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LL.M. Thesis

**A Comparative Analysis of Legal Frameworks for Investments in Africa by China
and the European Union**

by

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Research dissertation presented for the approval of Senate in fulfillment of part of the requirements for the LL.M. specialized in International Trade Law for which the student is registered in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of LL.M. in Commercial Law dissertation, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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Abstract

This thesis presents a comparative analysis of the legal investment frameworks of the European Union and China in African countries. The thesis reviewed financial instruments of foreign direct investments, official development assistance and other official flows. The legal analysis focus on the demand on political conditions to access the financial assistance; under which conditions are the projects tendered; and which labor standards set the parties while the project is implemented. All reflected under the aspect of the fairest condition for African countries.

The comparison figured out that the European Union with its demands for the implementation of human rights, democracy and the rule of law facing certain reluctance of most African governments for a full implementation while contrary to that the One-China principle is broadly acknowledge by African governments to gain investments.

When projects are tendered the research presents that the European Union searches for local and regional providers to strengthen African businesses. This with guidelines for core labor laws based on human rights when it comes to the implementation. While China tenders with a strong commercial self-interest and does not set any labor standards relaying on local laws and showing limited interest and understanding when it comes to implementation.

List of Acronyms

ACP	African-Caribbean-Pacific
AU	African Union
BITs	Bilateral Investment Treaties
BRI	One Belt one Road Initiative
BRICS	Brazil-Russia-India-China-South Africa
CA	Cotonou Agreement
CIDCA	China International Development Cooperation Agency
DRC	Democratic Republic of the Congo
EC	European Community
EDF	European Development Fund
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
ENI	European Neighborhood Instrument
EPA	Economic Partnership Agreements
EU	European Union
Exim-Bank	China Export-Import Bank
FDIs	Foreign Direct Investments
FOCAC	Forum on China-Africa Cooperation
IfSP	Instrument for Stability and Peace
ILO	International Labor Organization
INSC	Instrument for Nuclear Safety Cooperation
IPA	Instrument for Pre-accession Assistance
MOFCOM	Ministry of Commerce
NDRC	National Development and Reform Commission
ODA	Official Development Assistance
OECD	Organization of Economic Cooperation and Development
PI	Partnership Instrument
PRAG	Practical Guide to Contract Procedures for EU External Actions
RECs	Regional Economic Communities
TEU	Treaty of the European Union
TFEU	Treaty of the Function of the European Union
UN	United Nations
WTO	World Trade Organization

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1. Chapter: Introduction

1.1. Background to the study

Africa's need for foreign investments, whether it is foreign direct investments by the private sector or by non-African governments or international organisations, is unabated. In the last two decades Africa has found new partner who seek to grow their own economies whilst also benefiting African countries. This "new scramble for Africa" as resulted in new competition and the option for African countries to be able to choose who they will partner with, but it is still an unclear field for African governments.¹

The western private sector invests in the African continent but with concerns of insecurities.² Until the late nineteen nineties western governments and international organizations were major investors in Africa. The European Union ("EU") with its member states, however, is still the largest provider for investments worldwide.³

These investments are provided in the form of development aid. It is however noteworthy that African communities have been vocal critics of the contrary interests of trade and development aid.⁴ On the other side they also rely on such financial assistance. In the last two decades China has become more active in Africa and Western communities have started to review their Africa strategies and try to have stronger engagement with the continent. The EU with its recently newly elected commission and the Brexit challenge is reviewing its Africa agendas for the foreseeable future. A clear commitment for development and support to Africa was set by the new president of the EU commission when she made her first official visit to the headquarters of the African Union in Addis Ababa, Ethiopia in December 2019.⁵

Brexit will reduce the amount available to the EU to spend on investments and aid through its own budget, the European Investment Bank, and the separate budget

¹ Nicholas Norbook, Patrick Smith "The World Bank and IMF are necessary evils" (2018) 106 *The Africa Report* 49-50.

² The G20 launched in 2017 the initiative "Compact with Africa" to promote and facilitate private investments in Africa.

³ European Commission "International development Aid" available at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/international-development-aid_en Note this and all following links were accessed on 09 February 2020.

⁴ Deborah Brautigam, *The Dragon's Gift* (2009) 148-149.

⁵ Peter Müller „Auf nach Afrika“ (07.12.2019) *Der Spiegel*.

of the European Development Fund (“EDF”). The 11th EDF which expires at the end of February 2020 is planned to be extended to 2027.⁶

Through Brexit Britain can redesign its own foreign policies and be less collusive with the EU in search of new trade partners and alliances. Even when the status quo does not change for the first year after Brexit, Britain could please African countries and seek to renew their Commonwealth bonds by intensify its aid or investments offers.⁷ Britain’s priorities however are as yet not clear.⁸ It is noteworthy that the interest in Africa is not limited to the developed nations. Emerging countries are also seeking to expand their economies whilst strengthening their economic relations with Africa. A good example of this is an association of key emerging national economies made up of Brazil, Russia, India, China and South Africa known as the BRICS who are the newly industrialized nations looking forward to expand their economies.⁹

Over the last two decades’ African countries have as such gained more options for obtaining investments from different partners. China is probably the most active and controversial new actor in Africa. In 2000 China and 44 African countries launched the Forum on China-Africa Cooperation (FOCAC) where they discussed future economic and development cooperation for their mutual benefit.¹⁰ Every three years since then China announced a new budget to be used for investing across the African continent.

