes, however, that Britain's military imperialism "was equally spectacular and bloody").

281. The announcement by Defense Secretary Robert Gates on February 6, 2007 of the creation of United States Africa Command (USAFRICOM), a unified combatant command for Africa, has raised concerns in many quarters. See Jim Garamone, *DoD Establishing U.S. Africa Command*, AM. FORCES PRESS SERV., Feb. 6, 2007 <http://www.defenselink.mil/News/NewsArticle.aspx?id=2940>. AFRICOM will be operational by September 30, 2008 and will oversee military operations on the African continent. *Id.* In his testimony before the Senate Armed Services Committee, Secretary Gates stated: "The President has decided to stand up a new, unified, combatant command, Africa Command, to oversee security cooperation, building partnership capability, defense support to non-military missions, and, if directed, military operations on the African continent." *Id.* Presently, responsibility for operations in Africa is divided among three combatant commands: U.S. European Command (EUCOM), U.S. Central Command (CENTCOM), and U.S. Pacific Command (PACOM). *Id.* EUCOM has responsibility for most of the nations in the African mainland except in the Horn of Africa. *Id.* CENTCOM has responsibility for Egypt, Sudan, Eritrea, Ethiopia, Djibouti, Somalia, and Kenya, while PACOM has responsibility for Madagascar, the Seychelles, and the Indian Ocean area off the African coast. *Id.*; see also Prashad, *supra* note 167 (stating that although the proximate issues used to push for AFRICOM were the ongoing crisis in Darfur and the failure of the United States to act in the Rwandan genocide in 1994, "the less-talked-about issue is the importance of African resources for the U.S. economy and for multinational corporations. Oil is, of course, a central character in this story").

282. See *supra* text accompanying note 250.

283. Share the World's Resources, *Revealed: The New Scramble for Africa*, <http://www.stwr.net/content/view/428/36> (last visited Feb. 12, 2008).

284. Denny, *supra* note 228.

285. See Uzoigwe, *supra* note 250, at 29–31 (discussing the purposes of the Berlin Conference).

virtually ignored.<sup>286</sup> The provision of the Berlin Act that addressed the welfare of Africans was very paternalistic and lacked depth.<sup>287</sup> While European powers assumed the responsibility to “watch over the preservation of the native tribes”<sup>288</sup> and to “care for the improvement of the conditions of their moral and material well-being,”<sup>289</sup> few rights were expressly guaranteed to the Africans.<sup>290</sup> Today, the rights and interests of Africa do not appear to feature strongly in the economic calculations of African leaders and their trading partners. Agreements are concluded in secret and rarely published.<sup>291</sup>

The nineteenth century commercial and political agreements between African leaders and European powers were concluded without public scrutiny or participation. Today, trade and concession agreements—some binding future generations—are also concluded without any public involvement.<sup>292</sup> Such secrecy is unacceptable. Openness and accountability are critical for stability and prosperity in Africa. Presently, multinational companies—Western as well as Chinese—are not required to disclose publicly their basic payments for resources to their governments, which results in massive revenue embezzlement.<sup>293</sup> Ordinary Africans, the real owners of the

286. Article IX of the Berlin Act, the only Article to address slave trade, merely stated:

Seeing that trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers, and seeing also that the operations, which, by sea or land, furnish slaves to trade, ought likewise to be regarded as forbidden, the Powers which do or shall exercise sovereign rights or influence in the territories forming the Conventional basin of the Congo declare that these territories may not serve as a market or means of transit for the trade in slaves, of whatever race they may be. Each of the Powers binds itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it.

Berlin Act, *supra* note 253, art. IX.

287. *Id.* art. VI.

288. *Id.*

289. *Id.*

290. The Act guaranteed only freedom of conscience and religious toleration. *Id.* Although this right was extended to natives, the primary concern was the protection of missionaries and their work. Thus, Article VI(b) states that “Christian missionaries, scientists[,] and explorers, with their followers, property and collections, shall likewise be the objects of especial protection.” *Id.*

291. GLOBAL WITNESS, TIME FOR TRANSPARENCY: COMING CLEAN ON OIL, MINING AND GAS REVENUES 92 (2004), [http://www.globalwitness.org/media\\_library\\_get.php/186/report.rtf](http://www.globalwitness.org/media_library_get.php/186/report.rtf) (commenting that the “extreme secrecy clauses” build into oil concessions agreement ensure that proper public accounting is impossible); Nicholas Miranda, Note, *Concession Agreements: From Private Contract to Public Policy*, 117 YALE L.J. 510, 519 (2007) (noting that government officials limit public involvement in concession agreements by disseminating little information about bid selection procedures and withholding the existence of concession agreements until they become binding).

292. GLOBAL WITNESS, *supra* note 291, at 92; Miranda, *supra* note 291, at 519.

293. GLOBAL WITNESS, *supra* note 291, at 5.

resources, are left dispossessed and reliant on donor assistance.<sup>294</sup> In a report that looked at the problem in five countries, including three countries in Africa,<sup>295</sup> Global Witness concluded:

In these countries, governments do not provide even basic information about their revenues from natural resources. Nor do oil, mining[,] and gas companies publish any information about payments made to governments . . . . Investigations . . . reveal that some companies have played a willing role in facilitating off-the-books payments, misappropriation of state assets, and other nefarious activities such as arms shipments, as part of an anti-competitive, under-the-table method of winning business with unaccountable regimes . . . . The end result is a litany of corruption, social decay, increased poverty, reinforcement of authoritarian government[,] and political unrest, which can ultimately lead to state failure and the spread of instability across regions.<sup>296</sup>

African leaders should involve their citizens in discussions about future direction of trade and investment in the continent. Ideally, the terms of trade and investment agreements should be readily available for public scrutiny and comment before they are concluded.

Thus far, natural resources in Africa have left a legacy of conflict, corruption, poverty, serious abuses of human rights, and environmental degradation.<sup>297</sup> Critics worry that increased trade between China and Africa may erode democratic gains made in Africa since the 1990s.<sup>298</sup> Africans remain spectators to arrangements and agreements that fundamentally affect their lives. While nineteenth-century African chiefs may have acted in ignorance in concluding lopsided treaties that offered no tangible benefit to Africa, ignorance is not an acceptable excuse today. Sadly, African leaders who resisted the annexation and domination of the continent in the nineteenth century were dismissed as being romantic and short-sighted.<sup>299</sup> African leaders must reject terms of engagement that

294. *Id.* at 6.

295. The five countries investigated were Kazakhstan, Congo Brazzaville, Angola, Equatorial Guinea, and Nauru. *Id.* at 4.

296. *Id.*

297. *See id.* at 21 ("Oil wealth [in Africa] has left a legacy of corruption, poverty and conflict.").

298. *See* Wilson Testimony, *supra* note 169, at 11.

It is clear that neither democracy nor transparency have much standing in China's policy repertoire. China has a consistent policy of not imposing explicit political conditionalities on its aid recipients. Their philosophy of non-interference in the internal affairs of other nations fits well with the policy preference of many African heads of state. Trade trumps transparency.

299. BOAHEN, *supra* note 250, at 12. In their 1962 book, *A Short History of Africa*, Oliver and Fage assert:

If these [African rulers] were far-sighted and well-informed, and more particularly if they had had access to foreign advisers such as missionaries or traders they might well understand that nothing was to be gained by resistance, and much by negotiation. If they were less far-sighted, less

undermine human rights and sustainable development, as well as arrangements that do not advance Africa's economic interest. Is a win-win trade relation conceivable? The jury is still out. Nevertheless, relationships that simultaneously depict sub-Saharan Africa as the object of charitable concern while removing billions of dollars of natural resources are no longer acceptable and must be seriously probed.<sup>300</sup>

To date, corruption has crippled Africa and is destroying present and future generations in a continent otherwise blessed with an abundance of natural resources.<sup>301</sup> A clear and transparent legal and regulatory framework is necessary to curb this corruption.<sup>302</sup> Corruption and the lack of transparency currently discourage the adoption of appropriate laws and regulations to inhibit malfeasance, fraud, financial-sector abuses, and diversion of government budget revenues.<sup>303</sup> Transparency by governments and companies—particularly in key sectors of the economy—as well as enhanced public financial management and accountability must be the cornerstone of the unfolding relationship between China and Africa.

fortunate, or less well-advised, they . . . would themselves assume an attitude of resistance, which could all too easily end in military defeat, the deposition of chiefs, the loss of land to the native allies of the occupying power, possibly even to the political fragmentation of the society or state.

ROLAND OLIVER & J.D. FAGE, *A SHORT HISTORY OF AFRICA* 203 (1962).

300. Leigh & Pallister, *supra* note 230 (observing that while Africa is the object of the West's charitable concern, billions of pounds' worth of natural resources are being removed from it, and revealing the findings of a Guardian investigation that instead of enriching often debt-ridden countries in Africa, some big corporations are facilitating corruption and provoking instability—so much so that organizations such as Friends of the Earth talk of an “oil curse”).

301. According to the U.S. Ambassador to Chile:

Corruption jeopardizes free markets and sustainable growth. It provides sanctuary to the forces of global terror. It facilitates the illicit activities of international and domestic criminals. It saps the legitimacy of democratic economies and can, in its extreme forms, threaten democracy itself. It also diverts public investment away from areas such as public sector modernization and social development—including education and health care—and into projects where bribes and kickbacks are more readily available. Dishonest, corrupt, and unethical behavior among public officials undermines the trust and confidence of the people that government can do “good” and advance the public interest.

Craig A. Kelly, Ambassador to Chile, Statement to APEC Meeting of Government Anticorruption Experts (Sept. 25, 2004), *available at* <http://canberra.usembassy.gov/hyper/2004/0928/epf204.htm>.

302. In NEPAD's framework document, African leaders pledged to take joint responsibility for “instituting a transparent legal and regulatory framework for financial markets and the auditing of private companies and the public sector.” New Partnership for Africa's Development, Framework Document, Oct. 2001, ¶ 49, *available at* <http://www.nepad.org/2005/files/documents/inbrief.pdf> [hereinafter NEPAD Framework Document]

303. Kelly, *supra* note 301.

African countries should immediately ratify the United Nations Convention Against Corruption (UNCAC) and facilitate timely implementation of the treaty. UNCAC provides a comprehensive framework for fighting corruption with its emphasis on prevention, criminalization, international cooperation, and asset recovery.<sup>304</sup> Transparency in the energy and extractive sector is very important. The Extractive Industry Transparency Initiative (EITI)<sup>305</sup> and other similar initiatives should play a critical role in investment relations between China and Africa.<sup>306</sup>

304. United Nations Convention Against Corruption, U.N. Doc. A/58/422 (Oct. 7, 2003), available at [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf).

