University of Arkansas, Fayetteville

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September, 2007

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Uche Ofodile

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TRADE, EMPIRES AND SUBJECTS: CHINA-AFRICA TRADE - A NEW FAIR TRADE ARRANGEMENT OR THE THIRD SCRAMBLE FOR AFRICA?

By

Uche U. Ofodile

I. INTRODUCTION

The year 2006 was dubbed “China’s Year of Africa.”¹ Since 2000, the interest of the People’s Republic of China ("China") in Africa has grown steadily.² The Forum on China-Africa Cooperation ("Forum" or “FOCAC”) was created by Africa and China and formally launched in October 2000 to serve as a vehicle for promoting China-Africa friendship and cooperation.³ In October 2000, Beijing hosted the ministerial conference of the Forum ("First Ministerial

¹ Associate Professor, University of Arkansas School of Law. LL.M. (London), LL.M. (Harvard), S.J.D. (Harvard). There is currently a dearth of systematic data pertaining to China-Africa trade. As the World Bank study recently noted, “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 Tyalor, 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 terms 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 interest and U.S. foreign policy will be critically evaluated in future articles as they become available.

² Le ni Wild and David Mephan, Introduction, THE NEW SINOSPHERE: CHINA IN AFRICA 1(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.”). Harry Broadman, AFRICA’S SILK ROAD: CHINA AND INDIA’S NEW ECONOMIC FRONTIER 1 (2007)(observing that today’s scale of China and India’s trade and investment flow with Africa are “wholly unprecedented.”).

³ China-Africa Forum, Address By Hu Jintao, President of the People’s Republic of China At the Opening Ceremony of the Beijing Summit of The Forum on China-Africa Cooperation, http://english.focacsummit.org/2006-11/04/content_4978.htm (“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.”). (hereinafter “President Hu Jintao’s Address”).
The first of its kind in the history of China-Africa relations, the First Ministerial Conference drew over 5000 attendees including, China’s Foreign Minister Tang Jiaxuan, a representative of the China’s Ministry of Foreign Trade and Economic Cooperation, Shi Guangsheng, and about 80 ministers in charge of foreign affairs and international trade and economic cooperation from 44 African countries. Even countries that did not have diplomatic relations with China such as Malawi and Liberia sent observers to the meeting. Since 2000, several other conferences have been organized. The Second China-Africa Forum on Cooperation was held in Addis Ababa Ethiopia, from December 15 to 16, 2003. More recently, the Beijing Summit & Third Ministerial Conference on China-Africa Cooperation took place in November 2006. In January 2006, the Chinese Government, for the first time, issued an African Policy Paper. Since January 2006, Chinese President Hu Jintao and Premier Wen Jiabao have paid friendly visits to at least 10 African countries. For example, in January 30, 2007, Chinese President Hu Jintao embarked on a 12-day tour of Africa, the second trip to the continent in less than a year.

Emerging discourse on the China-Africa relationship depicts China either as the new imperial power or as Africa’s benefactor. In the West, reaction to China’s involvement in Africa

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7 Id.


has bordered on suspicion and paranoia. Policy makers 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. The current struggle over Africa’s resources evokes worrying memories of an earlier scramble for pieces of the continent in the late nineteenth century by Western European powers and in the 1950s and 1960s by Eastern powers, principally China and Russia. China’s involvement in Africa has serious implications not only for Africa and

11 Elizabeth Sidiropoulos, Options for the Lion in the Age of the Dragon, 13(1) SOUTH AFRICAN JOURNAL OF INTERNATIONAL AFFAIRS 97 (2006)(observing that recent discourse in most parts of the world over China’s involvement in Africa has often been characterized by paranoia.).

12 See generally, Joshua Eisenman, Sino-Japanese Oil Rivalry Spills into Africa, ENERGY SECURITY, January 19, 2006. Cyril Widdershoven, Chinese Quest for Crude Increases Focus on Africa, ENERGY SECURITY, November 15, 2004 (suggesting a growing conflict between Western and Asian countries as they seek to outbid each other for key hydrocarbon assets 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.”)

13 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. Africa’s raw materials were eyed for their value to Europe's continuing industrialization and thus ensued 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. A purely 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. In all, fourteen countries were represented at the conference. These included, in alphabetical order: Austria-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. See Wikipedia, Scramble for Africa, http://en.wikipedia.org/wiki/Scramble_for_Africa (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.)

14 In Chapter Four of his book titled “The Second Scramble for Africa,” Emmanuel John Hevi describe 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” (emphasis in the original).

Africans but also for U.S. security and energy interests. This paper examines the opportunities and pitfalls that renewed Sino-Africa trade relations presents for Africa, traces the evolution in China-Africa partnership discourse, identifies the basic legal and policy framework of the unfolding relations, and calls for a clear Africa policy regarding China. The paper will also seek to identify the core characteristics of China’s partnership with Africa.

The emphasis is on the trade and investment dimension of the Sino-Africa relations. Instead of paranoia, this paper calls for guarded optimism regarding the deepening relationship between Africa and China. With China confident emergence on 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. However, 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 in the continent or undermine respect for human rights and human dignity. 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 of the scramble for Africa in the nineteenth century, African leaders must avoid the economic, political and legal pitfalls of the past and position the

Sadly, the effect of the struggle between China and Russia on the continent was largely ignored by the warring factions. As Hevi notes, “[a]s 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.” Hevi at 70

See generally, Ariel Cohen and Rafal Alasa, *Africa’s Oil and Gas Sector: Implications for U.S. Policy*, BACKGROUNDER, No. 2052, July 13, 2007 (noting that the United States consumes 25 percent of the world’s petroleum and 22.5 percent of the world’s natural gas and that although many Americans do not recognize the importance of Africa, particularly West African oil, over 18 percent of U.S. crude oil imports comes from Africa, compared to 17 percent from the Persian Gulf. Nigeria alone accounts for 47 percent of African oil imports). Backgrounder is a publication of The Heritage Foundation.

continent to benefit from strategic relations with countries that Alpha Oumar Konare, the President of African Union (AU) Commission, rightly refer to as ‘partners of the future.’

This paper is in six parts. Part II maps out the history and evolution in Sino-Africa trade and investment relations. Part III examines the framework for China and Africa relations. The foundational documents guiding the unfolding relationship are examined. In Part IV, the motivation for China’s foray into Africa will be discussed and China’s Africa policy analyzed. The scramble for Africa by European powers in the nineteenth century and the on-going struggle over the continent’s resources is the focus of Part V. Part involves a critical appraisal of Sino-Africa trade and investment relationship. The opportunities that the relationship presents for Africa are evaluated and proposals offered for maximizing these opportunities. Part VI offers conclusions and looks at the future of Sino-Africa trade.

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

The year 2006 marked the 50th anniversary of the onset of diplomatic relations between China and Africa. However, China’s contact with the continent goes back for centuries. Indeed the idea of a Chinese invasion of Africa is not new. In his 1965 book *East Wind Over Africa*, for example, John K. Cooley announced: “Red China has moved into Africa, and it

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17 Cited in Sidiropoulos, *supra* note 11 at 103 (by partners of the future he was referring to countries such as China, Brazil and India.). 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.).

18 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* Section II), trade and economic issues now dominate China-Africa interactions. Taylor, *supra* note 16, at 71.

19 President Hu Jintao’s Address, *supra* note 3.

20 Wild & Mephan, *supra* note 2, at 1 (“China is not a new player in Africa."). 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, an historical connection linking the two goes back many centuries.).
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.”

The foundation stone of China-Africa relations was laid at the Asia-African Conference (the Bandung Conference) held in Bandung, Indonesia from April 18-April 24, 1955. 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.”

A. The Bandung Conference of 1955 (“Bandung I”)

Organized by Egypt, Indonesia, Burma (now Myanmar), Ceylon (now Sri Lanka), India, and Pakistan, the stated goals of the Bandung conference's stated aims 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.”

The conference brought together, for the first time, African and Asian nationalist leaders including prominent personalities such 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). In all, six African countries sent delegates to the conference.

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22 Taylor, supra note 16, 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, en.wikipedia.org/wiki/Bandung_Conference
23 Cooley, supra note 21, at 13 (1965)(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.).
24 Id.
25 Matthew Quest, The Lessons of the Bandung Conference: Reviewing Richard Wright’s The Color Curtain 40 Years Later, http://www.spunk.org/texts/pubs/ir/sp001716/bandung.html. Cooley, supra note 21, 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.).
26 The six countries are: Egypt, Ethiopia, the Gold Coast (now Ghana), Liberia, Libya, and the Sudan. Cooley, supra note 21, at 8-9 (1965).
China played a prominent part at this conference which brought together 29 Asian and African countries.\textsuperscript{27} Significantly, Taiwan was not invited to the conference together with South Africa, Israel, South Korea, and North Korea.\textsuperscript{28} The Five Principles of Peaceful Co-existence ("Five Principles"), the cornerstone of diplomatic relations between China and India, was endorsed at the Bandung Conference.\textsuperscript{29} Although the Five Principles were "originally only prescribed relations between China and India", they eventually became the principles that would guide the conduct of relations between China and other countries.\textsuperscript{30} At the conclusion of the conference, attendees adopted a Final Communiqué\textsuperscript{31} which included the "Declaration on Promotion of World Peace and Cooperation" and the Bandung Declaration of 10 Principles.\textsuperscript{32}


\textsuperscript{28} \textit{Id.}

\textsuperscript{29} 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. The Five Principles were featured for the first time in an April 29, 1954, diplomatic agreement on trade and communications between the Chinese region of Tibet and India. 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. 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." The Sino-Myanmese joint declaration expressed the hope that "these principles will be observed by all nations." See, Embassy of the People's Republic of China in India, Backgrounder: Five principles of peaceful coexistence (2004/06/14). Available from: http://in.china-embassy.org/eng/syygd/fiveprinciple/t132640.htm

\textsuperscript{30} Taylor, \textit{supra} note 16, at 18.


\textsuperscript{32} The 10 principles contain all points in the five principles of peaceful co-existence and, in some respects, extended and developed the later. 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 other peaceful means of the parties' own choice, in conformity with the United Nations Charter. 9) Promotion of mutual interest and cooperation. 10) Respect for justice and international obligations. \textit{Id.}
The Bandung Conference enhanced the unity of African and Asian countries and laid the foundation for future co-operation on multiple fronts. Most of the participants at the conference shared a history of colonization by Western States and a common desire to overcome the legacies of colonialism and forge closer ties with one another. Trade between China and Africa grew following the conference. Shortly after the conference, 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. Between 1955 and 1965, trade between Africa and China increased nearly sevenfold. The first Chinese trade agreement with any African country was negotiated in August 1955. Diplomatic relations also deepened during this period. The first Afro-Asia People’s Solidarity Conference was held in Egypt in 1957.

33 Quest, supra note 25 (observing that “Bandung clearly helped to forge the modern identity politics of race, religion and nationality.”).
34 Richard Wright, THE COLOR CURTAIN 40 YEARS LATER (1994) ("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!")
35 Id. (observing that the Bandung Conference “enhanced the unity and co-operation 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.”). As Richard Wright aptly described: “The despised, the insulted, the hurt, and the disposed – in short, the underdogs of the human race were meeting. Here were class and race and religious consciousness on a global scale … And what had these in common? Nothing, it seems 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.” Id.
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.” See Zhang Yan, THE MISSISSIPPI QUARTERLY REPORT, 1997.
36 Cooley, supra note 21, at 13.
37 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.).
38 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 20, at 15.
1965, China entered into relations with fourteen newly independent states in Africa. ⁴⁰ Despite growing trade relations, China’s interest in Africa during the fifties and sixties was ideological rather than economic. ⁴¹ China’s relationship with China took a nose-dive during the Cultural Revolution in China. ⁴² However, in the 1970s China “embarked on an extensive aid programme to Africa.” ⁴³ Between 1970 and 1976, China committed about $1,815 million to Africa. ⁴⁴ During this period, China also sponsored several prestige projects in Africa such as the Tanzam railway between Tanzania and Zambia. ⁴⁵ Africa was also of some help to China during this period. In

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⁴¹ The dominant message of communist China during this period was revolution – revolution against colonialism and imperialism. China thought that on its way to genuine socialist revolution and saw itself as having a role in furthering this revolution. China even became a member of the Afro-Asian Solidarity Fund Committee, an organization which met for the first time in Conakry, Guinea in 1991 and had as its aim, the provision of support for African liberation organizations. Taylor, supra note 16, at 24. 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 21, at 211.