It cannot be expected that China, which doubled and tripled its investment budget in Africa in the last two decades, will raise the budget much higher.¹¹ In fact, the \$US 60 billion China promised in 2018 are not provided fully from Chinese public budget. \$US 10 billion is said to be invested through China’s private sector, which is strongly promoted by the Chinese government.¹² Changes in 2018 FOCAC financial

⁶ European Parliament “Fact Sheets on the European Union Multiannual Financial Framework” May 2019, available at: <http://www.europarl.europa.eu/factsheets/en/sheet/29/mehrjaehriger-finanzrahmen>.

⁷ Ian Mitchell, Kimberly Ann Elliot “Brexit: What Next for Trade and Development?” *Centre for Global Development* (30.01.2020) available at: <https://www.cgdev.org/blog/brexit-what-next-trade-and-development>.

⁸ Kanika Saigal “London Calling Africa” (2018) 103 *The Africa Report*, September 57.

⁹ Théophile Dzaka-Kikouta, Francis Kern, Chiara Gonella “Chinese economic co-operation with Central Africa and the transfer of knowledge and know-how” (2013) 2 *African East-Asian Affairs*, 39.

¹⁰ FOCAC Action Plan 2000, section 1.1.

¹¹ Yun Sun “China’s 2018 financial commitments to Africa: Adjustment and recalibration” (05.09.2018) *Brookings* available at: <https://www.brookings.edu/blog/africa-in-focus/2018/09/05/chinas-2018-financial-commitments-to-africa-adjustment-and-recalibration/>.

¹² Shannon Tiezzi “FOCAC 2018: Rebranding China in Africa” (5 September 2018) *The Diplomat* available at: <https://thediplomat.com/2018/09/focac-2018-rebranding-china-in-africa/>.

pledges were interpreted as China's concern of its returns and commercial viability.¹³ In the meantime some countries have renegotiated credit lines with China as a result of having issues with repaying their loans.¹⁴ Western countries are concerned about China's presence in Africa and regularly question its accountability for its investments and causing debt.¹⁵ Similarly individual politicians, businesses and the media are also critical of China's involvement in Africa.¹⁶ In contrast the governments of African countries appreciate China's engagement and interest in the continent.

Most of the literature and news reports which look at African foreign investments only analyse or discuss the socio-economic or financial effects on Africa beneficiary countries of that receive investments from West and China. Both these financial providers or investors are economically and financially stronger than African countries and can therefore dictate the legal terms and conditions for the provision of the relevant investment. Such terms and conditions however sometimes conflict with domestic legal systems in African recipient countries. There is a significant dearth of analyses covering the legal terms, which covering the access, the tendering and the labour standards which occur to realize the investment projects in African countries.

1.2. Principal Research Questions and Research Objectives

This thesis will juxtapose and comparatively analyse the investment legal frameworks set by the EU (the "EU's Investment Legal Framework") and those set by China (the "China's Investment Legal Framework") for African countries. The thesis will have particular regard to the terms and conditions upon which the EU or China provides access, issues tenders and sets labour standards for investment projects in African countries. The question then arises which of the two frameworks is more compatible with the legal systems of African countries and sets the fairer conditions.¹⁷ This thesis as such endeavours to answer the following three sub-questions arise:

¹³ Sun op cit note 11

¹⁴ Morris Kiruga "Ethiopia's China challenge" (27.03.2019) *The Africa Report* available at: <https://www.theafricareport.com/11080/ethiopias-china-challenge/>.

¹⁵ Brautigam op cit note 4 at 12-13.

¹⁶ Chris Alden, Christopher R. Hughes "Harmony and Discord in China's Africa Strategy: Some Implications for Foreign Policy" *The China Quarterly* 2009 570; Stephen Chan "New departures" 99 (2018) *The Africa Report* 23.

¹⁷ When in this work "African countries" or synonyms are used relating to "African countries" those countries are meant that obtain aid or investments from China or the EU.

- (1) How compatible are the political demands of the Investment Legal Frameworks with African countries to get access to financial assistance?
- (2) How are projects in Africa tendered for under the China's Investment Legal Frameworks and under the EU's Investment Legal Framework?
- (3) How are employees who are assisting with implementing the projects protected under both Investment Legal Frameworks?

The research is made in order to determine whether African countries have made drastically changes in their legal system putting back their own regulations or even raising standards. The comparative analysis could come to the result that the conditions are better, equal or worse than the other regarding African domestic legal systems. It must to be noticed that by covering the whole continent, different legal system could be more or less compatible with those conditions. However, it can be assumed that the EU and China investment legal frameworks apply continental-wide.

1.3. Relevance of Study

The main aim of comparative law studies is to provide knowledge.¹⁸ This knowledge can, for example, assist with making domestic adjustments to local legislation in reaction to certain developments relating to investment conditions. But it also could motivate African countries to consider negotiating new or re-negotiating existing investment agreements and make adjustments to advance their legal systems. This knowledge could also empower African countries to demand more responsibility from foreign investors pointing out that other investors offer fairer conditions. China works on a bilateral basis the EU has bilateral and multilateral frameworks, however, both review or agree to new agreements periodically.