305. Announced in September 2002 by British Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg, September 2002, EITI “supports improved governance in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining.” Extractive Industries Transparency Initiative, EITI Summary, <http://www.eitransparency.org/eiti/summary> (last visited Feb. 18, 2008).

To date, about fifteen African countries have either endorsed, or are now actively implementing, EITI. See Extractive Industries Transparency Initiative, Implementing Countries, <http://www.eitransparency.org/implementingcountries> (last visited Feb. 18, 2008) (showing a complete list of EITI countries). The countries in Africa implementing EITI are Angola, Cameroon, Chad, Democratic Republic of Congo, Republic of Congo, Gabon, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Sao Tome and Principe, and Sierra Leone. *Id.*

An EITI Source Book developed by the EITI Secretariat provides guidance for countries and companies wishing to implement the initiative. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, SOURCE BOOK (2005), available at <http://www.eitransparency.org/files/document/sourcebookmarch05.pdf>. Participants must embrace the twelve core EITI principle. Principle 1 emphasizes EITI participants’ shared “belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.” *Id.* at 8. Principle 4 “underline[s] the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.” *Id.* Participants also express belief “in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure” (Principle 7), as well as commitment to “encouraging high standards of transparency and accountability in public life, government operations and in business” (Principle 8). *Id.*

306. Another noteworthy initiative is the Group of Eight’s (G8) FIGHTING CORRUPTION AND IMPROVING TRANSPARENCY—A G8 ACTION PLAN (2003), available at <http://www.g8.fr/evian/extras/506.pdf> [hereinafter G8 TRANSPARENCY ACTION PLAN].

The Evian Declaration is the G8’s first specific statement on the importance of transparency of natural resource revenues and was welcomed by the Publish What You Pay (PWYP) international coalition of NGOs. Press Release, Publish What You Pay, G8 Must Follow Declaration on Oil, Gas and Mining Transparency with Action (June 2, 2003), available at [http://pwyp.gn.apc.org/english/pdf/releases/pwyp\\_020603.pdf](http://pwyp.gn.apc.org/english/pdf/releases/pwyp_020603.pdf). The Declaration outlines the G8’s commitments to take necessary steps to combat bribery, help recover and return stolen assets, and deny safe havens for corrupt officials. G8 TRANSPARENCY ACTION PLAN, *supra*, at 2. A few countries have been invited to undertake pilot partnerships in support of G8 anticorruption and transparency programs. Peru, Georgia, and Nicaragua are a few of the Countries that have agreed to participate in the pilot. Neil Levine, Chief, Governance Division Office,

## VI. CHINA-AFRICA RELATIONS: CRITICAL APPRAISAL AND A MODEST PROPOSAL

An assessment of Africa's relationship with China must be carried out against the backdrop of past and present scrambles for energy and strategic minerals in the continent. China-Africa trade relations must also be assessed against the backdrop of growing South-South trade and investment,<sup>307</sup> since developing countries are trading and investing more among themselves than ever before.<sup>308</sup> Finally, China-Africa trade and investment relations must be assessed in light of the shrinking opportunities for growth-enhancing trade between Africa and its traditional trading partners in the North, as well as the continent's dire need for new trade and investment opportunities.<sup>309</sup> As John Donnelly aptly notes, "[T]he Chinese . . . are making strategic economic inroads into a continent that, outside of oil investment, has long been written off by most Western companies as too risky because of poor governance or threat of conflict."<sup>310</sup>

DCHA, USAID, Report Before the USAID Advisory Committee on Voluntary Foreign Aid 10 (Feb. 16, 2005), available at [http://www.usaid.gov/about\\_usaid/acvfa/acvfafullreptfeb2005.pdf](http://www.usaid.gov/about_usaid/acvfa/acvfafullreptfeb2005.pdf).

307. Since the decolonization period in the 1950s and 1960s, commerce between developed countries and the developing countries of the South has dominated world trade. However, since 2000 the world has witnessed a massive increase in trade and investment flows between Asia and Africa. According to a recent World Bank report:

The acceleration of South-South trade and investment is one of the most significant features of recent developments in the global economy. . . . Today, Asia receives about 27[%] of Africa's export, in contrast to only about 14[%] in 2000. This volume of trade is now almost at par with Africa's export to the United States and the European Union (EU)—Africa's traditional trading partners. . . . Asia's exports to Africa also are growing very rapidly—about 18[%] per annum—which is higher than to any other region.

BROADMAN, *supra* note 2, at 1–2.

308. According to Supachai Panitchpakdi:

Today, developing countries are trading and investing more, and doing so increasingly among themselves. In just 10 years—between 1995 and 2005—the share of the South in global merchandise trade increased from 27.6% to 36%. Developing countries now account for nearly one fourth of world imports of commercial services, and are seeing a large and ever-expanding share of the US, Japan and EU export markets. In one year alone—2004—South-South trade soared by 14.6%, and has now outpaced total world trade growth. South-South trade is also becoming more complementary and more diversified, moving from primary commodities to manufactures and high-end services.

Panitchpakdi, *supra* note 69.

309. BROADMAN, *supra* note 2, at 2 (noting that over the period from 2000–2005, the EU's share of Africa's exports has been cut in half).

310. John Donnelly, *China Scooping Up Deals in Africa as US Firms Hesitate*, BOSTON GLOBE, Dec. 23, 2005, at A-1.

Africa needs new trade partners. The continent is also in dire need of FDI and technical assistance. While China-Africa trade and investment relations present Africa with immense opportunities to address her pressing needs, there are serious challenges, too. The challenge for Africa in its relationship with China is threefold. First, Africa must seek to maximize the opportunities without giving up fundamental values that are only now taking root in the continent. Second, Africa must avoid mistakes made during the colonial era that led to exploitation and balkanization of the continent. Finally, Africa must ensure that human beings, particularly Africa's poor, are not sacrificed at the altar of economic growth. Part V of this Article identifies and analyzes the potential gains and pitfalls of the unfolding relationship between Africa and China. The Author also offers suggestions for an African-China policy.

### A. China-Africa Relations: Potential Gain for Africa

#### 1. Africa's Need for New Trade Opportunities

Examination of Africa's trade performance over the past decade reveals a need for new trade opportunities. First, although Africa has witnessed an overall increase in its trade relative to gross domestic product,<sup>311</sup> Africa's share in world exports has fallen.<sup>312</sup> According to a 2004 report from UNCTAD, Africa's share in world exports fell from about 6% in 1980 to 2% in 2002, and its share of world imports fell from about 4.6% in 1980 to 2.1% in 2002.<sup>313</sup> Also of concern is Africa's heavy dependence on primary commodities as a source of export earnings.<sup>314</sup> Today, Sub-Saharan Africa "is the only region of the world that has not exhibited an increasing share of non-oil exports over the last two decades."<sup>315</sup> The share of manufactured exports in Africa's total merchandise exports has increased by only 10% since the 1980s.<sup>316</sup> Overall, compared to other regions such as

311. See U.N. Conference on Trade & Dev., *Economic Development in Africa: Issues in Africa's Trade Performance*, ¶ 1, U.N. Doc. TD/B/50/6 (July 28, 2003), available at [http://www.unctad.org/en/docs/tb50d6&c1\\_en.pdf](http://www.unctad.org/en/docs/tb50d6&c1_en.pdf) [hereinafter *Economic Development in Africa*] (reporting that trade as a share of GDP for sub-Saharan Africa, excluding South Africa and Nigeria, increased from 45.0% to 50.4% between 1980–1981 and 2000–2001); see also U.N. Conference on Trade & Dev., *World Economic Situation and Prospects 2007*, at 9, available at [http://www.unctad.org/en/docs/wesp2007\\_en.pdf](http://www.unctad.org/en/docs/wesp2007_en.pdf) [hereinafter *World Economic Situation and Prospects*] (noting that economic growth in Africa "has maintained a strong pace, reaching almost 5.6 per cent in 2006").

312. *Economic Development in Africa*, *supra* note 311, ¶ 1.

313. *Id.*

314. *Id.* ¶ 2 (observing that Africa depends more on primary commodities as a source of export earnings than any other developing region).

315. BROADMAN, *supra* note 2, at 7–8.

316. *Economic Development in Africa*, *supra* note 311, ¶ 5.

Asia and Latin America, Africa has not benefited from the boom in manufactured exports.<sup>317</sup> What boom the continent has experienced has been concentrated in a few countries. According to UNCTAD:

While the value of Africa's manufactures increased by 6.3[%] annually, this seemingly high growth is about half the growth rates recorded by Asia (14[%]) and Latin America (about 12[%]) and is from a relatively low base. It is also the result of significant growth in labour-intensive and resource-based semi-manufactures from a few countries, in particular Mauritius (garments) and Botswana (rough diamonds).<sup>318</sup>

Africa's commodity dependence means vulnerability to weather conditions and market vagaries and frequently results in terms-of-trade losses.<sup>319</sup> Price volatility also "aggravates difficulties in macroeconomic management" and "frustrates investment efforts as it increases uncertainty about overall economic conditions, including exchange rates, returns on investment, and import capacity."<sup>320</sup> Third, even in the fuel sector where Africa enjoys comparative advantages, the continent has fallen behind other developing countries in the export of non-fuel primary commodities.<sup>321</sup> Fourth, for most countries in Africa, market access remains a problem.<sup>322</sup> Because most of the tariff peaks are in agriculture and average agricultural tariffs are higher than tariffs on manufactured products, Africa suffers disproportionately given the region's dependence on commodities export.<sup>323</sup>

The continent's share in world merchandise exports fell from 6.3[%] in 1980 to 2.5[%] in 2000 in value terms. . . . Similarly, its share of total developing-country merchandise exports fell to almost 8[%] in 2000, nearly a third of its value in 1980, while the share of world manufactured exports remained a little below 1[%].").

317. *Id.* ¶ 4.

318. *Id.* ¶ 7.

319. *Id.* ¶ 2; see also *World Economic Situation and Prospects*, *supra* note 311, at 7 (observing that because of their narrow production and resources bases, the majority of LDCs remain vulnerable to weather shocks and are highly dependent on developments in commodity markets).

320. *Economic Development in Africa*, *supra* note 311, ¶ 26.

321. *Id.* ¶ 7 (observing that Asia outperformed other developing regions in non-fuel commodity exports between 1980 and 2000). According to UNCTAD:

The trends . . . indicate that most African countries have been losing market shares in commodity exports to other developing countries, while at the same time most have been unable to diversify into manufactured exports. Africa's difficulties in maintaining market shares for its traditional commodities derive from its inability to overcome structural constraints and modernize its agricultural sector, combined with [its] high cost of trading.