⁴² The Cultural Revolution in China began in 1966 and formally ended at the Ninth Congress of the CPC in April 1969. Experts suggest that the Cultural Revolution spelt disaster for Beijing’s foreign relations and that China’s interest and influence in Africa during this period suffered a major setback. Taylor, supra note 16, at 32-33 (observing that China’s image was tarnished and its position eroded internationally during this period. Observing also that during this period, all the Chinese embassies in Africa with the exception of the embassy in Egypt, had their ambassadors recalled.).

⁴³ Taylor, supra note 16, at 37 (noting that from the end of the Cultural Revolution, nearly half of China’s aid was directed towards Africa).

⁴⁴ Id.

⁴⁵ A joint statement of intent to build a joint railway was issued by Tanzania and Zambia in October 1964. The Agreement on the Construction of the Tanzania-Railway line was signed by China, Tanzania and Zambia (“the Three Sides”) on September 5, 1967. To fund the project, China agreed to an interest free loan of $406 million in July 1970. The loan was to cover construction and rail stock. See Taylor, supra note 16, 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.”).
particular, Africa was instrumental to China success in gaining admission into the United Nations in 1971.46

B. South-South Cooperation Discourse

The “south-south cooperation” discourse is essential to an understanding of the unfolding China-Africa trade relations.47 Indeed, Sino-Africa trade partnership discourse is a logical extension and a manifestation of the south-south cooperation discourse. 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.48 South-South cooperation is fuelled 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.”49 Shared concerns about asymmetries of the international economic order,50 uneven distribution of the benefits of globalization,51 poverty, and social and economic instability caused by underdevelopment are some of the issues that fuel

46 Of 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.” Taylor, supra note 16, at 40.

47 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.”).

48 Chris Melville and Olly Owen, China and Africa: a new era of “south-south cooperation” http://www.opendemocracy.net/globalization-G8/south_2658.jsp

49 Id.

50 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.”. The Doha Declaration (G-77/SS/2005/1) is available from: http://www.g77.org/southsummit2/en/intro.html

The Group of 77 and China Second South Summit convened in Qatar, Doha from 12-16 June 2005. The first South Summit was held in Havana, Cuba, from 10-14 April 2000.

51 According to paragraph 23 of the Doha Declaration adopted following the Second South Summit in Doha Qatar:

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.

See id.
renewed talks for greater south-south cooperation. Several organizations now provide the platform for the advancement of the South-South cooperation discourse including, the United Nations Conference on Trade and Development (UNCTAD),\(^{52}\) the United Nations Development Program (UNDP)\(^{53}\) and Group of Seventy-Seven (G-77) at the United Nations.\(^{54}\)

i. **The First South Summit:** The First South Summit was held in Havana, Cuba, between 10 – 14 April 2000. From 29-30 July 2003, the Asian-African Sub-regional Organizations Conference (AASROC) took place in Bandung, Indonesia, at which a decision was made to establish a New Strategic Partnership for Promoting South-South Cooperation. From 16-19 December 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 Marrakech Framework of Implementation of South-South cooperation (“Marrakech Framework”) were adopted.\(^{55}\) In the Marrakech Declaration, participants pledged to strengthen cooperation in a number of different areas including trade, technology, health, education and debt management. Pursuant to the Marrakech Framework, G-77 members agreed to *inter alia* undertake a study on the potential of intensifying interactions between business agents in developing countries,\(^{56}\) enhance coordination and joint negotiating

\(^{52}\) See http://www.unctad.org/Templates/StartPage.asp?intItemID=2068

\(^{53}\) See http://www.undp.org/

\(^{54}\) Established on 15 June 1964 by seventy-seven developing countries signatories of the "Joint Declaration of the Seventy-Seven Countries" 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 first Ministerial Meeting of the Group of 77 took place in Algiers in 1967 at which the Charter of Algiers was adopted. 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).” Information about the G-77 is available on the organizations website at: http://www.g77.org/index.html

\(^{55}\) Id.

\(^{56}\) Marrakech Framework, paragraph 1. Available from: [http://www.g77.org/marrakech/Marrakech-Framework.htm](http://www.g77.org/marrakech/Marrakech-Framework.htm).
positions on major issues of the multilateral trading negotiations,\textsuperscript{57} and promote investment among developing countries.\textsuperscript{58}

ii. **The Second South Summit:** The Second South Summit took place in Doha, Qatar, 12-16 June 2005, and led to the adoption of the Doha Declaration and the Doha Plan of Action by the Group of 77 and China.\textsuperscript{59} 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.”\textsuperscript{60} They also recognized “the increasing importance of South-South trade and economic cooperation”\textsuperscript{61} 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.”\textsuperscript{62} Participants also reaffirmed that “South-South trade should be enhanced and further market access from developing countries must continue to stimulate South-South trade.”\textsuperscript{63}

Today, South-South trade\textsuperscript{64} and South-South investment are on the increase.\textsuperscript{65} FDI from developing countries and transition economies now account for about 17% of the world’s FDI

\textsuperscript{57} Id., para. 5.
\textsuperscript{58} Id., para. 8.
\textsuperscript{59} See infra note 50.
\textsuperscript{60} Id., para. 6.
\textsuperscript{61} Id. (para. 12.
\textsuperscript{62} Id., para. 12.
\textsuperscript{63} Id., para. 27.
\textsuperscript{64} 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. See New Dynamics of South-South Development, Keynote address by Supachai Panitchpakdi, Secretary-General of UNCTAD, on United Nations Day for South-South Cooperation, 19 December 2006. Available from: http://www.unctad.org/Templates/webflyer.asp?docid=7991&kntItemID=3549&lang=1
\textsuperscript{65} Id. (observing that outward FDI from developing and transition economies is expanding fast - reaching $133 billion in 2005, the highest level ever – and is increasingly going into other developing countries).
flows. The geographical composition of FDI from developing countries and transition economies reveal 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. Today, China is in the top 10 in terms of FDI home countries. More important, according to the World Investment Report 2006, China and Malaysia are among the top 10 sources of FDI in Africa today. There is today a growing realization that for developing countries, there are many benefits associated with increasing South-South relations. The importance of South-South cooperation has been recognized by the international community at various United Nations conferences such as the 2005 World Summit, the International Conference on Financing for Development, held

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67 Id., at 112.
68 Id., at 114 (noting that in 2005, FDI from China reached $11 billion, representing the fourth largest outflow from developing and transition economies.
69 Id., at 117.
70 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.

Supachai Panitchpakdi, supra note 64.
71 In paragraph 40 of the 2005 World Summit Outcome, world Heads of State and Government state: “We recognize the achievements and great potential for South-South cooperation and encourage the promotion of such cooperation, which compliments North-South cooperation as an effective contribution to development and as a means to share best practices and provide enhanced technical cooperation.” See, 2005 World Summit Outcome, Resolution adopted by the United Nations General Assembly, 24 October 2005, A/RES/60/1. Available at http://www.un.org/summit2005/documents.html.

in Monterrey in March 2002 and the World Summit on Sustainable Development, held in Johannesburg in August 2002.

C. Asia-African Summit 2005 (“Bandung II”)

President Hu Jintao was present at an event commemorating the 50th anniversary of the Bandung Conference in Bandung, Indonesia, on April 24, 2005. Also present were President Obasanjo of Nigeria, Prime Minister Singh of India, and President George Maxwell Richards of Trinidad and Tobago. The two chairmen of the Asia-Africa Summit, President of Indonesia Susilo Bambang Yudhoyono and President of South Africa Thabo Mbeki both signed the Declaration on the Asia-African New Strategic Partnership (“NAASP”). The commemorating event came at the heels of the 2005 Asia-Africa Summit (“2005 Summit”).

At the 2005 Summit, Asian and African leaders sought to invigorate the spirit of Bandung I. In the NAASP, states affirmed that the 1955 Bandung Conference “remains as a beacon in guiding the future progress of Asia and Africa,” and reiterated their conviction “that the Spirit of Bandung, the core principles of which are solidarity, friendship and cooperation,

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72 The International Conference on Financing for Development was a summit-level meeting convened by the United Nations 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 http://www.un.org/esa/ffd/Monterrey/Conference/index.html

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. 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.” 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.” See, Monterrey Consensus of the International Conference on Financing for Development. Available from: http://www.un.org/esa/sustdev/documents/Monterrey_Consensus.htm

73 See http://www.un.org/events/wssd/


76 Id.
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.” 77 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.” 78 NAASP builds on the ten principles of Bandung. 79 In the area of trade and economic development, NAASP will emphasize “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.” 80

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

FOCAC serves as the official platform for “collective consultation and dialogue and a cooperation mechanism” between China and cooperating African States (the two sides). 81 Five principle documents spell out the legal and policy framework of the unfolding trade and

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77 Id.
78 Id.
79 According to the Declaration on the New Strategic Partnership, the core principles that underly 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/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.
See id.
80 Id.

81 The two of the 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.” See, Forum on China-Africa Cooperation, Characteristics of FOCAC, http://www.fmprc.gov.cn/zflt/eng/gylt/ltjj/t157576.htm
investment relations between China and Africa (the Framework Documents). These are: the 2000
Beijing Declaration of the Forum on China-Africa Cooperation (the 2000 Beijing Declaration), \(^{82}\) the
2000 Programme for China-Africa Cooperation in Economic and Social Development (the
2000 Programme for Cooperation), \(^{83}\) the Forum on China-Africa Cooperation Addis Ababa
the Forum on China-Africa Cooperation ("Declaration of the Beijing Summit")\(^{85}\) and the Forum

**A. The Framework Documents**

The First Ministerial Conference produced the 2000 Beijing Declaration and the 2000
Programme for Cooperation. Noting that “a huge gap between the rich North and the poor
South,” the two sides, in 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.”\(^{87}\) The two sides pledged “to further consolidate
and expand China-Africa cooperation at all levels and in all fields and to establish within the

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\(^{83}\) Forum on China-Africa Cooperation, *Programme for China-Africa Cooperation in Economic and Social


\(^{85}\) China-Africa Forum, *Declaration of the Beijing Summit Of the Forum on China-Africa Cooperation*,
[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”).


\(^{87}\) The two sides also stressed that “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.”
framework of South-South cooperation a new-type, long-term and stable partnership based on equality and mutual benefit.”

The 2000 Programme for Cooperation covers a host of issues including trade and investment, debt relief and cancellation, exploration and utilization of natural resources and energy, and tourism. 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.” 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.” 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.” 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

88 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.

Beijing Declaration, supra note 82.

89 Id., Para. 4.1

90 Id., para. 4.2.

91 Id., para. 4.5.
establishment of joint business for a."92 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 co-operation projects adapted to local need in terms of job creation and transfer of technologies.93 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.”94

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, 2006.95 In the Declaration 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.”96 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.”97 To this end, the leaders purposed to “[i]ncrease high-level visits, conduct strategic dialogue, enhance mutual political trust and

92 Id., para. 5.1
93 Id., para. 5.2
94 Id., para. 5.3
95 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 48 African countries. See, China-Africa Forum, China-Africa cooperation fruitful over past 50 years, 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 President Hu Jintao, 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 and mutual support in international affairs.”
96 Declaration of the Beijing Summit, supra note 85.
97 Id.
promote enduring friendship.”  

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.” 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,” 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.”

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 US$10 billion to US$18 billion between 2000 and 2003. In 2004, China's exports to Africa rose by 36 percent year-on-year to $13.82 billion, while imports, surged 81 percent to $15.65 billion. In 2005, total trade between Africa and China surged to $40 billion. In 2006, China-Africa trade was valued at US$55.5 billion, 40 percent more than in 2005. Of this amount, China's export to Africa was worth US$26.7 billion, up 43 percent

98 Id.
99 Id.
100 Id.
103 Id.
104 Id.
and import from Africa was worth US$28.8 billion dollars, up 37 percent.¹⁰⁵ A third of China's crude oil imports come from China.

Africa’s export to China is mainly comprised of petroleum and raw materials.¹⁰⁶ Oil and natural gas currently accounts for more than 62 percent of total African export to China, followed closely by ores and metals (17 percent) and agricultural raw materials (7 percent).¹⁰⁷ There is geographic concentration in the source of Africa’s export to China. According to a World Bank study, Angola, Sudan and the Democratic Republic of Congo supply 85 percent of African oil exports to China.¹⁰⁸ In early 2004, Total Gabon S.A. reportedly signed a contract with China's Sinopec under which Gabonese crude oil will be sold to China for the first time.¹⁰⁹ Also in 2004, following Chinese Vice-President Zeng Qinghong visit to South Africa, the two countries signed agreements that included a deal that paved the way for the export of South African citrus to China.