1.4. Research methodology

The information and data used for this study was obtained from desk research. The author undertook a review of relevant legal material such as legislation regulations, policy documents, white papers and court decisions, legal customs as well as relevant literature. The literature included hard copy or digital books, journals, articles

¹⁸ Konrad Zweigert, Hein Kötz "An Introduction to Comparative Law" 3 ed (1998) 15.

and reports as well as information gleaned from reliable websites. All the relevant data and information was systematically reviewed, analysed and processed for inclusion in this thesis by the author with the goal of achieving the research objectives noted above. The methodology of the comparison will be specified below in section 4.2.

Comparative law follows a certain structure. In the following two chapters the Investment Legal Frameworks are introduced and examined on the terms and conditions regarding the research questions of section 1.2. In the fourth chapter a critical evaluation of the found terms and conditions is given which concludes in the comparative analysis, using legal arguments measuring which of these applying conditions are the preferable.

1.5. Research Limitations

International investment law is a vast legal field. Each country has its own complex laws and policies which influence international investment agreements and investments. Those agreements may be bilateral or multilateral. This thesis as such will face several limitations in examining these investment agreements and the conditions that apply to the parties involved. The primary handicap is that examples of Chinese international investment agreements are not publicly available. It will therefore not be possible to effectively compare the precise legal frameworks with precision and accuracy. Under these circumstances, this work will rely on the accessible documents which are secondary sources such as scholar articles. The limitation of access to relevant documents is further exacerbated by the fact that some of the accessible documents are in Chinese which is a language that the author cannot read.

This thesis will not touch on European Migration Return Agreements, which are often combined with aid and investments too but not in force yet with African countries.¹⁹ Furthermore, no view is taken in relation to Double-taxation-treaties, which rely more on the treatment of private investments.²⁰ Environmental standards are also not dis-

¹⁹ Anne Meike Riebau, "Rückübernahmeabkommen und partnerschaftliche Steuerungsinstrumente: Menschenrechte als wirtschaftliche Tauschware auf dem politischen Tableau?", (2015) ZAR 63. - Since more and more refugees from Africa arrive in the EU each year, the EU tries with these agreements to send them back. Another option is that the north African countries hold those refugees back. Therefore, the EU offers financial benefits for those countries. But, till today none of them agreed to those agreements.

²⁰ Double-taxation-treaties are used to avoid that the investor has to pay taxes in his home country and the country the investment lies. Those agreements regulate how and by whom the taxation applies.

cussed due to concerns about the length of this paper. For instance, the bulk of different financial instruments used by, for example, the EU-Africa Infrastructure Trust Fund or the China-Africa Development Fund, cannot be considered, assuming that the same legal conditions this thesis deals with would apply.

1.6. Structure of Dissertation

The first chapter introduces the subject matter of the thesis, the research aims and methodology. Followed by a discussion of the historical, socio-economic and financial aspects of investments in African countries by the EU and China.

The second chapter will critically discuss the EU's Africa Investment Legal Framework. The main constitutional treaties and development programs of the EU will be examined and the different development programs and the conditions imposed thereunder on African countries to access the relevant funding will be discussed. The second chapter will also examine the European Development Fund which is regulated in the Cotonou Agreement as a major source of finance from the EU to African countries. The chapter concludes by dealing with the procurement conditions and the labour standards set under the EU Investment Legal Framework for investments in Africa.

The third chapter will critically discuss China's Africa Investment Legal Framework. This chapter will initially discuss the broad policies for foreign aid and the economy applicable to Chinese commercial investments in Africa. More Africa specific policies and FOCAC which facilitates Chinese aid and investments will then be considered. The last part of the chapter will use case studies to critically examine conditions for procurement and labour standards under the Chinese Investment Legal Framework for investments in Africa.

Chapter four will compare China's Africa Investment Legal Framework with the EU's Africa Investment Legal Framework. This comparison will be split into three sub-questions which discuss which investor sets fairer conditions for African countries. Each section will explain how the rule(s) of each legal framework apply before the rules are individually and systematically evaluated.

Chapter five will conclude this thesis with a review and some final remarks regarding what African countries should consider by obtaining investments from foreign investors.

1.7. Introduction in international investments in Africa from historical, socio-economic and financial perspectives

To provide a better understanding of European and Chinese investments in Africa and their different approaches some historical background is set out below. That will be followed by a discussion of the socio-economic interests of the EU and China in investing in Africa in conjunction with the Africa's needs for investments. In the third section terms and definition of "investor" and the "financial investment" types will be given, considering the previous sections.

1.7.1. Historical background of investing in Africa

The different approaches and objectives of the Investor Legal Frameworks are possibly shaped by historical events and relations between China and the EU and Africa. It is as such crucial that these past events are summarily described below.

a. Europe and the European Union: Since ancient times trade took place in the Mediterranean Sea between Europe and northern Africa. With the beginning of colonialism, the European powers moved to Africa to enslave the continent and exploit it for agriculture and mining products. The Europeans built new settlements and developed existing infrastructure. That being said any investment by colonial powers into their African colonies at the time cannot be understood as foreign investment.²¹

When the first African states received independence in the 1950s and 60s their old bonds with former colonial powers remained active. The former colonial powers became responsible for their former colonies and began to provide financial assistance.²² Companies from the former mother countries which were, active in Africa, invested for the now cross border. In 1958 the European Community ("EC"), which was the precursor to EU, was constituted and the first common policies for development aid for Africa, the Caribbean and Pacific ("ACP") states were set and seen as a role

²¹ Markus Krajewski *"Wirtschaftsvölkerrecht"* 4 ed (2017) para. 529.