*Id.* ¶ 9.

322. *Id.* ¶ 16.

323. See *id.* (noting that most tariff peaks are in agriculture).



Overall, as a result of a host of factors, including small and shallow markets, underdeveloped market institutions, restricted market access, constraints on business competition, and poor regulatory climate, Africa “has not taken full advantage of international trade to leverage growth.”<sup>324</sup> Trade with Asian countries, particularly China, may open up new opportunities for Africa. According to the World Bank,

Africa’s exports to China and India have grown 1.7 times the growth rate of the continent’s total exports worldwide. Between India and China, it is China that is the more dynamic destination market for Africa’s exports. Exports to China grew by 48[%] annually between 1999-2004, compared to 14[%] for India. Ten percent of Sub-Saharan exports are now to China, and some 3[%] are to India. China has overtaken Japan as the leading importer of African products in Asia.<sup>325</sup>

Apart from the increase in the volume of African exports to China, trade with China may stimulate diversification and export of non-fuel products. Increasingly, labor-intensive raw and semi-processed agricultural commodities that are used for further processes are also exported to China.<sup>326</sup> In 2006, China promised to further open its market to Africa.<sup>327</sup> Concomitantly, China pledged to increase the number of export items that would be eligible for zero-tariff treatment (i.e., when exported from least-developed countries to China) from 190 to over 440.<sup>328</sup> It also pledged to launch bilateral negotiations with countries concerned with the early conclusion and implementation of related agreements.<sup>329</sup>

## 2. Africa’s Need for New Investment Opportunities

Africa urgently needs FDI. FDI provides the resources needed to finance sustained economic growth over the long term.<sup>330</sup> Although

324. BROADMAN, *supra* note 2, at 8.

325. *Id.* 11.

326. *Id.* 12.

327. *See id.* at 19 (heralding the January 2006 release of “China’s Africa Policy” which “identifies a large set of economic issues over which China proposes to cooperate with Africa, including trade, investment, debt relief, economic assistance, finance, agriculture, and infrastructure”).

328. Chang Ai’ling, *China, Africa Build New Partnership on Old Ties*, XINHUA NEWS AGENCY (P.R.C.), Oct. 2, 2007, available at [http://news.xinhuanet.com/english/2007-10/02/content\\_6821758\\_1.htm](http://news.xinhuanet.com/english/2007-10/02/content_6821758_1.htm).

329. Beijing Action Plan, *supra* note 92, ¶ 3.3.

330. Monterrey Consensus, *supra* note 77, ¶ 20.

Private international capital flows, particularly foreign direct investment, along with international financial stability, are vital complements to national and international development efforts. . . . [FDI] is especially important for its potential to transfer knowledge and technology, create jobs, boost overall productivity, enhance competitiveness and entrepreneurship, and ultimately eradicate poverty through economic growth and development.

FDI inflow as a percentage of Africa's gross fixed capital formation increased to 19% in 2005,<sup>331</sup> Africa's current share of global FDI is negligible—it stands at about 3%.<sup>332</sup> Outward FDI from the region as a whole is in decline.<sup>333</sup> Several factors—including lack of productive capacity, small regional markets, and lack of diversification into non-agricultural sectors—account for the steady decline in Africa's share in global FDI since the 1980s.<sup>334</sup>

China represents a new and growing source of FDI inflow to Africa.<sup>335</sup> According to media reports, China has now signed a Bilateral Investment Treaty (BIT) with twenty-eight African countries, and it has signed Agreements for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income with eight African countries.<sup>336</sup> With the increase in FDI from China comes a new aid-investment nexus that could stimulate human resource development in Africa. Indeed, the *2004-2006 China-Africa Inter-governmental Human Resources Development Plan* (2004-2006 Human Resources Plan), adopted after the second Ministerial Conference of the Forum, has now been successfully implemented.<sup>337</sup> Pursuant to the 2004-2006 Human Resources Plan, China trained over ten thousand African professionals in various fields under the African Human Resources Development Fund (AHRDF).<sup>338</sup> The Chinese government has also pledged to continue to provide specific training of professionals and management personnel for African countries in response to their needs, as well as to train fifteen thousand professionals for African countries in the next three years.<sup>339</sup>

Overall, Chinese investment in Africa could help diversify Africa's export base, strengthen the continent's domestic production capacity, and shape Africa's economic relations with the rest of the world in the years to come. Whether Africa can maximize the opportunities that the growing relationship with China presents is debatable. With the service and manufacturing sectors dominating outward FDI flows from developing countries, Africa's weak

331. *World Investment Report*, *supra* note 71, at 40 (noting that total FDI inflows into Africa "surged to reach \$31 billion in 2005, representing a historic growth rate of 78%").

332. *Id.* at 40.

333. *Id.*

334. *Id.* at 41.

335. *See id.* at 42 ("The key source countries of FDI inflows to Africa have remained the same for years, but investment from China and other Asian economies . . . increased, especially in the oil and telecom industries.").

336. *China-Africa Trade Hits US\$55.5 Billion in 2006*, *supra* note 114.

337. Beijing Action Plan, *supra* note 92, ¶ 5.2.1.

338. *Id.*

339. *Id.* ¶ 5.2.2.

manufacturing and service base may make Africa an unattractive market for Chinese investors.<sup>340</sup>

### 3. Africa's Need for Trade-Related Technical Assistance

Compared to other developing regions, Africa has been unable to modernize its agricultural sector, tap into cheaper finance, increase capital resources and skill, or develop efficient trade-facilitating infrastructural bases.<sup>341</sup> Africa suffers from a weak private sector.<sup>342</sup> Countries in Africa "lack a strong institutional capacity to provide the necessary support services to producers and exporters."<sup>343</sup> In short, even with increased market access and lower tariffs, most African countries may not be able to benefit from global trade unless supply-side constraints to trade and investment are addressed.<sup>344</sup> To benefit from the open global economy, most countries in Africa must enhance their supply and trading capacities. The continent needs adequate financial resources that can enable states to remove supply-side constraints through investments in trade production capacity, human resources and institutions, infrastructure, and technology.

Although world leaders have pledged to promote increased aid for building the trade and productive capacities of developing countries,<sup>345</sup> Africa's relationship with China holds a lot of promise.

340. *World Investment Report*, *supra* note 71, at 115 (observing that the service sector accounted for 81% of the total FDI stock of the developing and transition economies in 2004).

341. *See Economic Development in Africa*, *supra* note 311, ¶ 11 (observing that the continent has underdeveloped and unreliable road and railway networks and communication links as well as outdated information technology.).

342. *See id.* ¶ 10 ("Africa has also not been able to tap into cheaper finance, efficient logistics, and increased capital resources and skills . . .").

343. *Id.* ¶ 11.

344. *See World Economic Situation and Prospects*, *supra* note 311, at 52 ("[T]here is now overwhelming evidence that many developing countries require not only lower tariffs or improved market entry conditions but also enhanced supply and trading capacities in order to benefit from the open, global economy through the production and trading of competitive goods and services."); World Trade Org., *Aid for Trade*, [http://www.wto.org/english/tratop\\_e/dda\\_e/aid4trade\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/aid4trade_e.htm) (last visited Jan. 25, 2008) ("Many poor countries lack the basic infrastructure to take advantage of the market access opportunities resulting from a successful outcome to the Doha Round of trade negotiations."). For developing countries, particularly the least-developed countries, the importance of increased market access cannot be ignored, however. At the United Nations World Summit in 2005, leaders pledged to "work towards the objective . . . of duty-free and quota-free market access for all least developed countries' products to the markets of developed countries, as well as to the markets of developing countries in a position to do so" and also to "support their efforts to overcome their supply-side constraints." 2005 World Summit Outcome, *supra* note 76, ¶ 29.

345. *See 2005 World Summit Outcome*, *supra* note 76, ¶ 30 ("We are committed to supporting and promoting increased aid to build productive and trade capacities of developing countries and to taking further steps in that regard, while welcoming the substantial support already provided.").

China has promised to “step up China-Africa cooperation in transportation, communication, water conservancy, electricity[,] and other infrastructures.”<sup>346</sup> Under the 2007-2009 Action Plan, China has committed to send one hundred senior experts on agricultural technologies to Africa and to establish ten demonstration centers of agricultural technology in Africa.<sup>347</sup> China has also undertaken to establish cooperation with Africa in extending applicable agricultural technologies and human resource training.<sup>348</sup> The important point to note is that China is providing assistance in areas that Western aid agencies and private investors have long neglected.<sup>349</sup>

---

At the level of the World Trade Organization, there has been much talk on trade-related capacity building for developing countries, particularly LDCs. At the Sixth Ministerial Conference of the WTO in December 2005, trade ministers endorsed the Aid for Trade Initiative and gave the WTO Director General a mandate to create a Task Force to provide recommendations on how to operationalize Aid for Trade. World Trade Org., *Implementing Paragraph 57 of the Hong Kong Ministerial Declaration*, [http://www.wto.org/english/tratop\\_e/dda\\_e/implementing\\_par57\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/implementing_par57_e.htm) (last visited Jan. 25, 2008). According to Paragraph 57 of the Hong Kong Ministerial Declaration:

We welcome the discussions of Finance and Development Ministers in various fora, including the Development Committee of the World Bank and IMF, that have taken place this year on expanding Aid for Trade. Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade. Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access. However, it can be a valuable complement to the DDA. We invite the Director-General to create a task force that shall provide recommendations on how to operationalize Aid for Trade. The Task Force will provide recommendations to the General Council by July 2006 on how Aid for Trade might contribute most effectively to the development dimension of the DDA. We also invite the Director-General to consult with Members as well as with the IMF and World Bank, relevant international organisations and the regional development banks with a view to reporting to the General Council on appropriate mechanisms to secure additional financial resources for Aid for Trade, where appropriate through grants and concessional loans.

World Trade Org., Organization, Hong Kong Ministerial Declaration, WT/MIN(05)/DEC (Dec. 18, 2005), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm#aid\\_for\\_trade](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm#aid_for_trade)

346. China's African Policy, *supra* note 8, pt. IV, sec. 2.5.

The Chinese Government will step up China-Africa cooperation in transportation, communication, water conservancy, electricity and other infrastructures. It will vigorously encourage Chinese enterprises to participate in the building of infrastructure in African countries, scale up their contracts, and gradually establish multilateral and bilateral mechanisms on contractual projects. Efforts will be made to strengthen technology and management cooperation, focusing on the capacity-building of African nations.