Since 2000, greenfield FDI projects by Chinese investors has grown.¹¹⁰ By 2000, there were at least 499 Chinese companies in Africa with a total contractual investment of $990 million.¹¹¹ At the end of 2005, China's investment in Africa totaled US$6.27 billion.¹¹² It is estimated that Chinese direct investment in Africa reached US$370 million in 2006 and that Chinese-funded projects are now scattered across 49 African countries.¹¹³ China now has several

¹⁰⁶ Broadman, supra note 2, at 75-76 (observing that oil and natural gas are the single dominant category of products exported from Africa to China.)
¹⁰⁷ Id., at 77 (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.”).
¹⁰⁸ Id., at 76.
¹⁰⁹ Total is reportedly, fourth largest publicly-traded oil and gas company. A multinational energy company, Total operates in more than 130 countries. See http://www.total.com/en/group/presentation
¹¹⁰ Id.
¹¹¹ Taylor, supra note 16, at 70.
¹¹³ Id.
Investment Development and Trade Promotion Centers in Africa\textsuperscript{114} and has undertaken to “establish a China-Africa Joint Business Council in co-ordination with the Chambers of Commerce of African countries”\textsuperscript{115} and “establish a China-Africa Products Exhibition Center in China to promote two-way trade and facilitate access for African products to the Chinese market.”\textsuperscript{116}

Three Chinese entities play critical roles in the unfolding relations. These are 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.\textsuperscript{117} 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.\textsuperscript{118}

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 and additional $2.2 billion in soft loans in early 2006. It is 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. Chinese companies are also winning lucrative contracts such as the construction of railroads, housing projects, and oil refinery. On May 10, 2006, Sonangol, Angola’s state-owned oil company, and Sinopec reportedly launched a US$2.2 billion joint bid

\textsuperscript{114} 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.” Declaration of the Beijing Summit, supra note 85, at para. 4.4.2.
\textsuperscript{115} Id., para. 4.4.3.
\textsuperscript{116} Id., para. 4.4.4.
\textsuperscript{117} 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.).
\textsuperscript{118} Don Lee, China Barrels Ahead in Oil Market, The Los Angeles Times, November 14, 2004, at www.energybulletin.net/3159.html (visited 1/7/07).
for blocks 17 and 18.\textsuperscript{119} It is believed that the new blocks have estimated reserves of 3 billion barrels and 1.5 billion barrels respectively. Sinopec secured a 40 percent 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.

In July 2005, China and Nigeria signed an $800 million crude oil sale deal involving Petrochina International and the Nigerian National Petroleum Corporation (NNPC). Under the arrangement, NNPC will supply 30,000 barrels of crude oil per day to China for one year.\textsuperscript{120} In January 2006, CNOOC secured its largest ever overseas acquisition when it agreed to pay $2.3 billion for a stake in a Nigerian oil and gas field.\textsuperscript{121} Also in 2006, China secured a $4 billion deal for drilling licenses in Nigeria.\textsuperscript{122} China has also concluded an offshore exploration deal with Kenya which allows CNOOC to explore in six blocks covering 115,343 sq km (44,500 sq miles) in the north and south of Kenya.\textsuperscript{123} Chinese foreign direct investment in Mozambique in 2005


\textsuperscript{120} Xinhua News Agency, \textit{China, Nigeria, Sign Oil Supply Pact}, July 9, 2005, at

\textsuperscript{121} 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. 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. It is reported that CNOOC has committed to spend $2.25 billion over the next few years to help develop the Nigerian project. David Babooza, \textit{Chinese Oil Firms to Invest Billions in Nigerian Fields}, International Herald Tribune, MONDAY, JANUARY 9, 2006, at: http://www.iht.com/articles/2006/01/09/business/cnooc.php

\textsuperscript{122} BBC News, \textit{China and Nigeria agree oil deal}, Wednesday, 26 April 2006 , at http://news.bbc.co.uk/2/hi/business/4946708.stm (reporting that in return for investing $4bn (£2.25bn) in oil and infrastructure projects in Nigeria, China secured four oil drilling licences 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.)

\textsuperscript{123} During President Ju Jintao’s 2006 visit to Kenya, the two countries signed a deal that would allow CNOOC to prospect for oil off Kenya's coast. The deal allows VNOOC to source for oil in six areas covering more than 100,000 square kilometers in the Indian Ocean area. Surprisingly, the oil agreement was not mentioned in a joint statement listing agreements signed during President Hu Jintao's visit to the country. Kenyan Foreign Minister Raphael Tuju, who reading from the joint statement, reemphasized Kenya's position regarding Taiwan. According to the Minister: "The Kenyan government expressed its opposition to Taiwan independence in any form and expressed its support for China's efforts to realize national reunification." See Cathy Majtenyi, \textit{China Signs Deal for Kenya Oil}
stood at $9 million up from $436,000 in 2004. In 2004, the volume of trade between China and Mozambique stood at US$120 million, up by 66 per cent.

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? These questions which first surfaced following China’s engagement with Africa in the 1960s persist today. 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 this section. Regarding China’s Africa policy, prior to 2006, China made general reference to the Five Principles of Peaceful Coexistence. Traces of China’s Africa policy could found in statements by Chinese leaders particularly statements by Chinese leaders at diplomatic conferences and in the course of their tours of Africa. The African policy paper issued for the first time in January 2006 attempts to address formally and concretely China’s interests and goals in Africa and the means for achieving these goals. While African governments have warmly embraced China, Africa is yet to develop a coherent and clearly articulated strategy to guide its engagement

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125 Taylor, supra note 16, at 103
126 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.” See Alaba Ogunsanwo, supra note 41, at 1 (1974).
127 See supra note 29.
128 Tours of Africa by Chinese leaders is not new. Beginning in 1963, successive leaders have made historic tours of parts of the continent including Zhou Enlai 10 nation tour (1964), Vice Premier Li Xiannian (1979), Premier Zhao Ziyang 11 nation tour (1982), President Hu Jintao 8 nation tour (2006).
129 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, at 2.
with China. It appears African leaders are approaching China from “a residual liberation paradigm” rather than “a contemporary economic paradigm” that would require them to actively and strategically preserve Africa’s interest.\footnote{Leveraging the Dragon, supra note 101.} Thus, areas where the Africa’s interest diverge from Beijing’s interests are yet to be clearly identified and addressed.\footnote{Id. (noting that African leaders “need … to recognise that there are important areas where their national interests diverge from Beijing’s.” He cites as example, China’s status as a global leader in attracting foreign direct investment which clearly and directly competes Africa's own needs for FDL.)}

**A. China’s African Policy**

In the Africa policy paper, China promises to proceed “from the fundamental interests of both the Chinese and African peoples” and to establish a strategic partnership with Africa the emphasizes political equality and mutual trust, economic win-win cooperation and cultural exchange. The general principles and objectives of China’s Africa policy, according to the policy paper, are: “[s]incerity, friendship and equality,”\footnote{China’s African Policy, supra note 8 (“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.”).} “[m]utual benefit, reciprocity and common prosperity,”\footnote{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.”).} “[m]utual support and close coordination”\footnote{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.”).} and “[l]earning from each other and seeking common development.”\footnote{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.”).} Part IV of the policy paper outlines four key fields of cooperation: “political,” “economic,” “education, science, culture, health and social,” and “peace and security.” In the economic field, China outlines plans for cooperation in a host of areas including trade, investment, financial cooperation, agriculture, infrastructure, tourism and
Regarding trade and investment, China’s agenda is four fold: increased market access for African commodities, extension of duty-free privileges, pacific settlement of trade disputes, private sector involvement, 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 (FTA) with African countries and African regional organizations.” It is not clear what indicators will announce when the conditions are ripe and who will be making that determination. Regarding promise of duty-free treatment, the policy paper merely 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.” 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 tariff 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 on the concrete step China plans to adopt to meet its specified goal nor does it indicate what constitutes an effective market access measure.

Regarding investment, the Chinese Government plans to encourage and support Chinese enterprises investment and business in Africa, and “to provide preferential loans and buyer

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136 Id.
137 Id. (“The Chinese Government will adopt more effective measures to facilitate African commodities' access to Chinese market”).
138 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.”).
139 Id. (“[China] intends to settle trade disputes and frictions properly through bilateral or multilateral friendly consultation, mutual understanding and mutual accommodation.”).
140 Id. (“Efforts will be made to encourage business communities on both sides to set up China-Africa Joint Chamber of Commerce and Industry.”).
141 Emphasis added.
credits to this end.” The Chinese Government is also ready “to explore new channels and new ways for promoting investment cooperation with African countries,” and “to formulate and improve relevant policies, provide guidance and service and offer convenience.” While the Chinese government expressed 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 Africa. The policy paper is silent on how to address barriers to investment in China nor does it address the human rights and environmental aspects of China’s investment activities in Africa.

What then is the legal status of the preferential arrangement that China has extended to countries in Africa? Will China keep its numerous promises to Africa? Only time will tell. The China’s African Policy is not recognized as binding under international law. Countries in Africa have no legal recourse should China renege on its promises. If the policy paper was issued simply to silence Western critics, it may be no more than a public relations campaign and a weapon in the broader but unacknowledged struggle between United States and China over Africa’s resources. China’s numerous promises may be inimical to the interest of ordinary Africans in that her promises prompt undemocratic Africa’s leaders to offer reciprocal promises that have not been vetted by the general public in the continent. The process of negotiating an

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142 Id.
143 Id.
144 Id.
145 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.”).
146 Dr. Barry V. Sautman, Friends and Interests: China’s Distinctive Links with Africa, Center on China’s Transnational Relations, Working Paper No. 12 at 1 (2005-2006) (suggesting that China’s African policy was announced in response to a 2005 publication by the US 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, August 11, 2007 (suggesting that a new Cold War over oil has begun in Africa and that the new players are the U.S. and China).
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, when negotiated, will actually benefit African countries is debatable.

**B. China’s “Real” Interest in Africa**

China’s Cold War relations with Africa “was driven mainly by anti-capitalist ideologies of Marx and Mao, as well as by the Party leadership’s effort to counter Soviet influences in states like Angola and the Congo.”\(^{147}\) China’s post-Cold War African policy is shaped by economic and diplomatic concerns.\(^{148}\) Growing mutual needs clearly drives the present China-Africa relation.\(^{149}\) China has much to gain from its relationship with Africa politically as well as economically.\(^{150}\) However, as Chris Alden rightly warns, “it would be a mistake to ascribe a single motive to China’s growing interest in Africa.”\(^{151}\)

i. **Political Motivations:** On the political front, China’s concerns regarding Taiwan’s political ambitions, China’s strive for international significance and China’s need for strategic partners drives the country’s foray into Africa. Regarding Taiwan, China has not hidden


\(^{148}\) Wilson, *supra* note 145, at 7 (noting that in the post-Cold War era market motives are up and Marxism is down).

\(^{149}\) Id. (observing that today, China and Africa have complementary economic and commercial needs.).

\(^{150}\) 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.). Sidiropoulos, *supra* note – at 101 (“observing that Africa’s importance to China is multi-layered.”). Payne and Veney, *supra* note 147, 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.).

\(^{151}\) Alden, *China in Africa*, 47(3) SURVIVAL 147-164 (2005). 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.”).
the fact that one of the reasons for pursuing relations with Africa states is to influence their relationship with Taiwan. Relations with Africa would go a long way in thwarting Taiwan’s effort to gain diplomatic recognition and independence. 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.

Although nowhere expressly stated, the prize of cooperation with China is that countries in Africa must cut their ties to Taiwan. 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.”

China is also in need of diplomatic allies and strategic partnership. Relations with Africa guarantees China fifty-plus allies in key multilateral institutions. As Alden rightly notes: “[a]s a significant player in multilateral organizations… China recognizes that it needs to

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152 Payne and Veney, supra note 147, at 868. (“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.”

153 China’s African Policy, supra note 8, Part III.

154 President Hu Jintao’s Address, supra note 3 (President Hu Jintao 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”).

155 2007-2009 Plan of Action, supra note 86, at para. 3.3 (emphasis added).

156 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.).

157 Id. (observing that on the political front, Africa is significant for the number of countries it comprises.).
court votes to protect and promote its interests. African states have the largest single bloc of votes in multilateral settings.\footnote{Alden, supra note 148, at 153 (To date, “African votes have been crucial to Beijing’s multilateral diplomacy, whether it be blocking resolutions as the UN Commission on Human Rights … or garnering support to win a second bid to host the Olympics in 2008.”).}

China’s foray into Africa is also fueled by China’s concerns about dominance by the Superpower and by the desire to bolster its own position in the international system. China has in the past criticized Washington’s and Moscow’s hegemonism and continues to express opposition to expansionism by any power.\footnote{Taylor, supra note 16, 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’, whilst at the same time trying to carve out space for itself as its economy continues to grow.”).} For example, in his report to the 12th National Congress of the CRC, General Secretary Hu Yaobang asserted:

> The main forces jeopardizing 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 fare from being eliminated. The Superpowers that practice hegemonism pose a new threat to the peoples of the world.\footnote{Cited in Diplomacy of Contemporary China 560 (1990). Taylor, supra note 16, at 56. Diplomacy of}

**ii. Economic**: Economic factors 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 opportunity to place China’s surplus labor to manufacturing use.