²² *Ibid* para 893.

model for north-south relations.²³ The establishment of the EC led to the formation of the EDF which gave grants and concessional loans to former European colonies. In the raising Cold War the fund gave financial assistance to all countries regardless of their political system.

The EDF was later linked to former economic partnership agreements beginning with the Yaoundé (Cameroon) agreement, 1975 and later with the treaties from Lomé I-IV (Togo). The European Community promised aid and offered preferential tariffs to the European market. The provided aid that was provided did not develop the African recipient countries as expected.²⁴ For this reason, the EC with the ACP-countries launched a new agreement in Cotonou (Benin) in 2000. These agreements were based on European aid for the ACP-parties and set out preferential trade conditions and provided room for further political dialogue.

Today the EU seeks Economic Partnership Agreements (“EPAs”) with Regional Economic Communities (“RECs”) as the preferential trade treatments for all ACP-states do not comply with the laws of the World Trade Organization (“WTO”). These EPAs are free trade agreements which are based on reciprocity which means the EU will be able to export goods to ACP-states and be exempted of custom tariffs. Critics have expressed the view that trade liberalisation will weaken economic development and will be counterproductive to development aid.²⁵ While the EU and some RECs signed EPAs already some countries are still hesitating to join those agreements.

b. China: The first and friendly contact between China and the African continent dates back to the 9th century, as proven by archaeological findings of porcelain from that period in today’s South Africa and Zimbabwe.²⁶ Later China was occupied like the African continent by several European powers during the colonial period.

When the first African states became sovereign in the 1950s and 60s, China offered formal diplomatic relations to the newly independent African countries and even technical assistance and aid.²⁷ The aid was given initially only to socialist countries but

²³ Sven Grimm, “Afrika in der internationalen Politik – Die Verträge von Lomé und Cotonou“ (2009) 2 *Informationen zur politischen Bildung* 63.

²⁴ Ibid.

²⁵ Ibid at 64.

²⁶ Alex Perry “*In Afrika: Reise in die Zukunft*” (2016) 475.

²⁷ “White Paper on China’s Foreign Aid” (21.04.2011), available at: http://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284620.htm.

China later changed this policy and aid was offered to countries with other political ideology as well.²⁸

During that time China set, for purposes of its international relations, the Five Principles of Peaceful Coexistence, which are respect for sovereignty and territory integrity, mutual non-aggression, non-interference in internal affairs, equality and mutual and peaceful coexistence.²⁹ These are repeatedly used in today's foreign related policies of China. In 1955, during the Asian-African Conference in Bandung, Indonesia, China and 28 other newly independent states agreed to ten principles which contain those five principles and acknowledged the United Nations ("UN") for instance.³⁰ Through these new alliances China received a seat in the Security Council of the UN.³¹

China expanded developing aid to thirty African countries in the 1970s.³² After Mao Zedong's death, China's engagement in Africa increased rapidly from aid to multi-form and mutually-beneficial cooperation in the 1980s.³³ In the late 1970s China opened its economy slightly and began to grow. The relationship with Africa was broadened in several areas, like finance, investment, trade, development assistance, technology transfer and training, tourism and cultural exchange.³⁴ In 1999 China announced its "Going Global Policy" that pushes Chinese firms to invest abroad. Through guarantees of the Chinese government Chinese private investors took higher risks in Africa than other investors.³⁵

In 2000 China and 44 African countries founded FOCAC with the objective of coordinating equal economic and social development on both sides. During the latest FOCAC summit in 2018, China committed to investments worth \$US 60 billion for Africa.

²⁸ Ibid.

²⁹ *Chinadaily* "Backgrounder: Five Principles of Peaceful Coexistence" (22.04.2015) available at: https://www.chinadaily.com.cn/world/2015xivisitpse/2015-04/22/content_20509374.htm.

³⁰ *Chinadaily* "China and Zhou Enlai lay basis for the future at Bandung Conference" (22.04.2015), available at: https://www.chinadaily.com.cn/world/2015xivisitpse/2015-04/22/content_20509367.htm.

³¹ White paper op cit note 26.

³² David Haroz "China in Africa: Symbiosis or Exploitation?" 35 (2011) *The Fletcher Forum of World Affairs* 67.

³³ Ibid, White paper op cit 26.

³⁴ Haroz op cit note 31 at 65.

³⁵ Perry op cit note 25 at 483.

1.7.2. Socio-economic aspects for investments in Africa

As pointed out in the previous section the 54 African countries are recognized as developing countries, lack well developed economies and seek to raise their standard of living. China, who shares a similar history as a former colony, is already an emerging country but also aims to develop to a fully industrialized nation. The EU as an international organization represents the interests of its member states, some of which were former colonial powers. It will be explained the importance of investments for African countries and reflecting the differences of the two counterparts. Afterwards the interests to invest in Africa by the EU and China will be examined.

a. Africa's need for Investments: African countries differ in size, demographic trends, levels of economic development and natural resources. African countries are in debt and as such investment may help to reduce this debt. Some African countries hope for a debt cancellation.³⁶ In general, African countries have an interest in investments to develop their underdeveloped infrastructure. Those infrastructure investments include bridges, schools, hospitals, railroads, roads, dams, telecommunication networks, and other critical infrastructure across Africa.³⁷ Aid and foreign direct investments ("FDIs") can transfer technical knowledge and assistance which help to develop economies.