347. Beijing Action Plan, *supra* note 92, ¶ 3.1.3.

348. *Id.*

349. According to a 2005 report by the U.S. Council on Foreign Relations:

## B. Africa's China Policy: A Modest Proposal

What principles ought to guide the relationship between Africa and China going forward? This Subpart identifies several issues that should be in the minds of policy-makers in Africa as they contemplate a trade and investment relationship with China.

### 1. Proactivity

Africa must learn from the mistakes of the past. During the colonial era, African states were mere spectators, and they suffered for it. Africans cannot afford to be passive observers of this unfolding relationship between the continent and China. Africans and African leaders must “proactively identify how to maximise the opportunities and the potential know-how China presents.”<sup>350</sup> This requires the active involvement of Africa’s civil society, including scholars, members of the private sector, trade unions, and women’s groups. Proactivity calls for a careful review of actual market conditions in China. What “at-the-border” and “behind-the-border” rules and regulations in China could operate as effective barriers to African export? What tariffs do African exporters face in China? How might non-tariff barriers in China affect African exports? These questions are important because, according to the World Bank, African exports face relatively high tariffs in Asia.<sup>351</sup> The overall tariff effectiveness on African imports in Asian countries “is in part a reflection of the lack or limited scope of Asian preferences granted to Africa compared to those granted by the United States and EU.”<sup>352</sup> What is perhaps shocking is that “[a]mong Asian countries, the tariff levels of China and India on African products remain high.”<sup>353</sup> Specifically, in China

---

China is . . . investing and providing assistance in areas that Western aid agencies and private investors have long neglected: physical infrastructure, industry, and agriculture. USAID has not funded heavy infrastructure project since the late 1970s. Both USAID and the World Bank reduced assistance to agriculture by as much as 90[%] in the 1990s. Yet these are areas that are once again recognized as essential for Africa’s growth. U.S. companies are also most heavily invested in the extractive industries, whereas Chinese companies are eager to go into many other fields.

MORE THAN HUMANITARIANISM, *supra* note 229, at 48.

350. Moeletsi Mbeki, Deputy Chairman, S. Afr. Inst. of Int’l Aff., Address at the China in Africa in the 21st Century: Preparing for the Forum on China-Africa Cooperation Conference (Oct. 16, 2006), available at [http://saiia.org.za/images/upload/Moeletsi%20\\_China\\_in\\_Africa.pdf](http://saiia.org.za/images/upload/Moeletsi%20_China_in_Africa.pdf).

351. See BROADMAN, *supra* note 2, at 130 (“Although Asian tariffs for Africa are gradually declining, the trend is very weak, especially for exports from African least developed countries (LDCs).”).

352. *Id.*

353. *Id.* at 131.

as well as in India, tariff rates on agricultural products are high.<sup>354</sup> Although China has a zero tariff on raw materials for which there is high demand, it places moderate to high tariffs on other imports.<sup>355</sup> High tariffs, particularly on agricultural products, are troubling as they have the tendency to discourage African exports.<sup>356</sup>

Tariff peaks and escalations in the Asian market are another cause of concern that must be closely monitored.<sup>357</sup> According to the World Bank, tariff escalation "is quite visible in Asian markets on some of the leading exports from Africa."<sup>358</sup> Tariff escalations in China discourage processing activities in Africa,<sup>359</sup> and they result in Africa's continued dependence on primary production.<sup>360</sup>

Non-tariff barriers (NTBs) are another area that calls for vigilance on the part of African governments. For Africa, certain circumstances may subvert the expected gains from trade; these circumstances include the increase of sanitary and phytosanitary technical measures in many countries, the fact that most technical measures in other countries are applied to agricultural products (the primary export from Africa),<sup>361</sup> and the fact that developed countries and Asia have doubled their technical measures.<sup>362</sup> The World Bank has noted that African countries "overall carry a higher NTB burden than any other continent because the majority of [least developed

---

354. *Id.*

355. *Id.* at 132.

356. *See id.* at 134 ("High Indian and relatively high Chinese tariffs on agricultural products are of particular concern as higher tariff rates tend to be applied to the products in which African countries have growth potential.")

357. *Id.* at 135 ("Asia's tariff structure consists of many peaks and escalations."). Tariff peaks arise when a government maintains excessively high tariffs on products that the government considers sensitive in order to protect domestic producers. *Id.* Tariff escalation is a term used to describe a situation where an importing country, with a goal of protecting its processing or manufacturing industry, sets low tariffs on imported raw materials used by the industry but sets higher tariffs on finished products in order to protect the goods produced by the industry. *Id.* at 137.

358. *Id.*

359. *Id.*; World Trade Org., Understanding the WTO, Some Issues Raised, [http://www.wto.org/English/thewto\\_e/whatis\\_e/tif\\_e/dev4\\_e.htm](http://www.wto.org/English/thewto_e/whatis_e/tif_e/dev4_e.htm) (last visited Feb. 19, 2008) (noting that when importing countries escalate their tariffs, "they make it more difficult for countries producing raw materials to process and manufacture value-added products for export.")

360. *See* NEPAD Framework Document, *supra* note 302, ¶ 153 (noting that African economies are vulnerable because of their dependence on primary production and resource-based sectors, and urging that "[v]alue-added in agro-processing and mineral beneficiation must be increased and a broader capital goods sector developed through a strategy of economic diversification based on intersectoral linkages.")

361. *See* BROADMAN, *supra* note 2, at 145 ("LDCs carry a higher than average burden of NTBs because they export mainly agricultural products.")

362. *Id.* at 144.

countries, or LDCs] are in Africa.”<sup>363</sup> NTBs, especially technical standards, can pose three challenges to LDCs, most of which are in Africa. First, “LDCs lack the capacity to regulate based [on] technical standards, which means that their markets are less protected by NTBs than countries with such capacity.”<sup>364</sup> Second, “LDCs have less capacity to comply with NTBs imposed by other countries. This means that the actual barriers imposed by NTBs are effectively more binding for LDCs, where the capacity is weaker than for other countries where the capacity is high.”<sup>365</sup> Third, “a disproportionately large part of LDCs’ exports face NTBs due to their concentration on agricultural exports, where the majority of NTBs lie. For African LDCs, the cost of NTBs can be extremely high relative to the[] small size of their economies.”<sup>366</sup> African leaders must be vigilant to monitor Chinese market conditions and ensure that China keeps its promise of greater market access.<sup>367</sup>

## 2. Disaggregated Data

Because Africa is not homogenous, the relationship between the continent and China is bound to have a disparate impact on different countries in Africa.<sup>368</sup> In general, although the gains from South-South trade and investment cooperation have been celebrated, not all countries have benefitted.<sup>369</sup> Instead of broad speculations and generalizations, efforts must be made to identify the impact of Sino-African trade on the different countries in Africa and on different groups within each country. It is important to have a clear picture of the winners and losers in this unfolding relationship, not only as

---

363. *Id.* at 145. The World Bank also notes that “NTBs are . . . present in African industries where protection of domestic businesses from import surges is sought.” *Id.*

364. *Id.* at 146.

365. *Id.*

366. *Id.*

367. *See id.* at 134 (noting that China has plans to further lower its tariffs and bring about lower dispersions in the structure of tariffs by the end of 2007).

368. *See* Sidiropoulos, *supra* note 11, at 103 (“[T]here can be no single blueprint that can help all African countries rise to the challenges that China presents.”).

369. According to Supachai Panitchpakdi, Secretary-General of UNCTAD:

The United Nations Day for South-South Cooperation is an appropriate occasion to celebrate the good news about the rise of the South. . . . Unfortunately, as we know too well, the good news does not apply to developing countries or regions across the board; many of the most vulnerable countries are worse off today than ever. Income disparities between and within countries is growing, and in many nations the international development goals are unlikely to be met.”

between countries in Africa, but also as between groups within a country.

With China's interest concentrated in the energy sector and raw materials, the winners are likely to be countries endowed with oil, natural gas, and other raw materials. The losers are likely to be countries that are poor in natural resources. Not only will these countries not benefit from increased trade with China, they are likely to suffer the effect of an increase in global commodity prices brought about by China's economic expansion. FDI in Africa has traditionally been concentrated geographically and industrially.<sup>370</sup> A large proportion of Africa's FDI inflow is concentrated in mining, particularly in oil and gas.<sup>371</sup> The result is that only five countries—South Africa, Egypt, Nigeria, Morocco, and Sudan—account for 66% of Africa's FDI inflow.<sup>372</sup> Export trade is also geographically and industrially concentrated.<sup>373</sup> "Five oil- and mineral-exporting countries account for 85[%] of Africa's exports to China."<sup>374</sup> As the second largest oil producer in Africa today, Angola is China's most important trading partner on the continent.<sup>375</sup> Angola became the largest supplier of crude oil to China in February 2006, surpassing Saudi Arabia (second place) and Iran (third place).<sup>376</sup> In sum, LDCs will probably benefit the least as a result of limited natural resources, political instability, and lack of diversification into the manufacturing sector.<sup>377</sup>

Within these countries, the winners are likely to be the urban rich who can afford the manufactured goods from China that are flooding the continent.<sup>378</sup> Those who control the energy sector are also likely to benefit from FDI inflows from China.<sup>379</sup> Local producers

370. *World Investment Report*, *supra* note 71, at 41.

371. *Id.* at 40.

372. *Id.* at 41, fig. II.4. According to the *World Investment Report 2006*, South Africa registered the largest inflows taking about 21% of the region's total. Other leading recipients of FDI inflows in Africa include: Chad, Equatorial Guinea, Algeria, Tunisia, and the Democratic Republic of the Congo. *Id.*

373. See BROADMAN, *supra* note 2, at 12 ("The current geographic distribution of Africa's origin markets for the continent's export to China and India is concentrated.").

374. *Id.* at 9.

375. Chinese Ministry of Commerce of the P.R.C., *China's Portuguese Connection*, Sept. 26, 2006, <http://big5.mofcom.gov.cn/gate/big5/english.mofcom.gov.cn/aarticle/subject/chinaportuguese/lanmub/200609/20060903270793.html>.

376. *Id.*

377. *World Investment Report*, *supra* note 71, at 42 (observing that LDCs received the least FDI in Africa).

378. MORE THAN HUMANITARIANISM, *supra* note 229, at 48–49 (noting that Chinese consumer goods are flooding African markets, thus raising concerns about the effect on local industries).