China’s energy need is no secret. Double digit economic growth,\footnote{Payne and Veney, supra note 145, at 869 (noting that between 1978 and 1994, China’s foreign trade grew more than 16% a year.).} an automotive revolution, growing industrial production, a rising standard of living for China’s middle class all combine to fuel China’s demand for oil and strategic minerals.\footnote{Id. (noting that rapid economic growth is fueling China’s need for oil and other natural resources.). Alden, supra note --, at 148 (noting that “China’s dynamic economic growth fuels an ever-increasing need for energy and}
oil for the first time in a quarter century in November 1993.\footnote{Payne and Veney, supra note 147, at 869-870.} Displacing Japan, in 2005, China became the second-largest importer of African oil after U.S.\footnote{Joshua Eisenmann, supra note 12. Alden, supra note 146, at 148 (noting in 2005 that “China was consuming 5.46 million barrels a day (bbl/d), outstripping Japan’s 5.43m bbl/d but still some distance from the United State’s 19.7m bbl/d.”).} Africa offers China access to relatively unexploited oil and strategic natural resources. Africa currently supplies China with about 30\% of its oil imports.\footnote{Id., at 2. (“Beijing imports a quarter of Angola’s oil, 60\% of Sudan’s and an increasing percent from Equatorial Guinea, Nigeria and Gabon.”).} Beijing’s oil purchases from African nations constitute “a significant share of African oil producers’ export,” thus making China an increasingly important factor in the continent.\footnote{Id., supra note 11.} According to sources from the Chinese Ministry of Commerce, China’s dependency on import oil has risen to 47.0 percent of its annual demand in 2006, an increase of 4.1 percentage points from the previous year.\footnote{Xinhua, China’s oil dependency to continue to rise this year, Tuesday, February 13,2007, http://english.mofcom.gov.cn/aarticle/newsrelease/commonnews/200702/20070204382842.html} In 2006, China produced 183.68 million tons of crude oil (up 1.7 percent) while the country’s net oil imports exceeded 162.87 million tons, an increase of 19.6 percent.\footnote{Id.} Experts predict that China’s demand for oil is bound to increase. It is estimated that in 2007, China’s crude oil output will grow only less than two percent, while the country’s demand for both crude and oil products will increase by more than six percent.\footnote{Id.} Relations with Africa will give China access to cheap sources of raw materials which china needs.\footnote{Sidiropoulos, supra note 11, at 101(identify access to raw materials as one of the key motives for China’s involvement in Africa.)} Overall, while China is of value to Africa, Africa is of immense value to China
“for its resources and for the market it represents for cheap exports and Chinese infrastructure investments.”\textsuperscript{171} In the unfolding interest-based relationship, Africa need not bargain from a position of weakness. Africa is 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.\textsuperscript{172} The response from regional organizations in the continent have also been warm. Nevertheless, Africa is yet to develop a coherent and clearly articulated strategy to guide its future engagement with China.\textsuperscript{173}

i. China and African Leaders: Why have African leaders extended a warm reception to Beijing? There are several factors come into play. The fact that China identifies itself as a developing country, the shared history of colonial domination,\textsuperscript{174} the fact that in pursing relations with Africa Beijing has emphasized cooperation and respect rather than subordination,\textsuperscript{175} the fact that China is not a former colonial power,\textsuperscript{176} the fact that many leaders


\textsuperscript{172} Id., at 64 (observing that African governments “have not hesitated to supply Chinese Entrepreneurs with licenses to enable investment in their countries.”).

\textsuperscript{173} Wild and Mephan, \textit{supra} note 2, at (“observing that the world has seen China’s strategy for Africa but that Africa now needs to assert its own strategy for China.”).

\textsuperscript{174} Regarding the warm reception of the Chinese by Africans in the 1960s, Hutchinson writes: “In political terms, the Chinese were regarded with favor by Africans, for China had never been associated with any scramble for Africa; the Chinese were non-white and non-imperialistic. 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, \textit{supra} note 20, at 178.

\textsuperscript{175} Even in the area of aids, China still stresses the principles of mutual benefit and respect. During his tour of ten African countries from December 1963 to February 1964, Premier Cjou En-lai announced the eight principles Governing Red Chinese Foreign Aid. Most of the eight principles ring true today. 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.” 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.” According to Principle Four, “In furnishing economic aid …, the Chinese government does not seek to place the recipients in a state of dependency
see Beijing’s model of development as one which could be replicated successfully in Africa, and the fact that economic ties with China could lead to increased market for Africa’s raw materials and natural resources all explain why African leaders have readily embraced Beijing. China’s policy of non-interference in internal affairs and the fact that China does not insist on stringent conditions is also an attraction for African leaders. China represents an alternative market and an alternative source of aid for states in Africa, particularly states that have troubled relations with Western governments and states that are tired of being ignored or neglected by the West.

ii. China and Africa’s Regional Organizations: The African regional organizations are yet to issue clear statements on policies that would guide their relationship with China even though the organizations appear open and willing to deepen their relationship with China. In her relationship with Africa, China has emphasized bilateralism. Consequently, multilateralism has been somewhat neglected.

China has expressed support for the New Partnership for Africa's Development (NEPAD) and NEPAD has not hesitated to accept the offer of economic aid from China. On
26 July 2006, the Chinese Government handed over a check of $500,000 grant to the CEO of NEPAD Secretariat, Prof. Firmino Mucavele, at a handover ceremony in Midrand, South Africa. The money is to be used to support the Post-Graduate Training Program of African Nurses and Midwives to be launched in Tanzania and Kenya. To China’s Ambassador to South Africa, Ambassador Liu, the handover ceremony marked the first step of cooperations between China and NEPAD. A MOU 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) was recently signed.

In his November 4 address, President Hu Jintao promised that China will continue to support Africa in intervention, spearheaded by African leaders, to develop a new Vision that would guarantee Africa’s Renewal.” For information on NEPAD, see: http://www.nepad.org/2005/files/home.php (visited 9/5/07).

China was very supportive at the high-level plenary meeting of the UN General Assembly to consider how to support the New Partnership of Africa's Development (NEPAD) held in New York, 16 September 2002. In a speech delivered at the meeting, Chinese Foreign Minister Tang Jiaxuan noted that “[t]he 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.” The Chinese Foreign Minister also called on the international community to “create a sound international environment for the economic development of African countries.” In his words:

The international community, especially the developed countries, have 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.


implementing NEPAD and will “support African countries in their efforts to strengthen themselves through unity and support the process of African integration.”

**D. Conclusion**

Issued in early 2006, China’s Africa Policy is impressive for its coverage. In pursing a relationship with Africa, China has emphasized the common experiences of the two sides. China promise of a “win-win” relationship is tantalizing to a continent with a long history of imperialism and exploitation. A process of aggressive implementation of China’s Africa policy has already begun. In His November 4, 2006 address, President Hu Jintao committed to taking eight bold steps towards achieving the goals spelt out in the policy paper. Despite the tantalizing opportunities that relationship with China presents for Africa, there is a need for caution. African leaders must articulate the policies that would guide this unfolding relationship and identify strategies that would enable the continent 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, and critically evaluate what China-Africa relations holds

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185 Id.
186 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 buyer’s 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, train 15,000 African professionals; send 100 senior agricultural experts to Africa; set up 10 special agricultural technology demonstration centres in Africa; build 30 hospitals in Africa and provide RMB 300 million of grant for providing artemisinin and building 30 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.
for Africa and how Africa and Africans might maximize this new opportunity. A serious review of Sino-Africa trade arrangement is somewhat complicated by the fact that, as in the past, 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.”

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 at various levels,” much more is needed. Pursuant to the 2007-2009 Action Plan, the two sides agreed to establish new consultation and cooperation mechanisms and also strengthen existing mechanisms between China and Africa.

187 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 141, at 2.

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

“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.

Hutchinson, supra note --, at 106.

188 Cooley, supra note 21, 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.).

189 The 2000 Programme for Cooperation, supra note 83, para. 20.1.

190 Id., at para. 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.”).
such as bilateral commissions.\textsuperscript{191} 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 consultations.”\textsuperscript{192} These provisions are extremely vague and raise serious concerns. There are presently few rules stipulating the legal obligations of the two sides and no transparent review process is in place to investigate and correct infraction when they occur.

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

There is an on-going struggle for control of Africa’s resources. Media reports suggest a frenzied competition to gain access over the continent’s rich resources.\textsuperscript{193} Reports generated by think tanks based in the West also suggest an on-going struggle between China and the West.\textsuperscript{194} The driving force is oil. “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,” the Guardian reported in

\textsuperscript{191} \textit{Id.} para. 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.”).

\textsuperscript{192} Beijing Summit, \textit{supra} note 85, at 20.

\textsuperscript{193} \textit{See generally}, “China Muscles in to Africa Oil Scramble,” Reuters, 15 Dec. 2005; Charlotte Denny, \textit{Scramble for Africa: Fear of corruption and chaos in oil rush}, GUARDIAN UNLIMITED, June 13, 2003, \url{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.”); Christopher Thompson, \textit{The Scramble for Africa’s Oil}, NEW STATESMAN, 14 JUNE 2007, \url{HTTP://WWW.NEWSTATESMAN.COM/200706180024} (visited 8/11/07)(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, Bob Griffin, \textit{The economic scramble for Africa}, \textit{The INDEPENDENT}, 9 August 2007, \url{http://news.independent.co.uk/business/analysis_and_features/article2846539.ece} ; John Ghazvinian, \textit{UNTAPPED: THE SCRAMBLE FOR AFRICA’S OIL} (2007).

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.”

Reports published by U.S.-based think-tanks also point to an on-going scramble for Africa’s resources. These reports typically announce, with alarm and trepidation, China’s recent foray into Africa, suggest that China’s is motivated by less than humanitarian ideals, and charge that China’s involvement will likely undermine human rights and governance in Africa – ideals which Western government, presumably, are trying to institute in the continent. The reports usually conclude with calls for a revised U.S. strategy in Africa.

A July 2006 report by the Institute for the Analysis of Global Security (IAGS) takes such an approach. Authored by Cindy Hurst, a Lieutenant Commander in the United States Navy Reserve, the report China’s Oil Rush in Africa (“China’s Oil Rush), describes the activities of China’s oil companies throughout Africa and devotes a section to examining the possible implications of China’s activity in Africa for the US. The report suggests that there are positive and negative ramifications to China’s increasing involvement in Africa. On the positive side, the report asserts that China’s involvement in oil exploration in Africa could force oil prices down.

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195 David Leigh and David Pallister, Revealed: the new scramble for Africa, Guardian Unlimited, June 1, 2005, http://www.guardian.co.uk/print/0,5205602-115645,00.html
197 Peter Brooks, Back to The Maoist Future: China’s African Ambitions, April 17, 2006, at http://www.heritage.org/Press/Commentary/ed041706a.cfm?RenderforPrint=1 (visited 9/1/07) (“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.”).
198 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, www.iags.org
199 Hurst, supra note 117, 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.”).
and brings revenue and expertise to underdeveloped countries in the region.\textsuperscript{200} 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.”\textsuperscript{201} 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”\textsuperscript{202} and concludes that “[s]hould Countries in Africa choose to do business with China over the US, it could have an impact on future U.S. oil imports.”\textsuperscript{203}

\textit{More than Humanitarianism: A Strategic U.S. Approach Toward Africa} published by the US Council on Foreign Relations (CFR) aims at identifying ways that the US influence in Africa can be enhanced.\textsuperscript{204} The report devoted 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”\textsuperscript{205} and that “[i]t is increasingly in the U.S. interest to locate new oil sources outside the Middle East.”\textsuperscript{206} 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 to bolster its competitive advantage.”\textsuperscript{207} The report further charges that China “contributes to serious environmental damage in Africa,”\textsuperscript{208} is undermining Africa’s growth in the textile sector,\textsuperscript{209} and is offering protection to rogue states.\textsuperscript{210}

\textsuperscript{200} \textit{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.”).

\textsuperscript{201} \textit{Id.}

\textsuperscript{202} \textit{Id.}, at 14.

\textsuperscript{203} \textit{Id.}, at 16.