Since their independence African states have sought to cut their last links to colonialism, while on the other hand they are dependent on foreign investment and development aid to build up their economies.³⁸ Besides aid; it is essential to attract FDIs for further economic development.³⁹ French and British companies are the most active investors in their former colonies.⁴⁰ Both pay the most development aid in these countries and support and advocate for African interests in the EU.⁴¹ While the number of members in the EU increased in the last decades, the budget of the European Development Funds grew with it. And the EU as an international organization is seen

³⁶ Haroz op cit note 31 at 74.

³⁷ Haroz op cit note 31 at 65, 73.

³⁸ Paul G. Adogamhe, "PAN-AFRICANISM Revisited: Vision and Reality of African Unity and Development" 2 (2008) *African Review of Integration* 11-12.

³⁹ Haroz op cit note 31 at 73.

⁴⁰ Tobias Koepf, "Afrika in der internationalen Politik – Rolle Frankreichs und Großbritanniens" 303 (2009) *Informationen zur politischen Bildung* 57.

⁴¹ Ibid.

as a role model for the aim of the African Union and the RECs for an integrated Africa.⁴²

Contrary to the EU China is seen as a modern alternative to the old colonial legacy of Europe.⁴³ Chinese presence in Africa is often understood as a more equal partnership as opposed to the relationship to the Europeans.⁴⁴ China faced similar issues as African countries in the past and has become a role model for developing countries that are looking for a strategy that pushes their economy from a developing level to a more industrialized and competitive one. China reduced its high poverty rate within twenty years.⁴⁵ China is seen by African countries as a resources of professionalized training and new technology, like machinery, electronic equipment and high-tech products.⁴⁶ In addition to that the cooperation with Chinese banks often provide African countries with more favourable terms than the Western commercial lenders since the loans are subsidized by the Chinese government.⁴⁷

b. The EU motivation to invest in Africa: With the end of colonialism, the European powers tried to take responsibility for the continent.⁴⁸ Article 21 of the Treaty of the European Union (“TEU”) sets out the principles of European foreign policy.⁴⁹ This article calls for the promotion of democracy, the rule of law and validity of human rights, which together should provide sustainable development.⁵⁰ Article 21(2d) TEU provides that international relations should be focused on the cooperation for sustainable economic development and the improvement of society and the environment in developing countries, with the main goal of fighting poverty. More specifically “The New European Consensus on Development”, which is a shared vision and framework for action for development cooperation for the EU and its member states, covers specific topics aimed at reducing poverty through education for the youth, strengthening women rights and supporting the UN 2030 Agenda.⁵¹

⁴² Siegmund Schmidt, “Afrika in der internationalen Politik – Die Afrikanische Union“ 303 (2009) *Informationen zur politischen Bildung* 53.

⁴³ Alden & Hughes op cit note 16 at 569.

⁴⁴ Haroz op cit note 31 at 66.

⁴⁵ Ibid at 68.

⁴⁶ Ibid at 75.

⁴⁷ Ibid at 74.

⁴⁸ Koepf op cit note 39 at 57.

⁴⁹ The Treaty of the European Union, 2007.

⁵⁰ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission (2017/C 210/01), Para. 1, 22, 32, 33.

⁵¹ Ibid para 61.

Furthermore, article 21(2e) TEU provides for the promotion of integration of all countries in world trade and the removal of trade barriers. Article 21(2f) TEU does provide rules for the protection of the environment and sustainable management of natural resources for sustainable development. The EU as such supports RECs and the African Union (“AU”).

Security and migration are other EU interests.⁵² The EU seeks ways to stop migration flows to the EU and end the related violent spill-over effects through educational exchanges and security assistance. Due to migration concerns the EU has a vested interest in the maintenance of peace and stabilisation in Africa.⁵³

Finally, as an economic community the EU tries to strengthen trade relations with African states and has concluded EPAs with five African regions. The EU also promotes trade through the initiative of the WTO “Aid for Trade” which should help developing countries to mobilize resources for trade.⁵⁴

c. Chinese motivation to invest in Africa: China uses aid and investments to support three core priorities. These are strategic diplomacy, ideological values and commercial benefits.⁵⁵

By building new alliances in Africa China is looking to strengthen its role at an international level. African states have historically supported China and rallied to strengthen its role at an international level. The success of this support and related political ties was evident when African states supported China to receive a seat on the UN Security Council. With the One-China Policy, China tries to isolate Taiwan and has requested African states to support and give up their diplomatic relations with Taiwan as a sovereign nation.⁵⁶ With their economic growth and international presence, especially in Africa, China tries to present itself as a benevolent global power instead of the EU and the United States of America.⁵⁷

As China's domestic labour costs are rising there is an increasing need to relocate at least low-skilled and highly polluting industries to other countries in the same

⁵² Patrick Smith “Africa’s place in the world” 101 (2018) *The Africa Report* 4.

⁵³ Antonio Missiroli “*The EU and the World: Players and Policies Post-Lisbon: A Handbook, European Union Institute for Security Studies*” (2016) 131, 136.

⁵⁴ European Commission “*Aid for Trade Report 2015*” (22.06.2015) 7.

⁵⁵ Haroz op cit note 31 at 68.

⁵⁶ Alden & Hughes op cit note 16 at 564; Haroz op cite note 31 at 68, 73.