379. See *id.* at 52 (noting that China is reaching out to U.S. oil companies to assist with deep water oil exploration off the coast of Equatorial Guinea).



and manufacturers are likely to lose as a result of increased competition from China.<sup>380</sup>

### 3. Interrogate Reciprocity

Will Africa actually benefit from trade and investment relations with China? How would deepened relationships affect domestic industries and employment trends on the continent? While Asian firms are increasingly establishing businesses in Africa, FDI in Asia by African firms is negligible, both in relative and absolute terms.<sup>381</sup> It is unlikely that African corporations will invest in China in the short- to medium-term.<sup>382</sup> FDI outflow from Africa is negligible compared to overall global FDI outflow.<sup>383</sup> Worse, outward FDI from Africa is in decline.<sup>384</sup> Africa's FDI in China is thus likely to be negligible.<sup>385</sup> Although China attracts the most foreign direct investment among developing countries, Africa is not enjoying the windfall.<sup>386</sup> Only South African corporations are likely to contemplate investing in China.<sup>387</sup> Other countries that could

380. See *id.* at 49 (suggesting that Chinese textile exports to Africa are undermining the local industry in countries such as South Africa and Nigeria).

381. See BROADMAN, *supra* note 2, at 12 ("While there is some African FDI in China and India, this investment is dominated by the flows of Chinese and Indian FDI in Africa.")

382. See *id.* at 13 (suggesting that China's strict import policies and high tariff rates make it difficult for African companies to import their goods to China).

383. See *World Investment Report*, *supra* note 71, at 45 ("FDI outflows from Africa were a minuscule proportion of global outflows—0.1%—and only 0.9% of developing-country outflows.")

384. *Id.* at 44 (observing that outward FDI from Africa fell to \$1.1 billion from \$1.9 billion).

385. African countries do not feature in the list of top ten countries investing in China. According to the Chinese Ministry of Commerce,

In January 2007, the top 10 counties [sic]/regions[ten] countries/regions that invested in China are: Hong Kong (1.677 billion USD), British Virgin Islands (1.019 billion USD), South Korea (396,000,000 USD), Japan (323,000,000 USD), Singapore (246,000,000 USD), U.S.U[nited] S[tates] (236,000,000 USD), Mauritius (191,000,000 USD), Taiwan (136,000,000 USD), Cayman islands (134,000,000 USD), and Samoa (117,000,000 USD), which accounted for 86.62% of China's total actual foreign investment."

Ministry of Commerce of the P.R.C., *China Attracted 5.175 Bln USD of FDI in January 2007*, Feb. 16, 2007, <http://english.mofcom.gov.cn/aarticle/newsrelease/significantnews/200702/20070204389692.html>.

386. See Ministry of Commerce of the P.R.C., *Foreign Direct Investment in China Reached No.4 Worldwide in 2006*, Jan. 25, 2007, <http://english.mofcom.gov.cn/aarticle/newsrelease/significantnews/200701/20070104311875.html> ("Foreign capital inflow in Africa was focused on petroleum exploration and refining industries.")

387. See BROADMAN, *supra* note 2, at 12 (observing that while there is some African foreign direct investment in China, this investment is dominated by the flows

possibly benefit from the investment opportunities in China are Nigeria, Liberia, Morocco, Libya, and Egypt; together with South Africa, these countries account for 81% of Africa's FDI outflow.<sup>388</sup> Regarding trade, Africa's exports to Asia represent only about 1.6% of the worldwide exports to Asia.<sup>389</sup>

Despite the rhetoric of mutual benefit and win-win cooperation, competition between African and Chinese producers is a major source of concern for producers and manufacturers in Africa. According to the World Bank, "the rise of internationally competitive Chinese and Indian businesses has displaced domestic sales as well as exports from African producers, such as textile and apparel firms, whether through investments by Chinese and Indian entrepreneurs on the Sub-Saharan continent or through exports from their home markets."<sup>390</sup> Furthermore, "Sectors such as agriculture and food, machinery, non-durable, non-construction services, and textiles appear to face tougher competition from China and India than do other sectors."<sup>391</sup> Is Africa able to produce tradable, internationally competitive goods and services?<sup>392</sup> The forecast is grim. According to the World Bank,

Most African nations . . . possess a rather thin base of internationally competitive private sector enterprise and the related institutions and infrastructure needed for them to be able to engage in sustainable and commercially attractive international transactions. Under these conditions, . . . there would be limited or perhaps no supply response to any beneficial reform in trade and investment policies that might materialize.<sup>393</sup>

African leaders must adopt clear policies in response to competitive pressure from China and other countries in Asia. This does not necessarily call for protectionism.<sup>394</sup> Competition will likely affect the profitability and future viability of firms in Africa and presents grave survival and unemployment threats.<sup>395</sup> At the very least, governments in Africa must create enabling environments for the domestic private sector and adopt policies to protect those that will be affected by the competition.

of Chinese FDI in Africa); *World Investment Report*, *supra* note 71, at 40 (noting that Africa's outward investors are primarily from South Africa).

388. *World Investment Report*, *supra* note 71, at 45.

389. BROADMAN, *supra* note 2, at 3.

390. *Id.*

391. *Id.* at 203.

392. *See id.* at 13 (observing that in order for trade to take place, tradable goods and services must be produced).

393. *Id.* at 13-14.

394. Undoubtedly, import competition can have some positive effects. First, it could motivate firms in Africa to effectively differentiate their products in order to capture a market niche. Second, competitive pressure from import competition could motivate the private sector in Africa to be more internationally competitive.

395. BROADMAN, *supra* note 2, at 204.

#### 4. Maximizing Opportunities, Addressing Supply-Side Constraints

African leaders must effectively address the supply-side constraints to trade.<sup>396</sup> Africa cannot benefit from trade with China unless the continent is able to produce competitive goods for export and actively identify where markets exist for these products in China. Presently, "African producers do not effectively capture the benefit of low tariffs for some products in Asian markets due to a lack of production capacity."<sup>397</sup> Indeed, Chinese preferential tariffs for African LDCs have so far been underused.<sup>398</sup> According to the World Bank, Africa's exports under the existing preferential tariff accounts for only 25% of total exports from LDCs in Africa.<sup>399</sup> The need to address supply-side constraints is particularly strong in the agricultural sector because the agrarian systems in the continent are presently weak and unproductive.<sup>400</sup> Within the framework of NEPAD, African leaders have resolved to "improve access to, and affordability and reliability of, infrastructure services for both firms and households."<sup>401</sup> To this end, they resolved to increase investment in infrastructure and improve system maintenance that will sustain infrastructure.<sup>402</sup> These are welcomed plans that should be fully implemented.

---

396. According to the NEPAD Framework document:

If Africa had the same basic infrastructure as developed countries, it would be in a more favorable position to focus on production and on improving productivity for international competition. The structural gap in infrastructure constitutes a very serious handicap to economic growth and poverty reduction. Improved infrastructure, including the cost and reliability of services, would benefit both Africa and the International Community, which would be able to obtain African goods and services more cheaply.

NEPAD Framework Document, *supra* note 302, ¶ 98.

397. BROADMAN, *supra* note 2, at 137 (citing the example of cotton yarn in China, and noting that although the tariff on cotton yarn is relatively low in comparison to the tariff on cotton, African countries have not been able to take advantage of low tariffs on cotton products).

398. *Id.* at 170. ("In 2004, African LDCs actually exported products that correspond to only 72 of the 190 lines with zero tariffs.")

399. *Id.*

400. See NEPAD Framework Document, *supra* note 302, ¶ 130 ("Improvement in agricultural performance is a prerequisite of economic development on the continent. The resulting increase in rural people's purchasing power will also lead to higher effective demand for African industrial goods. The induced dynamics would constitute a significant source of economic growth.")

401. *Id.* ¶ 102.

402. *Id.* ¶ 97.

## 5. Private Sector-Led Relationships

The private sector is a stakeholder in Africa's development.<sup>403</sup> Africa will benefit from Sino-African trade to the extent that the continent has a strong, vibrant private sector able to engage in trade with China and equipped to access and compete for market openings in China.<sup>404</sup> The relationship between governments and businesses in Africa must be reassessed and strengthened. The communication channel between governments and the private sector should be open and transparent. The quality of information governments are able to provide to businesses in Africa about market conditions in China should be reviewed. Do states in Africa provide timely and regular reports on the trade and investment climate in China that could enable the private sector to have better knowledge of China's trade regimes and practices? Are there opportunities for African businesses to report market barrier problems to governments in Africa in a timely fashion? Are governments able to follow-up on complaints when they are made? China is definitely ahead in this regard. Since 2003, China's Ministry of Commerce (MOFCOM) has published the Foreign Market Access Report (FMA Report) annually.<sup>405</sup> The stated goal of the FMA Report is to

[enable] Chinese enterprises and relevant organizations to have better knowledge [of] the trade regimes and practices of China's trading partners in the field of trade in goods and services as well as foreign investment, to obtain a full-scaled understanding of competition on [the] global market, and thus to participate in the international competition on an even ground.<sup>406</sup>

The FMA Report also serves as a vehicle for "expressing the concerns of the Chinese government and industries over the external environment for trade development."<sup>407</sup> The 2005 Report covered twenty-two trading partners of China, including Egypt, South Africa, and Nigeria.<sup>408</sup> For each trading partner, the Report presented

403. See *id.* ¶ 56 (issuing a request from the African leaders that "the African people take up the challenge of mobilizing support for the implementation of the NEPAD initiative by setting up, at all levels, structures for organization, mobilization and action").

404. See United Nations, Office of the Special Adviser on Africa, Private Sector, <http://www.un.org/africa/osaa/privatesector.html> (last visited Feb. 15, 2008) ("A vibrant domestic private sector promises to be a virtuous link in the cycle of improving the competitiveness of African economies, signaling the existence of an enabling environment for business, and attracting foreign investment, which in turn strengthens international competitiveness of African economies.").

405. The Foreign Market Access Report is published pursuant to the Foreign Trade Law and the Regulations on Administration of Import and Export of Goods. See MINISTRY OF COMMERCE OF THE P.R.C., FOREIGN MARKET ACCESS REPORT 2005 (2005).

406. *Id.* at 2.

407. *Id.*

408. *Id.* at 3.

information on three main areas: bilateral economic and trade development, trade and investment regulatory regime, and barriers to trade and investment.<sup>409</sup>

There are interesting developments on the horizon. Within the context of NEPAD, the private sector is expected to play a significant role in the future.<sup>410</sup> There are also new initiatives aimed at fostering private-public partnership.<sup>411</sup> In NEPAD's framework document, African leaders acknowledge that "[p]rivate enterprise must be supported."<sup>412</sup> Under the framework, private enterprise includes "both micro-enterprises in the informal sector and small and medium enterprise in the manufacturing sector, which are principle engines of growth and development."<sup>413</sup> The framework calls upon governments to "remove constraints on business activity and encourage the creative talents of African entrepreneurs."<sup>414</sup>

## 6. Enabling Environment for Trade and Investment

For Africa to benefit from trade and investment relations, governments must improve the business environment on the continent.<sup>415</sup> Businesses, domestic and foreign, face many obstacles in Africa, including excessive regulation, lack of transparency and predictability, corruption, and anti-competitive practices.<sup>416</sup> Domestic and foreign firms lose millions due to corruption, red tape,

409. *Id.* at 4.