\textsuperscript{204} \textit{Supra} note 194.

\textsuperscript{205} \textit{Id.}, at 28.

\textsuperscript{206} \textit{Id.}

\textsuperscript{207} \textit{Id.}, at 40.

\textsuperscript{208} \textit{Id.}

\textsuperscript{209} \textit{Id.}

\textsuperscript{210} \textit{Id.}
Reports that foster the notion that China is bad for Africa and Western governments are good for the continent are myopic at best, largely unhelpful, and ignores Africa’s dark history, particularly the continent’s history of invasion, annexation, and exploitation in the nineteenth century or the continuing struggle between local communities and transnational oil corporations based in the West. Barry Sautman has noted, “[w]hile [China’s] support for Sudan and Zimbabwe is much discussed in the West, less is said about US support for authoritarian African states, especially oil producers such as Gabon, Cameroon, Angola, Chad and Equatorial Guinea, support that extends even to Sudan through US-Sudan intelligence cooperation.” 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. The conquest, occupation and eventual colonization of almost the entire continent by imperial powers occurred during this period. Although the Berlin West Africa Conference of 1884-85 (Berlin Conference), is often seen as marking the onset of the scramble for Africa, by 1880, European powers had acquired spheres of influence in

210 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.”).

211 Peter Brooks, supra note 197 (“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 and Ji Hye Shin, China’s Influence in Africa: Implications for the United States, BACKGROUNDER, No. 1916, February 2006 (observing that as China gains 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.”).

212 Sautman, supra note 146, at 7.

213 A. Adu Boahen, Africa and the Colonial Challenge, in GENERAL HISTORY OF AFRICA, VII: AFRICA UNDER COLONIAL DOMINATION 1880-1935 1, 1-18(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 their own kings, clans and lineage heads and that within 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 18, 18-44 (A. Adu Boahen, ed. 1985) (noting: “The 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.”).
the continent and had considerable commercial interest in the continent. Through explorations, the establishment of commercial posts, settlements, treaty-making with African leaders and the occupation of strategic areas, European powers acquired considerable influence in the region but did as yet exercise political power.

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

i. The General Act of the Conference at Berlin (The Berlin Act)

The Berlin Conference took place between November 15, 1884 and November 26, 1885. The primary aim of the conference was to address territorial disputes and other issues that arose as a result of the scramble. At the 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 laid down. The Berlin Act, adopted on February 26, 1885, embodied the doctrine of spheres of influence and the doctrine of effective

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214 Uzoigwe, supra note 213, at 28-29 (observing that by the early 1880s, the scramble was well under way and that the news that such a conference will be held increased the intensity of the scramble.).

215 Id., at 31.

216 See The General Act of the Congress at Berlin Done at Berlin, the 26th day of February, 1885. Available at: http://ocid.nacse.org/qml/research/tfdd/toTFDDdocs/4ENG.htm (hereinafter the “Berlin Act.”)

217 Uzoigwe, supra note 213, at 31 (noting that and that it was out of being pushed out of Africa that Portugal proposed the calling of an international conference to sort out the territorial disputes in the area of Central Africa.).

218 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.”

219 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. Sphere of influence refers to “the claim by a state to exclusive or predominant control over a foreign area or territory.” 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.” As between the European powers, agreement on spheres of influence
occupation. The welfare of Africans and the slave trade were given only passing thought.\footnote{220}

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.\footnote{221} This freedom included free access to the whole of the coastline of specified territories,\footnote{222} freedom from taxes,\footnote{223} and freedom from import and transit dues.\footnote{224}

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

was a legal devise 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. The said agreement provided for “a separation and definition of their respective spheres of influence in the territories on the Gulf of Guinea.” \textit{See} Encyclopedia Britannica Online, Sphere of Influence, at \url{http://www.britannica.com/eb/article-9042397/sphere-of-influence} \footnote{220} \textit{Id.} (noting that the conference passed empty resolutions regarding the abolition of the slave trade and the welfare of Africans). Out of a total of thirty-eight articles, one article (Article IX) was devoted to issues relating to the slave trade and one article (Article VI) addressed the welfare of natives.

\textit{Id.} (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.”).

\textit{Id.}, Article 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 situate on the banks of these waters, as well as to all canals which may in 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.”).

\textit{Id.}, Article 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.”).

\textit{Id.}, Article IV (“Merchandise imported into these regions shall remain free from import and transit dues.”)
to be Effective) legitimized and legalized the doctrines of effective occupation and the doctrine of spheres of influence.\(^{225}\) 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 of transit under the conditions agreed upon.”\(^{226}\) The Berlin Act was significant for the scant attention paid to the interests, rights and welfare of Africans and for the absence of Africans at the negotiating table.

ii. 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. First were the treaties between Africans and Europeans. Second were bilateral treaties between the European powers themselves.\(^{227}\) The African-European treaties were of two kinds. First, there were the commercial treaties and the slave trade treaties. 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

\(^{225}\) The Berlin Act, supra note --, at Article 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.”)

\(^{226}\) The Berlin Act, supra note 216, at Article XXXI.

\(^{227}\) Uzoigwe, supra note 213, 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.
European nations.” 228 An example of the African-European treaty was the treaty between the Imperial British East African Company (IBEAC) and Buganda. The African sovereign, Kabaka Mwanga II, actively sought the protection and help of the IBEAC in his struggle for power. 229 Although unwilling to give up his throne, Kabaka Mwanga II was willing to grant the Europeans unfettered freedom to engage in commercial activities in his territory. 230 Territories were fraudulently obtained. In return for false promises of protection, African rulers signed away their kingdoms and mortgaged their peoples for generation to come. So lopsided were the protection treaties that Captain F.D. Lugard, a British colonial administrator, wrote 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 have no idea of doing any such thing and no force to do it with if they wished. 231

iii. Response of Africans and African Leaders to the Nineteenth Century Scramble

Historians are divided on their interpretation of the attitude of the Africans towards the establishment of colonialism. Some historians assert that many African tribes and rulers

228 Id., at 31. 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, 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.” (31)
229 In his letter to the company, he has asked: “be good enough to come and put me on my throne.” 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.” Uzoigwe, supra note 213, at 32.
230 In his instruction to his emissaries to IBEAC, Kabaka Mwanga II stated “I do not wan 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.
welcomed European rule because of the peace dividends that resulted. A noted African historian Margery Perham writes:

“most 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, bicycle, 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, thought there was much bewilderment, revolts were very few, and there does not appear to have been much sense of indignity at being ruled.”

Others 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.” The response of Prempeh I of Asante of Gold Coast (present day Ghana) is a case in point. When the British offered him protection in 1891, he replied:

“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 …the 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.”

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

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233 Boahen, supra note 213, at 3.
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.\textsuperscript{235}

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, “whatever strategy the African’s adopted, all of them – with the sole exception of the Liberians and Ethiopians – failed … to maintain their sovereignty.”\textsuperscript{236}

\textbf{iv. Lessons Learned}

If not exactly a scramble, there is presently a strong competition to secure Africa’s natural resources, principally oil.\textsuperscript{237} While military conquest was deployed to further the goal of annexation and domination of the continent in the nineteenth century,\textsuperscript{238} military conquest is not overtly part of the equation today.\textsuperscript{239}

\textsuperscript{235} See M. Crowder, \textit{WEST AFRICA UNDER COLONIAL RULE} 97 (1968).
\textsuperscript{236} Boahen, supra note 213, 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.” 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. Uzoigwe, supra note 213, at 38.
\textsuperscript{237} Sautman, supra note 146, at 7 (2005-2006)(observing that Africa is the most resource-laden continent and is blessed with light, sweet, highly profitable crude and that there is a strong competition to secure African oil.).
\textsuperscript{238} Uzoigwe, supra note 213, at 35-39 (observing that between 1885 and 1902, European powers, particularly the French, pursed a policy of military conquest in Africa. He notes however that Britain’s military imperialism “was equally spectacular and bloody.”).
\textsuperscript{239} The announcement by Defense Secretary Robert Gates on February 6 2007 of the creation of a unified combatant command for Africa, United States Africa Command (USAFRICOM), has raised concerns in many quarters. AFRICOM will be operational by September 30, 2008 and oversee military operations on the African continent. In his testimony before the Senate Armed Services Committee, Defense Secretary Bates 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.” 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. EUCOM has responsibility for most of the nations in the African mainland except in the Horn of Africa. CENTCOM has responsibility for Egypt, Sudan, Eritrea, Ethiopia, Djibouti, Somalia and Kenya, while U.S. Pacific Command has responsibility for Madagascar, the Seychelles and the Indian Ocean area off the African coast. See Department of Defense, \textit{DoD Establishing U.S. Africa Command}, at \texttt{http://www.defenselink.mil/News/NewsArticle.aspx?id=2940} (visited 9/9/07). See Prashad, supra note 146 (stating that although the proximate issues used to push for AFRICOM
In the nineteenth century, Western corporations and Western governments often colluded with African chiefs to exploit Africa’s resources. Similar practices continue today. Although much is made of the China’s lack of scruples in its search for oil, when it comes to willingness to engage in corrupt business practices in Africa, Western corporations do not come out innocent. 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." 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.”

The Berlin Conference was motivated by economic concerns of western powers. The human rights and interests of African were virtually ignored. Provision of the Berlin Act that addressed the welfare of Africans was very paternalistic and lacked depth. While European

were the ongoing crisis in Darfur and the failure of the U.S. 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).

240 Charlotte Denny, supra note ----.
241 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.”

The Berlin Act, supra note 216.
powers assumed the responsibility to “watch over the preservation of the native tribes” and to “care for the improvement of the conditions of their moral and material wellbeing,” few rights were expressly guaranteed to the Africans. 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 are rarely published.

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 concluded without any public involvement. Such secrecy is unacceptable today. 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 the state resulting in massive revenue embezzlement. Ordinary Africans, the real owners of the resources, are left dispossessed and reliant on donor assistance. In a report that looked at the problem in five countries, including three countries in Africa, 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

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243 Id., Article VI.
244 Id.
245 The Act guaranteed only freedom of conscience and religious toleration. 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 special protection.”
247 Id.
248 Id., The five countries investigated were: Kazakhstan, Congo Brazzaville, Angola, Equatorial Guinea and Nauru.
political unrest, which can ultimately lead to state failure and the spread of instability across regions.\textsuperscript{249}

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 and serious abuse of human rights and environmental degradation.\textsuperscript{250} Critics are worried that China-Africa trade may erode democratic gains made in Africa since the 1990s.\textsuperscript{251} Africans remain spectators to arrangements and agreements that fundamentally affect their lives. While African chiefs may have acted in ignorance in the nineteenth century 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.\textsuperscript{252} African leaders must reject terms of engagement that undermine human rights and sustainable development and arrangements that do not advance Africa’s economic interest. Is a win-win trade relation conceivable? The jury is still out. Nevertheless, relationships that depict sub-Saharan Africa as

\textsuperscript{249} \textit{Id.}, at p. 4.
\textsuperscript{250} According to a 2004 Global Witness report: "Oil wealth [there] has left a legacy of corruption, poverty and conflict."
\textsuperscript{251} Wilson III, \textit{supra} note 148, at 11 (According to Dr. Wilson III, “[i]t 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.”).
\textsuperscript{252} Boahen, \textit{supra} note 213, at 12. In their 1962 book, \textit{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 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.”

See, Oliver , R. and Fage, J.D., \textit{A SHORT HISTORY OF AFRICA} 203 (1\textsuperscript{st} ed., 1962).
the object of charitable concern while billions of dollars’ worth of natural resources are being removed from it are no longer acceptable and must be seriously probed.253

To date, corruption has crippled Africa and is destroying present and future generations in a continent otherwise blessed with abundance of natural resources.254 Clear and transparent legal and regulatory framework is necessary.255 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.256 Transparency by governments and companies, particularly in key sectors of the economy, and enhanced public financial management and accountability must be the corner stone of the unfolding relations between China and Africa. African countries should immediately ratify the United Nations Convention Against Corruption (UNCAC) and a 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. Transparency in the

253 David Leigh and David Pallister, supra note -- (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 which reveals that instead of enriching often debt-ridden countries in Africa, some big corporations are facilitating corruption and provoking instability - so much so that organisations such as Friends of the Earth talk of an “oil curse”.)

254 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.


256 http://canberra.usembassy.gov/hyper/2004/0928/epf204.htm
energy and extractive sector is very important. The Extractive Industry Transparency Initiative (EITI)\textsuperscript{257} and other similar initiatives should play a critical role in investment relations between China and Africa.\textsuperscript{258}

V. 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 scramble for energy and strategic minerals in the continent. China-Africa trade relations must be assessed against the backdrop of growing South-South trade

\begin{itemize}
\item To date, about fifteen African countries have either endorsed, or are now actively implementing EITI. For a complete list of EITI countries, see: \url{http://www.eitransparency.org/section/countries}. Countries in Africa 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.