⁵⁷ Haroz op cit note 31 at 72.

manner that Taiwan and Japan did with China a few decades ago.⁵⁸ The restructuring of China's economy developed it to an industrialized country but has led to a greater need for resources. This need for natural resources, like oil and minerals, to feed its growing economy can be satisfied by Africa.⁵⁹

Furthermore, China's private sector also seeks new cash flow opportunities in form of investments in Africa.⁶⁰ The Chinese government has imposed its new economy plan on the private sector. Chinese companies are looking to gain profit in foreign markets, which the Chinese economy can no longer provide in sufficient quantities.⁶¹ Africa offers a great market of over one billion potential consumers of Chinese goods. China seeks to use this potential in accessing African states.⁶²

1.7.3. Types of Investments

The different historic backgrounds and the socio-economic interests of the EU and China have shaped the way they invest in Africa and other parts of the world. China has many state-owned-enterprises which invest through FDIs which are elaborated on first below. Following this the official development assistance of the European Union will be explained in order to explain China's governmental investments which is a combination of the previous two models.

a. Foreign Direct Investments: This model is used in the private economy to invest abroad. Private investors are as defined in bilateral investment treaties (BITs) can be natural persons but the majority are companies (juristic persons). These investors have a different nationality than the host-country. A foreign direct investment means that an investor is economically active in another country permanent or for a period of time.⁶³ In the BIT between South Africa and China article 1 (1) defines an investment differing as

“(a) movable and immovable property as well as any property rights, such as mortgages, liens and pledges; (b) shares, debentures, stock and any other kind of participation in companies; (c) claims to money or to any other performance having an economic value; (d) intellectual property rights, in particular copyrights, patents, utility-

⁵⁸ Alden & Hughes op cit note 16 at 567-568.

⁵⁹ Haroz op cit note 31 at 65.

⁶⁰ Ibid.

⁶¹ Ibid at 72.

⁶² Ibid at 66, 72.

⁶³ Krajewski op cit note 20 para 538.

*model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how and good-will; (e) concessions conferred by law, including concessions to search for, or exploit resources.”*⁶⁴

In all scenarios, the investor aims to generate a return higher than the investment. Depending on the investment the return, as defined in article 1(3) of this BIT includes “*profits, dividends, capital gains, interest, royalties or other legitimate income*”.⁶⁵ For example, the investor can build a new factory (so-called greenfield investment)⁶⁶, to benefit from low labour costs. Or the investor acquires an existing production location or joins one (so-called joint venture)⁶⁷.

FDIs have an important effect on the economic development of the host-country.⁶⁸ Compared to countries from Asia and Latin America African countries receiving significantly less foreign direct investments.⁶⁹ In Asia the most foreign direct investments are made by China.⁷⁰

b. Official Development Assistance: FDIs can be contrasted with Official Development Assistance (ODA) given by governments or international organizations like the EU.⁷¹ The term ODA was defined by the Organization of Economic Cooperation and Development (OECD) in 1969.⁷²

*“ODA flows to countries and territories on the DAC List of ODA Recipients and to multilateral development institutions that are: (i.) Provided by official agencies, including state and local governments, or by their executive agencies; and (ii.) Concessional (i.e. grants and soft loans) and administered with the promotion of the economic development and welfare of developing countries as the main objective.”*⁷³

⁶⁴ Agreement Between the Government of the People’s Republic of China and the Government of the Republic of South Africa concerning the Reciprocal Promotion and Protection of Investments, (01.04.1998)

⁶⁵ Ibid.

⁶⁶ Krajewski op cit note 20 para 538.

⁶⁷ Ibid.

⁶⁸ Ibid para. 539.

⁶⁹ United Nations Conference on Trade and Development (UNCTAD), “World Investment Report 2019” 3, 4.

⁷⁰ Ibid.

⁷¹ “Aid” or “Development Aid” are also used synonym in this thesis for ODA.

⁷² OECD “Official Development Assistance” available at: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.htm>.

⁷³ Ibid.

The EU is empowered by its member states to give ODA to developing countries.⁷⁴ The OECD provides a list of over 150 countries classified as developing countries which are eligible to receive ODA.⁷⁵ The concessional element in this definition can be technical assistance, grants without repayment provisions or soft loans with a lower interest rate than from the financial market.⁷⁶ These loans always offer lengthy repayment times. Debt relief and loans to the private sector are also regarded as ODA.⁷⁷ The use of ODA for military or commercial purposes is excluded as ODA because it must serve the welfare needs of the recipient.⁷⁸

c. Investments with Chinese characteristics: ODA is a model developed by industrialized economies from the global north. In south-south relations these terms are not used and government grants to other countries are not specifically named.⁷⁹ Those south-south investments are described as “*expressions of solidarity and cooperation borne out of shared experiences and sympathies*”.⁸⁰ Therefore, not all types of Chinese investments met the definition of ODA. China's different understanding is also evidenced by the fact that for a long time it has had no independent aid agency.⁸¹ The China International Development Cooperation Agency (CIDCA) was finally established in April 2018 and it administers grants and interest-free loans, while the other financial instruments are managed by the Ministry of Commerce.⁸²

China offers interest-free loans, debt-relief, grants and technical assistance which falls into the segment of ODA.⁸³ The concessional loans, which China understands as aid just have just an interest rate of 2-3 per cent.⁸⁴ Most of those loans and

⁷⁴ See article 209 of the Treaty of the Function of the European Union.