410. See Office of the Special Adviser on Africa, Report on the Ad Hoc Expert Group Meeting on the Contributions of the Private Sector to the Implementation of the New Partnership for Africa's Development 1 (2005), available at <http://www.un.org/africa/osaa/reports/Midrand%20WorkShop%20Report%20Contribution%20of%20the%20Pte%20Sector.pdf> (observing that the private sector's role in NEPAD is critical and its importance "well acknowledged both by the leaders of African countries and by the private sector itself").

411. In 2005, the Office of the Special Adviser on Africa of the UN Secretariat, in collaboration with the NEPAD Secretariat, organized an expert group meeting on the theme "The Contribution of the Private Sector in the Implementation of NEPAD." *Id.*

412. NEPAD Framework Document, *supra* note 302, ¶ 153.

413. *Id.*

414. *Id.*

415. According to Hilary Benn MP, the Secretary of State for International Development in the U.K.:

If Africa is to achieve the 7% growth necessary to meet the key MDG of halving the number of people in poverty by 2015, the business environment must improve. . . . [T]here is the perception that Africa's security, health and infrastructure problems mean it is a poor place to do business."

Press Release, Dept. for Int'l Dev., Africa Opening for Business: Prime Minister Confirms UK Support for Africa's Investment Climate Facility (ICF) (Nov. 17, 2005), available at <http://www.dfid.gov.uk/news/files/pressreleases/investment-climate-facility.asp>.

416. *Id.*

and regulatory uncertainty.<sup>417</sup> Presently, “many countries [in Africa] lack the policy and regulatory frameworks for private-sector growth,” as well as the “capacity to implement programs.”<sup>418</sup> According to Cohen and Alasa, key obstacles to foreign investment fall into three main categories: legal regimes and regulatory certainty,<sup>419</sup> lack of property rights,<sup>420</sup> and political instability and corruption.<sup>421</sup> Corruption in Africa is legendary. African countries also ranked low in the *2007 Index of Economic Freedom*, published by The Heritage Foundation and The Wall Street Journal, in terms of protecting property rights.<sup>422</sup>

The establishment of the Investment Climate Facility for Africa (ICF) is a step in the right direction. A new private-public partnership, the ICF is focused on improving Africa’s investment climate.<sup>423</sup> ICF’s mission is “to make Africa an even better place to do business, by removing obstacles to domestic and foreign investment and by promoting Africa as an attractive investment destination.”<sup>424</sup> Important African institutions, major donor agencies, and key private sector interests have all endorsed ICF.<sup>425</sup> ICF is set up to support

417. See *South Africa Industry: Undermined*, ECONOMIST INTELLIGENCE UNIT, Nov. 17, 2006 (citing a survey by the South African Chamber of Mines that found that red tape and regulatory uncertainty cost the mining sector 5 billion to 10 billion Rand (\$0.7 billion–\$1.4 billion) per year in lost investment).

418. NEPAD Framework Document, *supra* note 302, ¶ 86.

419. According to Cohen & Alasa, “Africa is one of the world’s most difficult places to do business. In many African oil-producing countries, investors face arbitrary or nonexistent law enforcement, selective and stifling taxation, conflicting legal codes, high transaction costs, shoddy infrastructure, and pervasive corruption.” Cohen & Alasa, *supra* note 17, at 3.

420. *Id.* at 4 (noting that property rights are the first institution that should be strengthened in Africa and calling for “clearly written and well-enforced land and mineral rights laws,” as these form the “bedrock for economic development and help to attract foreign investment”).

421. In an indicting critique, Cohen and Alasa assert:

Doing business in Africa requires facing significant political risks, including coups, ethnic strife, resource battles, and unstable transfers of power. Investment in the energy sector incurs even greater risks because of large initial capital costs and longer time horizons. If a new regime takes power and expropriates a multibillion-dollar project without paying full and fair compensation, investors can lose their entire investment.

*Id.* at 3.

422. The *2007 Index of Economic Freedom* measured and ranked 161 countries across ten specific freedoms: labour freedom, business freedom, trade freedom, monetary freedom, financial freedom, freedom from government, freedom from corruption, fiscal freedom, property rights, and investment freedom.

See 2007 INDEX OF ECONOMIC FREEDOM (Wall St. J. & Heritage Found. eds., 2007).

423. The Investment Climate Facility for Africa, Welcome: ICF Mission, <http://www.investmentclimatefacility.org> (last visited Jan. 20, 2008).

424. *Id.*

425. The Investment Climate Facility for Africa, Supporters, <http://www.investmentclimatefacility.org/supporters.htm> (last visited Jan. 20, 2008).

“appropriately targeted practical interventions” and to “systematically focus on areas where practical steps can be taken to remove identified constraints and problems.”<sup>426</sup> With the goal of enhancing the quality of economic and public financial management as well as corporate governance, African leaders agreed in 2001 to create a Task Force “to review economic and corporate governance practices in the various countries and regions, and to make recommendations on appropriate standards and codes of good practices.”<sup>427</sup>

## 7. Respect for Human Rights

The impact of Sino-African trade and investment on human rights cannot be ignored. Critics of China’s engagement in Africa are concerned that profit will be placed over principle.<sup>428</sup> Sticking points include China’s dubious stance on the Darfur crisis,<sup>429</sup> China’s arms

426. The Investment Climate Facility for Africa’s website explains the objectives of the Facility. Facility: At the initial phase, ICF operations will be driven by three strategic themes: intra-African trade, facilitation of business development, and expansion and facilitation of financial and investment environment. The Investment Climate Facility for Africa, About Us, <http://www.investmentclimatefacility.org/about.htm#icfinbrief> (last visited Jan. 20, 2008). Regarding intra-African trade, the emphasis is on “improving Africa’s import and export environment and improving and simplifying administration in order to facilitate cross-border trade.” *Id.* With respect to facilitation of business development and expansion, ICF will focus on “ICF and infrastructure development, business registration and licensing and property rights.” *Id.* Finally, regarding facilitation of financial and investment environment, the emphasis will be on “developing capital markets, increasing access to finance for enterprises, improving the regulatory environment for second and third tier institutions and facilitating improved digital infrastructure.” *Id.*

427. NEPAD Framework Document, *supra* note 302, ¶ 89.

428. For a critical discussion of China’s willingness to trade principle for profit, see Brad Adams & Peter Takirambudde, *Letter to China on the Crisis in Darfur*, Jan. 29, 2007, available at <http://hrw.org/english/docs/2007/01/29/sudan15189.htm> (“Chinese oil companies have frequently been operating in areas where communities complain of a wide range of abuses.”).

429. In an open letter to China’s president on January 29, 2007, Brad Adams (Executive Director of Asia Watch) and Peter Takirambudde (Executive Director of Africa Watch) urged China to use its influence to end the conflict in Darfur and to use the revenue from the Sudanese oil for the benefit of the poor. *Id.*

In the January 29 letter, the authors urged China to “seriously consider the important step of supporting through the UN the imposition of targeted sanctions on key Sudanese officials responsible for Darfur policy,” “in cooperation with other Security Council members, authoriz[ing] the establishment of a United Nations-administered trust fund for the victims of atrocities,” “establish[ing] new mechanisms to monitor the end-use of its weapons,” “examin[ing] the connection between Sudanese oil development and human rights abuses,” and “issu[ing] an overview or white paper on China’s policies toward the Sudan over the past decade.” *Id.*

The authors recommended sanctions, including freezing assets as well as travel restrictions applied to the Sudanese Minister of Defence and other high-level officials. *Id.* In requesting increased Chinese support for UN efforts in Sudan, Adams and

sales to regimes in Africa,<sup>430</sup> and China's friendship with leaders that Western governments seek to isolate, such as Robert Mugabe of Zimbabwe.<sup>431</sup> Critics see China as the major stumbling block to U.S. efforts to impose economic and military sanctions on countries such as Sudan, Myanmar, and Iran.<sup>432</sup>

Any claims of friendship made by China with respect to the African people will ring hollow if the Chinese government does not use its leverage to address human rights abuses on the continent. With its engagement in Africa, China has a fresh opportunity to prove that it can be a responsible international power.<sup>433</sup> Efforts to cast talk of democracy and human rights as a tool of anti-imperialism ignores internal pressure for reform in Africa. Human rights and respect for the rule of law can and should be strong components of South-South cooperation.<sup>434</sup> Chinese and African leaders must not let the spirit of the Bandung Conference die. Arguably, the Bandung

Takirambudde called attention to the fact that China has recently supported the imposition of sanctions elsewhere. *Id.* They note:

China has recently publicly supported sanctions against Iran and imposed lesser restrictions on North Korea for their nuclear activities. The crisis in Sudan is no less critical, either for its victims in Darfur or for the millions of civilians living in the region who now face threats to their lives and livelihoods because of the regional instability caused by Darfur's conflict. Millions of civilians face this nightmare because of the Sudanese government's policies of supporting abusive armed groups both within Sudan and across Sudan's borders. China can demonstrate its support for regional peace and security by publicly calling for an end to abusive domestic and foreign policies.

*Id.*

430. Brookes & Shin, *supra* note 248, at 4 (observing that African dictators "are regular buyers of Chinese weapons and military equipment, which they often use to oppress minority populations, quash political opposition, harass neighboring countries, and extinguish any glimmers of democratization").

431. *See id.* at 1 (observing that China "aids and abets oppressive and destitute African dictatorships by legitimizing their misguided policies and praising their development models as suited to individual national conditions").

432. *See, e.g.,* Thalif Deen, *How to Curb China's Arms Trade*, ASIA TIMES, June 14, 2006, <http://www.atimes.com/atimes/China/HF14Ad01.html> (last visited Feb. 15, 2008).

With the threat of its veto, China has expressed strong reservations over recent Western attempts either to penalize or impose sanctions against Sudan, Myanmar and Iran for various political reasons. Nor has the 15-member Security Council been able to take any action against any of the three countries because of opposition from China or Russia—or both.”)