An EITI Source Book developed by the EITI Secretariat provides guidance for countries and companies wishing to implement the initiative. Participants must embrace the twelve core EITI principle.\textsuperscript{258} EITI participants “share a 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” (Principle 1); “underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability” (Principle 4); 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) and commitment to “encouraging high standards of transparency and accountability in public life, government operations and in business” (Principle 8). See \url{http://www.eitransparency.org/section/abouteiti/principlescriteria}

\item Another initiative worthy of note is the “2003 Evian Declaration on Fighting Corruption and Improving Transparency” by the Group of Eight (G8). Fighting Corruption and Improving Transparency- (Evian Declaration). See, \url{http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_declaration.html} 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. The Declaration outlines commitments by the G-8 to take necessary steps to combat bribery, help recover and return stolen assets, and deny safe havens for corrupt officials. A few countries have been invited to undertake pilot partnerships in support of G-8 anticorruption/transparency programs. Peru, Georgia and Nicaragua are a few of the Countries agreeing to participate in the pilot.
\end{itemize}
and investment. Developing countries are trading and investing more among themselves than ever before. China-Africa trade and investment relations must also be assessed against the backdrop of shrinking opportunities for growth-enhancing trade between Africa and the continent’s traditional trading partners in the North and the continent’s dire need for new trade and investment opportunities. As John Donnelly aptly notes, “the 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.”

Africa needs new trade partners. The continent is also in dire need for foreign direct investments (FDIs) and technical assistance. While China-Africa trade and investment relations presents Africa with immense opportunities to address her pressing needs, there are serious challenges too. The challenge for Africa in its relationship with China is three-fold. First, Africa

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259 From the decolonization period in the 1950s and 1960s, world trade has been dominated by commerce between developed countries and the developing countries of the South. 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 percent of Africa’s export, in contrast to only about 14 percent 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 percent per annum – which is higher than to any other region.”

Panitchpakdi, supra note 64.

260 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 64.

261 Broadman, supra note 2, at 1 (noting that over the period 2000-2005, the EU’s share of Africa’s export more than halved).

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 of the colonial era which was marked by 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. This section identifies and analyzes the potential gains and pitfalls of the unfolding relationship between Africa and China. Suggests for an African China policy are offered.

A. China-Africa Relations – Potential Gain for Africa

a. Africa’s Need for New Trade Opportunities: Examination of Africa’s trade performance over the past decade reveals a need for new opportunities for trade. First, although Africa has witnessed an increase in its trade relative to gross domestic product, overall, Africa’s share in world export has fallen. According to a 2004 report from UNCTAD, Africa’s share in world exports fell from about 6 per cent in 1980 to 2 per cent in 2002, and its share of world imports fell from about 4.6 per cent in 1980 to 2.1 per cent in 2002. Second, also of concern is Africa’s heavy dependence on primary commodities as a source of export earnings. 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.”

263 UNCTAD, ECONOMIC DEVELOPMENT IN AFRICA: TRADE PERFORMANCE AND COMMODITY DEPENDENCE 1 (2003)(reporting that trade as a share of GDP for sub-Saharan Africa, excluding South Africa and Nigeria, increased from 45.0 to 50.4 per cent between 1980-1981 and 2000-2001.). (hereinafter “Economic Development in Africa”. See also, UNCTAD, WORLD ECONOMIC SITUATION AND PROSPECTS 2007 at 9 (noting that economic growth in Africa “has maintained a strong pace, reaching almost 5.6 per cent in 2006)(hereinafter WORLD ECONOMIC SITUATION AND PROSPECTS).

264 Id. note 263, at 1.
265 Id.
266 Id. (observing that Africa depends more on primary commodities as a source of export earnings than any other developing region.).
267 Broadman, supra note 2, at 6.
compared to 1980s. Overall, compared to other regions such as Asia and Latin America, Africa has not benefited from the boom in manufactured exports. 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 per cent annually, this seemingly high growth is about half the growth rates recorded by Asia (14 per cent) and Latin America (about 12 per cent) 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).

Africa’s commodity dependence means vulnerability to weather conditions and market vagaries and frequently result in terms-of-trade losses. 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.” Third, even in the sector where Africa enjoys comparative advantage, the continent has fallen behind other developing countries in the export of non-fuel primary commodities. Fourth, for most countries in Africa, market access remains a problem. Because most of the

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268 Id., at 3-4 (“The continent’s share in world merchandise exports fell from 6.3 per cent in 1980 to 2.5 per cent in 2000 in value terms…. Similarly, its share of total developing-country merchandise exports fell to almost 8 per cent in 20000, nearly a third of its value in 1980, while the share of world manufactured exports remained a little below 1 per cent.”).
269 ECONOMIC DEVELOPMENT IN AFRICA, supra note 263 at 2.
270 Id., at 4.
271 Id., at 2; See also, WORLD ECONOMIC SITUATION AND PROSPECTS 2007 supra note 263, 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.).
272 ECONOMIC DEVELOPMENT IN AFRICA, supra note 263, at 19.
273 Id., at 6 (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 diversity 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 the high cost of trading.”

274 ECONOMIC DEVELOPMENT IN AFRICA, supra note 185, at 22
tariff peaks are in Agriculture and average agricultural tariffs are higher than tariff on manufactures, Africa suffers disproportionately given the regions dependence on commodities export.\textsuperscript{275}

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.”\textsuperscript{276} Trade with Asia, 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 for Africa’s exports. Exports to China grew by 48 percent annually between 1999-2004, compared to 14 percent for India. Ten percent of Sub-Saharan exports are now to China and some 3 percent are to India. China has overtaken Japan as the leading importer of African products in Asia.”\textsuperscript{277}

Apart from increase in the volume of African export to China, trade with China may stimulate diversification and export of non-fuel products. Increasingly, labour-intensive raw and semi-processed agricultural commodities that are used for further processes are also exported to China.\textsuperscript{278} In 2006, China promised to further open up its market to Africa. Consequently, China pledged to increase the number of export items to China eligible for zero-tariff treatment from the least developed countries from 190 to over 440 and to launch bilateral negotiations with countries concerned for the early conclusion and implementation of related agreements.\textsuperscript{279}

\textbf{b. Africa’s Need for New Investment Opportunities:} Africa is in dire need for

\textsuperscript{275} \textit{ECONOMIC DEVELOPMENT IN AFRICA}, supra note 263, at 22 (noting that most tariff peaks are in agriculture).
\textsuperscript{276} Broadman, supra note 2, at 6.
\textsuperscript{277} \textit{Id.}, at 8.
\textsuperscript{278} \textit{Id.}, at 9.
\textsuperscript{279} 2007-2009 Action Plan, \textit{supra} note 86, at para. 3.3.
FDIs. FDIs provide resources needed to finance sustained economic growth over the long term. Although FDI inflow as a percentage of Africa’s gross fixed capital formation increased to 19% in 2005, Africa’s share of global FDI is negligible and currently stands at about 3%. Outward FDI from the region as a whole is in decline. 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.

China represents a new and growing source of FDI inflow to Africa. According to media reports, China has now signed a Bilateral Investment Treaty (BIT) with 28 African countries and Agreements for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income with 8 African countries. With increase in FDI inflow from China also come a new aid-investment nexus that could stimulate human resource development in Africa. The 2004-2006 China-Africa Inter-governmental Human Resources Development Plan (2004-2006 Human Resources Plan) adopted following the second Ministerial Conference of the Forum has now been successfully implemented. Pursuant to the 2004-2006 Human Resources Plan, China trained over 10,000 African professionals in various fields under the African Human Resources Development Fund (AHRDF). The Chinese government has also pledged to continue to provide specific training of professionals and management personnel

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280 Monterrey Consensus, supra note 55, at para. 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.”).

281 WORLD INVESTMENT REPORT 2006, supra note 66, at 41 (noting that total FDI inflows into Africa “surged to reach $31 billion in 2005, representing a historic growth rate of 78%.”)

282 Id., at 40.

283 Id.

284 Id., 41.

285 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.”).

286 Id.

287 2007-2009 Action Plan, supra note 86, para. 5.2.1.

288 Id.
for African countries in response to their needs and to train 15,000 professionals for African
countries in the next three years.\textsuperscript{289}

Overall, Chinese investment in Africa could help diversity the Africa’s export base,
strengthen the continent’s domestic production capacity and may 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, with its
weak manufacturing and service base, may not be an attractive market for Chinese investors.\textsuperscript{290}

c. 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
base.\textsuperscript{291} Africa suffers from a weak private sector. Countries in Africa “lack a strong institutional
capacity to provide the necessary support services to producers and exporters.”\textsuperscript{292} 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 constraint to trade and investment are addressed.\textsuperscript{293} To

\textsuperscript{289} Id.
\textsuperscript{290} WORLD INVESTMENT REPORT 2006, supra note 66, at 115 (observing that the service sector accounted for 81\% of
the total FDI stock of the developing and transition economies in 2004).
\textsuperscript{291} ECONOMIC DEVELOPMENT IN AFRICA, supra note 263, at 12 (observing that the continents underdeveloped and
unreliable road and railway networks and communication links and tardiness in information technology.).
\textsuperscript{292} Id.
\textsuperscript{293} WORLD ECONOMIC SITUATION AND PROSPECTS 2007, supra note 263, at 52 (noting that there 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 Organization, Aid for Trade,
(“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.”). Available at

For developing countries, particularly, 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
benefit from the open global economy, most countries in Africa must enhance their supply and trading capacities. What is needed is 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, Africa’s relationship with China holds a lot of promise. China has promised to “step up China-Africa cooperation in transportation, communication, water conservancy, electricity and other infrastructures.” Under the 2007-2007 Action Plan, China has committed to send 100 senior experts on agricultural technologies

markets of developed countries, as well as to the markets of developing countries in a position to do so, and support their efforts to overcome their supply-side constraints.” See 2005 World Summit Outcome, A/RES/60/, para. 29. See 2005 World Summit Outcome, A/RES/60/, para. 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.

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. 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.”

China’s African Policy, supra note 8., at para. 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.”).
to Africa and to establish 10 demonstration centers of agricultural technology in Africa.\textsuperscript{296} China has also undertaken to establish cooperation with Africa in extending applicable technologies and human resources training in agriculture.\textsuperscript{297} The important point to note is that China is providing assistance in areas long neglected by Western aid agencies and private investors.\textsuperscript{298}

**B. Africa’s China Policy - A Modest Proposal:** What principles ought to guide the relationship between Africa and China going forward? This section identifies several issues that should be in the mind of policy makers in Africa as they contemplate trade and investment relationship with China.

**a. Proactivity:**

Africa must learn from the mistakes of the past. During the colonial era, African states were mere spectators and 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 maximize the opportunities and the potential know-how China presents.”\textsuperscript{299} This requires the active involvement of Africa’s civil society including, scholars, 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

\begin{footnotesize}
297 \textit{Id}.
298 According to a 2005 report by the US Council on Foreign Relations:

“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 percent 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.”

CFR, \textit{supra} note 194, at 48.
\end{footnotesize}
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. 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.” What is perhaps shocking is that “[a]mong Asian countries, the tariff levels of China and India on African products remain high.” In China as well as in India, tariff rates on a agricultural products are high. Although China has zero tariff on raw materials in high demand in the country, it has moderate-to-high tariffs on other imports. High tariffs, particularly on agricultural products, are troubling as they have the tendency to discourage African exports.

Tariff peaks and escalations in the Asian market are another cause of concern that must be closely monitored. According to the World Bank, tariff escalation “is quite visible in Asian markets on some of the leading exports from Africa.” Tariff escalations in China discourage processing activities in Africa and they result in Africa’s continued dependence on primary production.