⁷⁵ OECD “DAC List of ODA Recipients”, available at: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC-List-of-ODA-Recipients-for-reporting-2018-and-2019-flows.pdf>.

⁷⁶ OECD “Net ODA (indicator)”, available at: <https://data.oecd.org/oda/net-oda.htm>; OECD “Official Development Assistance, What is ODA?” April/2019 4 available at: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/What-is-ODA.pdf>.

⁷⁷ Ibid at 5.

⁷⁸ Ibid at 4.

⁷⁹ UNCTAD, “*Economic Development in Africa Report 2010, South-South Cooperation: Africa and the New Forms of Development Partnership*” (2010) 49, 52.

⁸⁰ Ibid.

⁸¹ Axel Dreher, Andreas Fuchs, Brad Parks, et al “Apples and Dragon Fruits: The Determinants of Aid and Other Forms of State Financing from China to Africa” 62 (2018) *International Studies Quarterly* 184.

⁸² Cheng Cheng “The Logic Behind China’s Foreign Aid Agency” *Carnegie Endowment for International Peace* 21.05.2019, available at: <https://carnegieendowment.org/2019/05/21/logic-behind-china-s-foreign-aid-agency-pub-79154>.

⁸³ White Paper on China’s Foreign Aid White Paper.

⁸⁴ Ibid.

grants are provided for social non-profit projects, in sectors like health or education.⁸⁵ In the latest FOCAC summit China promised \$US 15 billion on aid.⁸⁶

For more profitable investments such as infrastructure or industrial projects, China offers commercial loans, which have regular financial market-oriented interest rates and can be secured by raw-materials like oil from the recipient country.⁸⁷ Nevertheless, China also combines grants with loans which makes it often difficult to distinguish between aid or commercial investment.⁸⁸ China's commercial interest were highlighted at the 2018 FOCAC summit when China promised \$US 20 billion in commercial loans and a provisional \$US 10 billion for Chinese private and state-owned companies.⁸⁹

The Chinese government also owns companies which invest in Africa. These state-owned enterprises invest in through FDIs or joint ventures in the African host-country.⁹⁰ In a decision of the International Centre for Settlement of Investment Disputes the panel decided that governmental-controlled entities can invest in the form of FDIs as long as they act in a commercial rather than in a governmental capacity.⁹¹ This means that those investors are also protected under the BITs.

Going Forward the term development aid will be used when referring to investments from the EU and the term investment will be used when referring to investments from China as investments from China results in the actual flow of money to African states in the in form of either official flows or ODA. There is very little development aid flowing from China to Africa.

1.8. Conclusion

The historical background of the EU has informed its socio-economic development and poverty reduction initiatives in Africa. The EU also takes into account commercial and security interests although these are not expressly reflected in relevant policy instruments.

⁸⁵ Dreher, Fuchs & Parks et al op cit note 79 at 185.

⁸⁶ Sun op cit note 11

⁸⁷ UNCTAD op cit note 77 at 56, 61; Dzaka-Kikouta, Kern & Gonella op cit note 9 at 43-44.

⁸⁸ Brautigam op cit note 4 at 174.

⁸⁹ Sun op cit note 11

⁹⁰ Dzaka-Kikouta, Kern & Gonella op cit note 9 at 50.

⁹¹ *Ceskoslovenska obchodni banka, a.s. v. Slovak Republic* (2004) ICSID Case No. ARB/97/4.

China shares the same historical background as Africa but unlike Africa it already went through strong development. Its aim to industrialize its economy is reflected in its engagement with Africa. It uses commercial investments and ODA to access African countries for raw materials and to generate profit and its commercial interest in such arrangements is dominant.

2. Chapter: The EU's Investment Legal Framework for Development Aid

2.1. Introduction

The previous chapter discussed the European approach to develop African countries through financial instruments of ODA. The EU's aim is sustainable socio-economic development and the reduction of poverty in Africa. This chapter considers whether the legal terms and conditions of the EU's Investment Legal Framework are fair to African countries and analyses which conditions apply to African countries. This chapter further considers how African countries get access to the different aid programs, how those projects are procured and under which labour standards these projects may be realized. The chapter will delve into the structure of the EU's Investment Legal Framework and the EDF which is the main European instrument for aid to Africa. The chapter will conclude by discussing procurement and labour rules regarding development projects.

2.2. The Legal Framework and its conditions

The EU as an international organization is empowered through the Treaty of the European Union ("TEU") and the Treaty of the Function of the European Union ("TFEU"), which have equal standing, to act on behalf of its member states.⁹² The EU based on common values and interests of its member states.⁹³ As an economic community the EU is empowered to regulate internal and external trade and tariffs of its member states.⁹⁴ EU and its member states also share resources relating to security and ODA.⁹⁵ The EU aims to have a coordinated and coherent external policy for its

⁹² Article 1(1) TEU; Article 1(2) TFEU.

⁹³ Article 21(1) TEU.

⁹⁴ Article 30 TFEU.

⁹⁵ Article 3(5), 4(2) TEU, Article 4(4) TFEU.

member states.⁹⁶ As will be shown by the analyses set out below, the EU fails to achieve its goals in certain respect.

2.2.1. Article 209 TFEU

Several EU regulations and policies allude to basic conditions for the provision of development aid but these are specifically mentioned in the TFEU itself.⁹⁷ Part five of the TFEU sets out articles which empower the organs of the EU to provide aid to non-EU-countries. The legal basis for the provision of development aid by member states of the EU is codified in article 209 TFEU.