433. *See* Drew Thompson, *Economic Growth and Soft Power: China's Africa Strategy*, CHINA BRIEF, Dec. 7, 2004, at 1, 3 (noting that China "has an opportunity to fulfill its aspirations as a 'responsible power' through cooperating with the international community to help promote security and stability in the region").

434. Katzenellenbogen, *supra* note 1 ("If and when China takes on a more active political reform, it is likely that elements of its Africa policy might also change to give human rights and governance more emphasis.”).



Conference was much more than an anti-colonial and anti-Western forum. Indeed, the leaders that gathered in Bandung in 1955 considered the achievement of respect for human rights important.<sup>435</sup> Principle 1 of the Bandung Conference called for respect for fundamental human rights as set forth in the United Nations Charter.<sup>436</sup> In the Doha Declaration, adopted by the Group of 77 and China following the Second South Summit in 2005, leaders of developing countries acknowledged that “good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development, and eradication of poverty and hunger,” and that “sound economic policies, solid democratic institutions responsive to the needs of the people, [and] respect for all human rights. . . should also be pursued.”<sup>437</sup> Moreover, as world leaders rightly noted in the Monterrey Consensus adopted at the Conference on Financing for Development that

[g]ood governance is essential for sustainable development. Sound economic policies, solid democratic institutions responsive to the needs of the people[,] and improved infrastructure are the basis for sustained economic growth, poverty eradication[,] and employment creation. Freedom, peace and security, domestic stability, respect for human rights, including the right to development, and the rule of law, gender equality, market-oriented policies, and an overall commitment to just and democratic societies are . . . essential and mutually reinforcing.<sup>438</sup>

The place of human rights in China’s Africa policy is vague at best. Even while asserting that “[t]he universality of human rights and fundamental freedoms should be respected,” the Beijing Declaration of 2000 goes on to state that “[c]ountries, that vary from one another in social system, development level, historical and cultural background and values, *have the right to choose their own approaches and models in promoting and protecting human rights in their own countries.*”<sup>439</sup> The Declaration further asserts that “the politicization of human rights and the human rights conditionalities on economic assistance should be vigorously opposed as violation[s] of human rights.”<sup>440</sup> While African dictators undoubtedly welcome such claims, they are troubling to human rights groups in Africa, most of whom have pushed for human rights conditionalities in economic assistance.<sup>441</sup> Such statements fuel the speculation that China’s

435. Bandung Conference, *supra* note 33, at 6.

436. *Id.*

437. Doha Declaration, *supra* note 52, ¶ 10.

438. Monterrey Consensus, *supra* note 77, ¶ 11

439. *Beijing Declaration of the China-Africa Cooperation Forum*, *supra* note 5 (emphasis added).

440. *Id.*

441. See, e.g., Adams & Takirambudde, *supra* note 428 (suggesting that the Security Council require the Sudanese government/Government of Sudan to contribute

Africa policy is intended to benefit the corrupt elites rather than the masses, and that the policy “grants [to] the elites of each country the [power to be the] arbiters of what are or what are not ‘human rights’ and also [to determine] how such rights should be protected (or not as the case may be).”<sup>442</sup> Within the context of NEPAD, African leaders have resolved to take “joint responsibility” for “[p]romoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency[,] and participatory governance at the national and subnational levels,”<sup>443</sup> and for “[i]nstituting transparent legal and regulatory frameworks for financial markets and the auditing of private companies and the public sector.”<sup>444</sup> The time for action is now.

## 8. Examining Readiness

Will the continent only be a source of cheap raw materials for China and a dumping ground for Chinese goods? Do African leaders have the will and capacity to protect their people from exploitation and abuse? Is Africa really ready to do business with China, or will history repeat itself? Although China likes to cast itself as a developing country and readily draws on a shared history of colonization and domination, China is a well-crafted, sophisticated economy, at least compared to economies in Africa. Dumping is already a problem and is likely to grow.<sup>445</sup> Regarding readiness, several questions may be asked:

- Do African countries have the institutional capability and expertise to initiate anti-dumping, countervailing, product-specific safeguard investigations against Chinese exporters if necessary? From 1995 to the first half of 2004, WTO members initiated 2,537 anti-dumping cases, 356 (or one-seventh) of which involved Chinese products.
- Do states in Africa have information in place to help domestic companies and organizations learn the investment systems and practices of China and understand barriers to trade and investment so that those African companies and organizations

---

to a trust fund to help support ongoing humanitarian assistance to the region, and urging China to support such measures).

442. TAYLOR, *supra* note 18, at 69

443. NEPAD Framework Document, *supra* note 302, ¶ 49.

444. *Id.*

445. Dulue Mbachu, *Nigerian Resources: Changing the Playing Field*, 13 S. AFR. J. INT'L AFF. 77, 80 (2006) (“Chinese exporters have been accused of dumping goods, particularly textiles, in Nigeria.”).

may participate in international competition on equal grounds?<sup>446</sup>

- Do states have a technical trade-barrier warning system that can alert African exporters and investors of potential problems in China and other countries?<sup>447</sup>
- Do states in Africa have the expertise and resources to trace and detect counterfeit or adulterated goods imported into the continent, particularly harmful food and drug imports?<sup>448</sup>
- Do states in Africa have the capability to monitor human rights conditions in Chinese-run and other foreign-run businesses and the willingness to enforce appropriate labor standards?<sup>449</sup>

446. See OFFICE OF THE U.S. TRADE REP., 2004 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 57–95 (2004), available at [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2004/2004\\_National\\_Trade\\_Estimate/2004\\_NTE\\_Report/asset\\_upload\\_file218\\_4743.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file218_4743.pdf) (explaining China's barriers to international trade).

447. *China to Set Up Technical Trade Barrier Warning System*, PEOPLE'S DAILY (P.R.C.), Jan. 14, 2005, [http://english.people.com.cn/200501/14/eng20050114\\_170704.html](http://english.people.com.cn/200501/14/eng20050114_170704.html).

448. See Mbachu, *supra* note 445, at 80 (noting that the influx of Chinese goods into Nigeria has generated complaints of unfair trading practices, including the dumping of fake and substandard goods into the country). In Nigeria, Asian companies, displaced by enforcement action in countries such as China and Taiwan, are finding "greener" pastures in Nigeria and other Third World countries with weaker or nonexistent enforcement apparatuses. For a discussion of the influx of Chinese business and the accompanying enforcement problems, see Kunle Aderinokun, *Foreign Investments in Nigeria Hit \$35bn*, THIS DAY (Nig.), Aug. 20, 2007, available at <http://www.thisdayonline.com/nview.php?id=86827.2007>. In 1995, Akina, a company reportedly owned and operated by some Chinese merchants, was barred from illegal mass reproduction of copyright products by the Nigerian Copyright Commission (NCC). See *Chinese Firm Sealed Up for Piracy*, THIS DAY (Nig.), June 11, 2005, available at <http://www.thisdayonline.com/nview.php?id=19789.2005>. Surprisingly, the same company had been sanctioned the previous year for illegal operation. However, unknown to authorities, the company continued to produce pirated copies under a new name: Kwangwang Nigeria Limited. *Id.*

449. In Mozambique, a Chinese-owned company was allegedly paying Mozambicans below minimum wage, but cooked up the wage sheet sent to the Provincial Labour Directorate to avoid detection. See TAYLOR, *supra* note 18, at 104 (noting that "in December 2005, it was alleged" that a Chinese-owned timber company in Mozambique "was paying its Mozambican workers wages that were below the statutory minimum wage"). In 2005, it was alleged that a Chinese-owned timber company in Mozambique was paying Mozambican workers wages that were below the mandated minimum wage. However, in order to evade Mozambican labor laws, the owners of the company produced two wage sheets every month. *Id.* According to the *Agencia de Informacao de Mocambique*:

On one of these sheets, the one sent to the Provincial Labour Directorate, every thing appears to be legal. . . . But the sheets sent to the Directorate are phoney, and bear forged signatures. . . . [W]hen [a] correspondent went to the company and spoke to the workers, he found that they had not been paid for

China cannot be singled out for special or heightened scrutiny. The questions are pertinent in all dealings between Africa and its trading partners. Trade between China and Africa will be shaped by the terms of any future trade and investment treaties that the two sides conclude, rather than by promises made at high diplomatic meetings. Although FTAs have proliferated in recent times,<sup>450</sup> none exist between China and any country or group of countries in Africa.<sup>451</sup> There is, however, a FTA currently under negotiation between China and South Africa.<sup>452</sup> Presently, multilateral commitments under the WTO govern trade between China and most countries in Africa.<sup>453</sup> In the Africa Policy Paper, China stated that “[w]hen conditions are ripe, China is willing to negotiate Free Trade Agreement (FTA) with African countries and African regional organizations.”<sup>454</sup> With respect to bilateral investment treaties (BITs), although China has signed BITs with many countries in Africa,<sup>455</sup> the terms of most of the treaties are not generally public.

## VII. CONCLUSION

The global economy and the global balance of power both have to be seriously reconsidered in light of China’s ascendance in the twenty-first century.<sup>456</sup> Experts project that China will become the world’s largest economy in 2027 if it stays on the same economic

---

December, and were unsure whether they would be paid before the end of the year. . . . [A] second wage sheet, not shown to the Directorate, contains the real wages.

*Id.* (citing an *Agencia de Informacao de Mocambique* report).

450. See BROADMAN, *supra* note 2, at 165 (noting that FTAs and RTAs “have proliferated around the world,” and that since June 2006, “197 RTAs have been filed with the WTO.”).

451. *Id.* at 165–66 (observing that agreements between countries in Africa and Asia are “very limited in number”).

452. *China, South Africa to Launch Free Trade Talks*, CHINA DAILY, July 1, 2004, [http://www.chinadaily.com.cn/english/doc/2004-07/01/content\\_344575.htm](http://www.chinadaily.com.cn/english/doc/2004-07/01/content_344575.htm).

453. See BROADMAN, *supra* note 2, at 166–67 (“[T]he basic contours of trade between Africa and China . . . are still subject to WTO rules and standards, including procedures for dispute settlement.”).

454. Chinese Government Official Web Portal, China’s African Policy, [http://www.gov.cn/misc/2006-01/12/content\\_156490.htm](http://www.gov.cn/misc/2006-01/12/content_156490.htm) (last visited Feb. 15, 2008).

455. See BROADMAN, *supra* note 2, at 158 (indicating that China is “among the top 10 developing countries that have signed the most BITs . . . with other developing countries” and that “China has by far the most BITs with other African countries.”).