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300 Broadman, supra note 2, at 120 (observing that “[a]lthough Asian tariffs for Africa are gradually declining, the trend is very weak, especially for exports from African least developed countries (LDCs).”).
301 Id.
302 Id.
303 Id.
304 Id.
305 Id. at 124 (observing that 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.”).
306 Id., at 126 (“Asia’s tariff structure consists of many peaks and escalations.”). Tariff peaks arises when a government maintains excessively high tariffs on products that the government considers sensitive in order to protect domestic producers. 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.
307 Id., at 126.
308 World Trade Organization, Understanding the WTO: Developing Countries, http://www.wto.org/English/thewto_e/whatis_e/tif_e/dev4_e.htm (noting that when importing countries escalate
Non-tariff barriers are another area that calls for vigilance on the part of African governments. The increase of technical measures and sanitary and phytosanitary measures in many countries, the fact that most technical measures are applied to agricultural products, the primary export from Africa, and the fact that developed countries and Asia have doubled their technical measures up to 50 percent, mean that for Africa, the promised gains from trade may not materialize. African countries “overall carry a higher NTB burden than any other continent because the majority of LDCs are in Africa,” the World Bank has noted. NTBs, especially technical standards, can pose triple challenges to LDCs most of which are in Africa. First, “LDCs lack the capacity to regulate based in technical standards, which means that their markets are less protected by NTBs than countries with such capacity.” 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.” Third, “a disproportionately large part of LDCs’ exports face NTBs due to their concentration on agricultural exports, where the majority of NTB’s lie. For African LDCs, the cost of NTBs can be extremely high relative to the small size of their tariffs, “they make it more difficult for countries producing raw materials to process and manufacture value — added products for export.” See also, Broadman, supra note 2, at 126.

309 NEPAD, The NEPAD Framework, supra note 255, para. 153 (2001)(noting that African economies are vulnerable because of their dependence on primary production and resource-based sectors and urging that “Value-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.”).

310 Broadman, supra note 2, at 133 (noting that least developed countries “carry a higher than average burden of NTBs because they export mainly agricultural products).

311 Id., at 133.

312 Id. The World Bank also notes that “NTBs are … present in African industries where protection of domestic businesses from import surges is sought.” Id., at 134.

313 Id., at 135.

314 Id.
of their economies.”

African leaders must be vigilant to monitor Chinese market conditions and ensure that China keeps its promise of greater market access.

b. **Disaggregated Data:** Because Africa is not homogenous, relationship between the continent and China is bound to have disparate impact on countries in Africa. In general, although the gains from South-South trade and investment cooperation has been celebrated, not all countries have benefited. Instead of broad speculations and generalizations, effort must be made to identify the impact of Sino-Africa 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 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 increase in global commodity prices brought about by the expansion in China’s economic expansion. FDI in Africa has traditionally been geographically and industrially concentrated. A large proportion of Africa’s

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315 *Id.*
316 *Id.*, at 124 (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.).
317 Sidiropoulos, *supra* note 11, at 103 (observing that there can be no single blueprint that can help all African countries to rise to the challenges that China presents.).
318 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.” See Supachai Panitchpakdi, *supra* note 64.
FDI inflow is concentrated in mining, particularly in oil and gas.\(^{320}\) The result is that only five countries (South Africa, Egypt, Nigeria, Morocco, and Sudan) account for 66% of Africa’s FDI inflow.\(^{321}\) Export trade is also geographically and industrially concentrated.\(^{322}\) “Five oil- and mineral-exporting countries account for 85 percent of Africa’s exports to China.”\(^{323}\) The second largest oil producer in Africa, today, Angola is China’s most important trading partner in the continent. Angola became the largest supplier of crude oil to China in February 2006, beating Saudi Arabia (second place) and Iran (third place).\(^{324}\) Least developed countries (LDCs) will probably benefit the least as a result of limited natural resources, political instability, lack of diversification into the manufacturing sector.\(^{325}\)

Within countries, the winners are likely to be the urban rich who can afford the manufactured goods from China that are flooding the continent.\(^{326}\) Those who control the energy sector are also likely to benefit from FDI inflows from China. Local producers and manufacturers are likely to lose as a result of increased competition from China.\(^{327}\)

c. **Interrogate Reciprocity**: Will Africa actually benefit from trade and investment relations with China? How would deepened relationship affect domestic industries and employment trends in the continent? Presently, while Asian firms are increasingly establishing

\(^{320}\) Id., at 40.
\(^{321}\) Id., at 41. 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.
\(^{322}\) Broadman, supra note 2, at 9 (“The current geographic distribution of Africa’s origin markets for the continent’s export to China and India is concentrated.”).
\(^{323}\) Id., at 9.
\(^{325}\) WORLD INVESTMENT REPORT 2006, supra note 66, at 42 (observing that LDCs received the least FDI in Africa.).
\(^{326}\) CFR, supra note 194, at 48 (noting that Chinese consumer goods are flooding African markets thus raising concerns about the effect on local industries.).
\(^{327}\) Id., at 48 (Suggesting that Chinese textile exports to Africa are undermining the local industry in countries such as South Africa and Nigeria.).
businesses in Africa, FDI in Asia by African firms is negligible, both in relative and absolute terms. It is unlikely that Africa corporations will invest in China in the short term to medium. FDI outflow from Africa is negligible compared to overall global FDI outflow. Worse, outward FDI from Africa is in decline. Africa’s FDI inflow to China is thus likely to be negligible. Although China attracts the most foreign direct investment among developing counties, Africa is not enjoying the windfall. Only South African corporations are likely to contemplate investing in China. Other countries that could 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. Regarding trade, Africa’s export to Asia represent about only about 1.6 percent of the worldwide export to Asia.

Despite the rhetoric of mutual benefit and win-win cooperation, competition between African producers and Chinese producers is a major source of concern for producers and manufactures in Africa? According to the World Bank, “the rise of internationally competitive Chinese and Indian businesses has displaced domestic sales as well as exports African producers,

328 Broadman, supra note 2, at 10.
329 WORLD INVESTMENT REPORT 2006, supra note 66, at 45 (“FDI outflows from Africa were a minuscule proportion of global outflows – 0.1% - and only 0.9% of developing-country outflows.”).
330 Id., at 44 (observing that outward FDI from Africa fell to $1.1 billion from $1.9 billiom.).
331 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 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. (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.” See, Ministry of Commerce, China Attracted 5.175 Bln USD of FDI in January 2007, Friday, February 16,2007. Available from: http://english.mofcom.gov.cn/aarticle/newsrelease/significantnews/200702/20070204389692.html
333 WORLD INVESTMENT REPORT 2006, supra note 66, at 40 (noting that Africa’s outward investors are primarily from South Africa.). Broadman, supra note 2, at 10 (observing that while there is some African foreign direct investment in China, this investment is dominated by the flows of Chinese FDI in Africa.).
334 Id., at 45.
335 Broadman, supra note 2, at 2.
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.\textsuperscript{336} 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.\textsuperscript{337} Is Africa able to produce tradable, internationally competitive goods and services?\textsuperscript{338} The forecast is grim. According to the World Bank, “[m]ost 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.\textsuperscript{339}

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.\textsuperscript{340} Competition will likely affect the profitability and future viability of firms in Africa and presents grave survival and unemployment threats.\textsuperscript{341} 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.

d. Maximizing Opportunities; Addressing Supply-Side Constraints: African

\textsuperscript{336} Broadman, supra note 2, at 2.  
\textsuperscript{337} Id., at 180.  
\textsuperscript{338} Id. (observing that in order for trade to take place, tradable goods and services must be produced.).  
\textsuperscript{339} Id., at 11.  
\textsuperscript{340} Undoubtedly, import competition can have some positive effect. 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?  
\textsuperscript{341} Broadman, supra note 2, at 190.
leaders must effectively address the supply-side constraints to trade. Africa cannot benefit from trade with China unless the continent is able to produce competitive goods for export and actively identify where market exists 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.” Chinese preferential tariffs for African LDCs have so far been underutilized. According to the World Bank, Africa’s export under the existing presidential tariff account for only 25 percent of total export from LDCs in Africa. The need to address supply-side constraints is particular strong in the agricultural sector because the agrarian systems in the continent are presently weak and unproductive. 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.” To this end, they resolved to increase investment in infrastructure and improve system maintenance that will sustain infrastructure. These are welcomed plans that should be fully implemented.

e. Private Sector-Led Relationship: The private sector is a stakeholder in Africa’s

342 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 (Para. 98).

343 Broadman, supra note 2, at 128 (citing the example of cotton yarn in China. 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.”).

344 Id., at 153 (“in 2004, LDCs in Africa exported products that correspond with only the 190 lines with Zero tariffs.”)

345 The NEPAD Framework Document, supra note 255, at para. 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.”).

346 Id., at para. 102.
development. Africa will benefit from Sino-Africa trade to the extent that the continent has a strong, vibrant private sector able to engage in trade with China and equipped to compete and access the market openings in China. 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 trade and investment climate in China that could enable the private sector 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 on an annual basis, the Foreign Market Access Report (FMA Report). 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 full-scale understanding of competition on global markets, and thus to participate in the international competition on an even ground.” The FMA Report also serves as a vehicle for “expressing the concerns of the Chinese governments and industries over the

347 In the NEPAD framework document, African leaders asked “the African people” to take up the challenge of mobilizing in support of the implementation of the NEPAD initiative by setting up, at all levels, structures for organization, mobilization and action (para. 56).
350 Id., at 2.
external environment for trade development.” The 2005 report covered 22 trading partners of China including Egypt, South Africa and Nigeria. For each trading partner, the report presented information on three main areas: bilateral economic and trade development, trade and investment regulatory regime, and barriers to trade and investment.

There are interesting developments in the horizon. Within the context of NEPAD, the private sector is expected to play a significant role in the future. There are also new initiatives aimed at fostering private-public partnership. In NEPAD’s framework document, African leaders acknowledge that the “[p]rivate enterprise must be supported, both micro-enterprises in the informal sector and small and medium enterprise in the manufacturing sector, which are principle engines of growth and development.” Governments are called upon to “remove constraints on business activity and encourage the creative talents of African entrepreneurs.”

f. **Enabling Environment for Trade and Investment:** For Africa to benefit from trade and investment relations, governments must improve the business environment in the continent. Businesses, domestic and foreign, face many obstacles in Africa including the problem of excessive regulation, lack of transparency and predictability, corruption or anti-

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351 Id., at 2.
352 Id., at 4.
353 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)(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.”).
354 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.
356 Id.
357 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…. Then there is the perception that Africa's security, health and infrastructure problems mean it is a poor place to do business.” See DFID, Press Release: Africa opening for business: Prime Minister confirms UK support for Africa's Investment Climate Facility (ICF), 17 Nov. 2005. [http://www.dfid.gov.uk/news/files/pressreleases/investment-climate-facility.asp](http://www.dfid.gov.uk/news/files/pressreleases/investment-climate-facility.asp)
competitive practices. Domestic and foreign firms lose millions due to corruption, red taps and red regulatory uncertainty. Presently, many countries in Africa lack the policy and regulatory frameworks for private-sector growth and lack the capacity to implement programs. According to Cohen and Alasa, key obstacles to foreign investment fall into three main categories: legal regimes and regulatory certainty; lack of property rights, and political instability and corruption. 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.

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. 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

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358 *Id.*

359 Economist Intelligence Unit, "South Africa Industry: Undermined," *Country Briefing*, November 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).

360 NEPAD Framework Document, *supra* note 255, at para. 86. According to Cohen and 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 and Alasa, *supra* note 15.

361 *Id.* (noting that property rights is 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.

362 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.

363 *Id.*

364 The 2007 *Index of Economic Freedom* measured and ranked 161 countries across 10 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.

investment destination.”

ICF has been endorsed by key African institutions, major donor agencies; and key private sector interests. ICF is set up to support “appropriately targeted practical interventions” and to “systematically focus on areas where practical steps can be taken to remove identified constraints and problems.” 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.”

g. Respect for Human Rights: The impact of Sino-Africa trade and investment on human rights cannot be ignored. Critics of China’s engagement in Africa are concerned that when it comes to Chinese involvement in Africa, profit will be placed over principles. Sticking points include, China’s apparent dubious stance on the Darfur crisis,

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366 ICF, About Us, http://www.investmentclimatefacility.org/about.htm#icfinbrief. 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. Regarding intra-African trade emphasis is on “improving Africa’s import and export environment and improving and simplifying administration in order to facilitate cross-border trade.” With respect to facilitation of business development and expansion, ICF will focus on “ICT and infrastructure development, business registration and licensing and property rights.” Finally, regarding facilitation of financial and investment environment, 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.”