456. See Mbeki, *supra* note 350 (“China’s developmental trajectory is forcing both the developed and the developing world to think differently about the global economy and the global balance of power.”).

track.<sup>457</sup> Clearly, “South-South cooperation is changing the landscape of international relations.”<sup>458</sup> As Mr. Anwarul K. Chowdhury (United Nations Under-Secretary-General and High Representative for the Least Developed Countries, Landlocked Countries, and Small Island Developing States) has rightly noted, “Historically, developing countries tended to look to the North for trade, investment[,] and other development opportunities. In the last decade . . . it has become clear that increased interaction among countries of the South can bring immense economic and social benefits.”<sup>459</sup>

Developed and developing countries alike have to rethink their relations with China. In light of the fact that barely thirty years ago, “China’s per capita income was a mere 7.5% of Western Europe’s,” but “by 2000, it had reached around 20% of Europe’s per capita income,” there is a lot Africa could learn from China.<sup>460</sup> For one thing, Africa could learn from China’s success in reducing extreme poverty in the last three decades.<sup>461</sup> In contrast to China, the number of people living in extreme poverty in Africa over the past three decades has steadily risen.<sup>462</sup>

In assessing Sino-African trade and investment relations, it is necessary to go beyond grand rhetoric, particularly the rhetoric of anti-hegemonism and mutual support. China must be judged by its deeds and not by its words.<sup>463</sup> Trade deficits and unbalanced terms of trade should be a big cause for concern for African leaders. Trade between China and Africa has traditionally been unbalanced in

457. William Foreman, *China’s Influence Spreads Around the World*, WASH. POST, Sept. 2, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/01/AR2007090100638.html>.

458. Anwarul Chowdhury, Under-Sec’y-General and High Rep. for the Least Developed Countries, Landlocked Countries and Small Island Developing States, *Celebrating the Global South: Diversity and Creativity*, Address before the Trusteeship Council (Dec. 19, 2005), available at <http://www.un.org/special-rep/ohrills/Statements/19%20Dec%2005%20-%20South-South%20Cooperation.pdf>.

459. *Id.*

460. Mbeki, *supra* note 350.

461. *See id.* (noting China’s impressive record on poverty reduction: “In 1981 about 64% of the Chinese population lived on less than one dollar a day. By 2001 this had been reduced to 17%.”).

462. *See id.* (indicating that poverty in Africa is rising, and today, “[a]lmost half of Africa’s population is considered to be living below the poverty line of one dollar a day.”).

463. In 1956, John Cooley aptly warned that

the overblown, verbose propaganda world of “paper tigers” and “armed struggle” is colorful and often effective. But neither Africans nor anyone else should allow it to obscure the often cautious and prudent nature of what the Chinese actually do in a given situation, as opposed to what they say about it. Chinese words in Africa have spoken louder than Chinese actions.

China's favor,<sup>464</sup> and this trend continues. In the Declaration of the Beijing Summit, the two sides merely noted "the necessity to move towards balanced and enhanced trade" and acknowledged "the need to assist in improving the production capacity in Africa and in diversifying the composition of African exports."<sup>465</sup> While "[n]oting with concern the imbalance in the two-way trade and the need to address it as soon as possible," China merely promised, among other things, to "encourage its enterprises to give preference to the import of African products in the light of market demand and conditions."<sup>466</sup>

Colonialism wreaked havoc on the economies of African states. Unfortunately, "failures of political and economic leadership in many African countries impede" economic development today.<sup>467</sup> Respect for human rights, transparency, and private sector participation must constitute the foundation for unfolding Sino-African trade relations. African leaders must ensure that China-Africa trade and investment relations do not undermine their renewed commitment to promote democracy and human rights and to institute transparent legal and regulatory frameworks on the continent.

Although China may have "effectively ended Western dominance" of economies in Africa,<sup>468</sup> Africa should not hastily part ways with its traditional Western trading powers for several reasons. First, much about China's relationship with Africa is still grounded in unenforceable promises. Only time will tell if China will keep its promises and if the arrangement will be mutually beneficial to all. Second, there is no guarantee that China will remain in Africa in the long-term. China may lose interest in the continent, as it has done in the past, if its economic expectations are not met.<sup>469</sup> As Taylor

464. TAYLOR, *supra* note 18, at 71 ("Traditionally, Sino-African trade has been vastly unbalanced in China's Favour.").

465. Declaration of the Beijing Summit, *supra* note 91, ¶ 4.1.

466. *Id.* ¶ 4.4.

467. NEPAD Framework Document, *supra* note 302, ¶ 34 ("At the same time, we recognize that failures of political and economic leadership in many African countries impede the effective mobilization and utilization of scarce resources into productive areas of activity in order to attract and facilitate domestic and foreign investment.").

468. Mbachu, *supra* note 445, at 82 (suggesting that the Chinese "have effectively ended Western dominance" of Nigeria and that "their presence has resulted in a change in the country's global relations"); *see also* World Economic Forum, *Trade Winds: Chinese Investment in Africa* (Jan. 26, 2006), available at [http://www.weforum.org/en/knowledge/KN\\_SESS\\_SUMM\\_16446?url=/en/knowledge/KN\\_SESS\\_SUMM\\_16446](http://www.weforum.org/en/knowledge/KN_SESS_SUMM_16446?url=/en/knowledge/KN_SESS_SUMM_16446) ("Whether oil in Angola, timber in Mozambique or copper in Zambia, China is breathing new life into these African economies." (quoting Elizabeth Economy, Senior Fellow & Dir., Asia Studies, Council on Foreign Relations)).

469. From the mid-1980s, China became very preoccupied with internal matters and with its interactions with Russia and the United States; consequently, it virtually lost interest in the continent. TAYLOR, *supra* note 18, at 59–60 (noting that "[b]y the mid-1980s it was apparent that China had effectively lost interest in Africa" and suggesting, as a rationale for the shift, that in China's modernization drive, China

rightly notes, "China's economic dealings with most African countries are today based on a cool evaluation of their perceived economic potentials."<sup>470</sup> In the 1980s, Africa was marginalized by a Beijing government that was intent on modernization and that came to view the continent as irrelevant to its modernization quests.<sup>471</sup> While China continued to pay lip-service to such issues as South-South cooperation, Taylor asserts that "the reality of the situation was that Beijing's foreign policy was firmly directed towards maintaining and developing cordial relations with the Superpowers as a means by which China might foster its economic modernization programme."<sup>472</sup> It was only after the Tiananmen Square debacle that China, shocked by the depth of Western condemnation, was forced to revive anti-hegemonic and anti-imperialist rhetoric and to reexamine its foreign policy towards Africa.<sup>473</sup>

Should Africa decide to forge even stronger ties with China, there will be many challenges in the years ahead. To benefit from Sino-African trade, knowledge of Chinese legal, social, and political systems is required. Language barriers could be a problem for Africans. Today, as in the 1960s, only a handful of Africans speak Chinese.<sup>474</sup> By contrast, the Chinese are unlikely to have problems communicating with Africans. English and French—the two main European languages spoken widely in Africa—are increasingly taught in Chinese schools.<sup>475</sup> While some scholars have dismissed as ridiculous an announcement in 2006 that Zimbabwe's government hoped to see Mandarin Chinese taught in universities,<sup>476</sup> there is

---

shifted towards Europe, the United States, and Japan, as Africa was perceived as having very little to offer in terms of trade and strategic needs).

470. *Id.* at 71.

471. *Id.* at 60–61.

472. *Id.* at 60.

473. *See id.* at 62 (noting that the post-Tiananmen era saw China redouble its effort in southern Africa and continue its anti-hegemonic posturing).

474. *See HUTCHINSON, supra* note 22, at 179–80 (explaining that since very few Africans spoke Chinese in the 1960s, the Chinese took it upon themselves to learn the language; this led to a temporary solution of the communications barrier, but also meant that most African people did not need to expand their knowledge of Chinese beyond rudimentary words).

475. *See* Burton Bollag, *The New Latin: English Dominates in Academe*, CHRON. HIGHER EDUC., Sept. 8, 2000, at A73, available at <http://chronicle.com/weekly/v47/i02/02a07301.htm> ("In China, where using English could once could have resulted in a prison sentence, the language is now on the highly competitive national university-entrance examination. A recent government survey found that 70 percent of urban Chinese have studied English.")

476. *See* TAYLOR, *supra* note 18, at 125 (stating that the Zimbabwean government does not care about the effect its policies is having on the economy as long as China offers support and that this "has now reached rather ridiculous lengths, with the announcement . . . that Zimbabwe's government was hoping to see Mandarin taught in Universities."); *see also Zimbabwe Planning Chinese Lessons*, BBC NEWS, Jan. 26, 2006, available at <http://news.bbc.co.uk/2/hi/africa/4649692.stm> (sharing an

nothing ridiculous or stupid about Africans learning languages that would help them navigate an increasingly globalized world. European languages such as English and French are taught in virtually every university and secondary school in Africa.<sup>477</sup> Racial discrimination against Africans trying to do business in China may also be a problem in the future. Early experiments to further the education of Africans in China in the 1960s and 1970s failed.<sup>478</sup> African students in China reported experiencing racial discrimination and complained about poor facilities and political indoctrination.<sup>479</sup> Disgruntled students organized protest demonstrations, requested to leave China, and even went on hunger strikes.<sup>480</sup>

The present pattern of trade between Africa and China, which closely mirrors the pattern of trade between African states and European powers during colonial rule, raises a red flag. Presently, Africa is exporting only primary commodities to China and is importing manufactured and higher-level products from China.<sup>481</sup> Might the relationship motivate African leaders to reevaluate their economic and development strategies and their trade and investment agenda? Or is the China-Africa relationship yet another opportunity for African leaders to line their pockets and their foreign bank accounts with ill-gotten wealth? Much will depend on the *de facto* rules and principles that guide Sino-African relations in the future, and on how the two sides address the issues of corruption, lack of transparency and popular participation, accountability, and respect for human rights.

---

announcement by Education Minister Stan Mudenge that Zimbabwe would try to implement Chinese language lessons in their schools).

477. See Bollag, *supra* note 475 (indicating that English is the predominant language of academic life in multiple African countries).

478. See HUTCHINSON, *supra* note 22, at 186–87 (noting that multiple students, from several countries in the program, reported brutality, racism, and poor education, and resorted to extreme measures in order to leave China).

479. In the 1960s and 1970s, African students who had been to China to study reported experiencing racial discrimination. See, e.g., EMMANUEL HEVI, AN AFRICAN STUDENT IN CHINA 134–35, 162–70, 183–89 (1964) (recollecting Hevi's own experiences with racial discrimination during the time he spent studying in China).

480. HUTCHINSON, *supra* note 22, at 187.

481. BROADMAN, *supra* note 2, at 8–10.



\*\*\*