368 In an open letter to China’s president on Jan. 29, 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. Brad Adams & Peter Takirambudde, Letter to China on the Crisis in Darfur, http://hrw.org/english/docs/2007/01/29/sudan15189.htm

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, authorize the establishment of a United Nations-administered trust fund for the victims of atrocities,” “establish new mechanisms to monitor the end-use of its weapons,” “examine the connection between Sudanese oil development and human rights abuses,” and “issue an overview or white paper on China’s policies toward the Sudan over the past decade.” The authors recommended sanctions including freezing assets and travel restrictions applied to the Sudanese Minister of Defence and other high-level officials. In calling for increased Chinese support for UN efforts in Sudan, Adams and Takirambudde called attention to the fact that China has recently supported the imposition of sanctions elsewhere. They not:
regimes in Africa,369 China’s friendship with leaders such as Robert Mugabe of Zimbabwe that Western governments seek to isolate.370 Critics see China as the major stumbling block to efforts by the U.S. to impose economic and military sanctions on countries such as Sudan, Myanmar and Iran.371

China’s claims to be a friend of the African people would ring hollow if the Chinese government does not use its leverage to address human rights abuses in the continent. With its engagement in Africa, China has a fresh opportunity to prove that she can be a responsible international power.372 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 be and should be strong components of South-South cooperation.373 Chinese and African leaders must not let the spirit of the Bandung Conference die. Arguably, the Bandung Conference was much more than an anti-colonial and anti-Western forum. Arguably, the leaders that gathered in Bandung in 1955 considered the achievement of respect for human rights

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369 Peter Brookes and Ji Hye Shin, China’s Influence in Africa: Implications for the United States, BACKGROUNDER, No. 1916, February 2006 (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.”).

370 Id. (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.”).

371 Thalif Deen, How to curb China’s arms trade, Asia Times On-line, June 14, 2006, http://www.atimes.com/atimes/China/HF14Ad01.html (visited 8/1/07) (“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 unable to take any action against any of the three countries because of opposition from China or Russia - or both.”).

372 Drew Thompson, Economic Growth and Soft Power: China’s Africa Strategy, 4 (24) CHINA BRIEF 3 (2004)(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.”).

373 Katzenellenbogen, supra note 1 (suggesting that if and when China takes on more active political reform, it is likely that elements of its Africa policy might also change to give human rights and governance more emphasis.)
important. Principle 1 of the Bandung Conference called for respect for fundamental human rights as set forth in the United Nations Charter. In the Doha Declaration adopted by the Group of 77 and China following the Second South Summit in 2005, developing country leaders 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 “south economic policies, solid democratic institutions responsive to the needs of the people, respect for all human rights … should also be pursued.” Moreover, as world leaders rightly noted in the Monterrey Consensus adopted at the Conference on Financing for Development:

> Good 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.

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, stages of development, 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.” The Declaration further asserts that “the politicisation of human rights and the imposition of human rights conditionalities on economic assistance should be vigorously opposed to as they constitute a violation of human rights.” While African dictators undoubtedly

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374 Doha Declaration, *supra* note 50, at para. 10.
375 Monterrey Consensus, *supra* note 72, at para. 11
376 Emphasis added.
welcome such claims, they are troubling to human rights groups in Africa most of whom have pushed for human rights conditionalities in economic assistance. Such statements fuel the speculation that China’s Africa policy is intended to benefit the corrupt elites rather than the masses and “grants the elites of each country the arbiters of what are and what are not ‘human rights’ and also how such rights should be protected. (or not as the case may be).” 377 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.” 378 and for “[i]nstituting transparent legal and regulatory frameworks for financial markets and the auditing of private companies and the public sector.” 379 The time for action is now.

h. Examining Readiness: Will the continent only be a source of cheap raw material for China and a dumping ground for Chinese goods? Do Africans 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 as least compared to economies in Africa. Dumping is already a problem and is likely to grow. 380 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

377 Taylor, supra note 16, at 69
378 Id., at para. 49.
379 Id., at para. 49.
380 Dulue Mbachu, Nigerian Resources: Changing the Playing Field, 13 (1) SOUTH AFRICAN JOURNAL OF INTERNATIONAL AFFAIRS 77, 80 (noting that Chinese exporters have been accused of dumping goods particularly textiles, in Nigeria.).
exporters if necessary? From 1995 to the first half of 2004, WTO members initiated 2,537 anti-dumping cases, 356 involving Chinese products -- one seventh.

- 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, in order to participate in international competition on equal grounds.\(^{381}\)

- Do states have a technical trade barrier warning system that can alert African exporters and investors of potential problems in China and other countries?\(^{382}\)

- 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?\(^{383}\)

- 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?\(^{384}\)

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\(^{382}\) People’s Daily Online, China to set up technical trade barrier warning system, http://english.people.com.cn/200501/14/eng20050114_170704.html

\(^{383}\) Mbachu, supra note 380, 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 like China and Taiwan, are finding “greener” pastures in Nigeria and other third world countries with weaker or nonexistent enforcement apparatus. In 1995, a company, Akina, reportedly owned and operated by some Chinese merchants, was barred from illegal mass reproduction of copyright products by the Nigerian Copyright Commission (NCC). 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.

\(^{384}\) In Mozambique, a Chinese-owned company was allegedly paying Mozambicans below minimum wage cooked up the wage sheet sent to the Provincial Labour Directorate to avoid detection. 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. According to the Agencia de Informacao de Mocambique:
China cannot be singled out for special or heightened scrutiny. The questions are pertinent in all dealing between Africa and her 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,\(^{385}\) there is no free trade agreement between China and any country or group of countries in Africa.\(^{386}\) Currently under negotiation is the China-South Africa FTA.\(^{387}\) Presently, trade between China and most countries in Africa is governed by multilateral commitments under the WTO.\(^{388}\) 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.” Regarding bilateral investment treaties, although China has signed BITS with many countries in Africa,\(^{389}\) there terms of most of the treaties are not generally public.

VI. CONCLUSION

The global economy and the global balance of power both have to be seriously

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Cited in Taylor, \(\textit{supra}\) note 16, at 104
\(^{385}\) \(\textit{Id.}\), at 147 (noting that FTAs and RTAs have proliferated around the world and that since June 2006, 197 RTAs have been filed with the World Trade Agreement).
\(^{386}\) \(\textit{Id.}\), at 148 (observing that agreements between countries in Africa and Asia are “very limited in number.”).
\(^{388}\) \(\textit{Id.}\), at 148-149 (“noting that “the basic contours of trade between Africa and China … are still subject to WTO rules and standards, including procedures for dispute settlement.”).
\(^{389}\) \(\textit{Id.}\), at 158 (noting that China has by far the most BITs with other African countries..).
rethought in the light of China’s ascendance in the twenty-first century.\textsuperscript{390} China would become the world's largest economy in 2027 if it stays on the same economic tract, experts project.\textsuperscript{391} Clearly, South-South cooperation is changing the landscape of international relations.\textsuperscript{392} As Mr. Anwarul K. Chowdury, Under-Secretary-General and High Representative for the Least Developed Countries, Landlocked Countries and Small Island Developing States, has rightly noted, “[h]istorically, 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.”\textsuperscript{393}

Developed and developing countries alike have to rethink their relations with China. In the light of the fact that barely thirty years ago, China’s per capita income was only 7.5\% of that of Western Europe but by 2000, it had reached about 20\% of Europe’s per capita income, there is a lot Africa could learn from China.\textsuperscript{394} For one thing, Africa could learn from China’s success in reducing extreme poverty in the last three decades.\textsuperscript{395} In contrast to China, the number of people living in extreme poverty in Africa has been steadily rising over the past three decades.\textsuperscript{396}

In assessing Sino-Africa trade and investment relations, it is necessary to go beyond

\textsuperscript{390} Mbeki, supra note 299.
\textsuperscript{391} William Foreman, \textit{China’s Influence Spreads Around the World}, \textit{Associated Press}, September 1, 2007, at http://ap.google.com/article/ALeqM5id_WAIkG8AEB9cdMkDcer0IH_VCg
\textsuperscript{392} \textit{Celebrating the Global South: Diversity and Creativity}, Statement by Mr. Anwarul K. Chowdury, Under-Secretary-General and High Representative for the Least Developed Countries, Landlocked Countries and Small Island Developing States for the United Nations Day for South-South Cooperation, 19 December 2005. Available at: www.un.org/special-rep/ohrlls/Statements/19%20Dec%202005%20-%20South-South%20Cooperation.pdf
\textsuperscript{393} Id.
\textsuperscript{394} Mbeki, supra note 299.
\textsuperscript{395} Id.
\textsuperscript{396} Id.
grand rhetoric, particularly the rhetoric of anti-hegemonism and mutual support. China must be judged by her deeds and not by her words.\(^{397}\) Trade-deficit 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 China’s favor.\(^{398}\) This sad 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.”\(^{399}\) 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 to \textit{inter alia} “encourage its enterprises to give preference to the import of African products in the light of market demand and conditions.”\(^{400}\)

Colonialism wrecked havoc on the economies of states in Africa. Unfortunately, failures of political and economic leadership in most countries in the continent continue to impede economic development today.\(^{401}\) Respect for human rights, transparency and private sector participation must constitute the foundation for unfolding Sino-Africa 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 institute transparent legal and regulatory framework in the continent.

\(^{397}\) 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.….” Cooley, \textit{supra} note 21, at 219.

\(^{398}\) Taylor, \textit{supra} note 16, at 71 (“Traditionally, Sino-African trade has been vastly unbalanced in China’s Favour”).

\(^{399}\) Declaration of the Beijing Summit, \textit{supra} note 85, at para. 4.1.

\(^{400}\) \textit{Id.} para. 4.4.

\(^{401}\) The NEPAD Framework Document, \textit{supra} note 255, at para. 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.”)
Although China may have effectively ended Western dominance of economies in Africa, Africa should not be too hasty to part ways with her traditional Western trading powers for several reasons. First, much about China’s relationship with Africa is still grounded in unenforceable promises. Only time can 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 the continent in the long-term. China may lose interest in the continent, as it has done in the past, if the economic expectations are not met. As Taylor rightly notes, “China’s economic dealings with most African countries are today based on a cool evaluation of their perceived economic potentials.”

In the 1980s, Africa was marginalized by a Beijing government that was intent on modernization and came to view the continent as irrelevant to its modernization quests. 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.” It was only after the Tiananmen Square debacle that China was, shocked by the depth of Western condemnation, forced to revive anti-hegemonic and anti-imperialist rhetoric and reexamine its foreign policy towards Africa.

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402 Mbachu, supra note 380, 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 Elizabeth Economy of the Council on Foreign Relations speaking at the World Economic Forum, Davos, Switzerland, 25-29 January 2006. Cited in Chris Alden and Martyn Davies, A Profile of the Operations of Chinese Multinationals in Africa, 13(1) SOUTH AFRICAN JOURNAL OF INTERNATIONAL AFFAIRS 83,91 (2006)(“Whether oil in Angola, timber in Mozambique or copper in Zambia, China is breathing new life into these African economies.”).

403 From the mid-1980s, China became very preoccupied with internal matters and with its interactions with Russia and United States and virtually lost interest in the continent. Taylor, supra note --, at 59 and 60 (noting that “[b]y the mid-1980s it was apparent that China had effectively lost interest in Africa. He notes further that “in China’s modernization drive, China 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.”)


405 Id.

406 Id., at 60.

407 Id., at 62.( noting that the post-Tiananmen era saw China redouble its effort in Southern-Africa and continue its anti-hegemonic posturing.).
Should Africa decide to forge even stronger ties with China, there will be many challenges in the years ahead. To benefit from Sino-Africa trade, knowledge of Chinese legal, social and political system is required. Language barriers could be a problem for Africans is a problem. Today, as in the 1960s, only a handful of Africans speak Chinese. 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. While some scholars have dismissed, as ridiculous, an announcement in 2006 that Zimbabwe’s government hoped to see Mandarin Chinese taught in Universities, there is 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. 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. African students in China reported experiencing racial discrimination and complained about poor facilities and political indoctrination. Disgruntled students organized protest demonstrations, requested to leave China while some went on hunger strikes.

The present pattern of trade between Africa and China which closely mirrors the pattern of trade between African states and European powers during the colonial rule raises a red flag.

Presently, Africa is exporting only primary commodities to China and are importing

408 Hutchinson, supra note 20, at 179 (noting with reference to the 1960s, that very few Africans spoke Chinese.).
409 Taylor, supra note 16, at 125 (stating that the Zimbabwean government does not care about the effect its policies are 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, BBC News, Zimbabwe planning Chinese lessons, Thursday, 26 January 2006. Available form: http://news.bbc.co.uk/2/hi/af rica/4649692.stm (visited 8/10/07).
410 In the 1960s and 1970s African students who had been to China to study reported experiencing racial discrimination. See Emmanuel Hevi, AN AFRICAN STUDENT IN CHINA (1964).
411 Hutchinson, supra note 20, at 186.
412 Id., at 187
manufactured and higher-level products from China. 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 pocket and their foreign bank accounts with ill-gotten wealth? Much would depend on the de facto rules and principles that guide the Sino-Africa relations going forward. Much would depend on how the two sides address the issues of corruption, lack of transparency and popular participation, accountability, and respect for human rights.