Article 209(1) TFEU empowers the European Parliament and the Council to adopt measures for the implementation of development cooperation. While the EU is empowered to give aid member states are still able to fund their own development aid projects outside of the EU.⁹⁸ The EU however tries to coordinate the individual aid programs of its member states with its own programs. Further to this in terms of article 211 TFEU the EU is linked with other international organisations like the UN and they have implemented their agendas and objectives in their respective development policies too. The EU offers different forms of development programs for developing countries till emerging nations. This aid can be in form of financial support and technical cooperation in relation to multiannual cooperation programmes or programs with a thematic approach or assistance in emergency situations (humanitarian aid).⁹⁹ In some sectors the EU supports non-governmental organizations or offers decentralized cooperation focusing for example on the protection of the environment or gender mainstreaming.¹⁰⁰ Those development programs are executed by the commission.¹⁰¹ Overall the EU has three themed and four geographic programmes. Themed programs are accessible to countries world-wide while geographic programs are created for EU specified regions or countries.

⁹⁶ Article 21(3) TEU.

⁹⁷ The EU is using regulations to exercise its competences within the union and its member states, article 288 TFEU.

⁹⁸ Article 4(4), 210 TFEU

⁹⁹ Article 214 TFEU.

¹⁰⁰ Wolfgang Benedek „Article 208 AEUV“ in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim “Das Recht der Europäischen Union – Band I-III EUV/AEUV“ (2019) para. 5.

¹⁰¹ EU Council Decision: 2010/427/EU (26.07.2010), article 9(1).

a. Thematic programs: The Instrument for Nuclear Safety Cooperation (“INSC”)¹⁰² is used to set a high standard of nuclear security and protection relating to nuclear material in non-EU-countries.¹⁰³ The Instrument for Stability and Peace (“IfSP”)¹⁰⁴ is used to strengthen the fight against terrorism, organized crime and protection of critical infrastructure and to react to crises.¹⁰⁵ The European Instrument for Democracy and Human Rights (“EIDHR”)¹⁰⁶ focuses on countries with records of human rights violations and its civil societies as well as promoting multilateral human rights instruments and assisting with democratic election observations.¹⁰⁷

b. Geographical programs: Geographical instruments are linked to selected countries. The European Neighborhood Instrument (“ENI”)¹⁰⁸ is used to strengthen political and economic cooperation with non-EU-member states neighbouring or bordering to the EU.¹⁰⁹ The Instrument for Pre-accession Assistance (“IPA”)¹¹⁰ supports countries which would like to join the EU and would be able to fulfil the requirements for membership.¹¹¹ This programme aims to strengthen democracy, the rule of law, civil rights and socio-economic development. The Partnership Instrument (“PI”)¹¹² finance projects with globally emerging nations who are interested in becoming strategic partners of the EU.

The Development Cooperation Instrument (“DCI”)¹¹³ aims to promote regional and country related cooperation.¹¹⁴ The DCI focuses on poverty reduction, climate protection, human development, food safety, sustainable agriculture and migration.¹¹⁵

¹⁰² EU Council Regulation (EURATOM) No 237/2014 (13.12.2013) establishing an Instrument for Nuclear Safety Cooperation.

¹⁰³ Benedek “Article 209 AEUV” in Grabitz, Hilf, Nettesheim para 13.

¹⁰⁴ EU Regulation No 230/2014 of the European Parliament and of the Council (11.03.2014) establishing an instrument contributing to stability and peace.

¹⁰⁵ Benedek op cit note 101 para 12.

¹⁰⁶ EU Regulation No 235/2014 of the European Parliament and of the Council (11.03.2014) establishing a financing instrument for democracy and human rights worldwide.

¹⁰⁷ Benedek op cit note 101 para 11.

¹⁰⁸ EU Regulation No 232/2014 of the European Parliament and of the Council (11.03.2014) establishing a European Neighborhood Instrument.

¹⁰⁹ Benedek op cit note 101 para 10.

¹¹⁰ EU Regulation No 231/2014 of the European Parliament and of the Council (11.03.2014) establishing an Instrument for Pre-accession Assistance.

¹¹¹ Benedek op cit note 101 para 9.

¹¹² EU Regulation No 234/2014 of the European Parliament and of the Council (11.03.2014) establishing a Partnership Instrument for cooperation with third countries.

¹¹³ EU Regulation No 233/2014 of the European Parliament and of the Council (11.03.2014) establishing a financing instrument for development cooperation for the period 2014-2020.

¹¹⁴ Benedek op cit note 101 para 7.

¹¹⁵ Ibid.

A good example of a programme financed under the DCI is the Pan-African Programme that was established in 2014 cover the whole African continent. The programme focuses on peace, democracy, human rights, human development, sustainable development and continental integration. It recognizes the Agenda 2063 of the African Union and promotes market integration and the enforcement of intellectual property and skills development.

To receive development aid under article 209(1) TFEU the countries must be developing countries. Which country qualifies and does not qualify as a developing country is not defined by EU primary law.¹¹⁶ Consequently, the EU has administrative discretion to qualify a country as developing or developed.¹¹⁷ In the regulation of the DCI article 1(1)(a) and in further regulations and EU documents a reference is made to the OECD list of developing countries.¹¹⁸

2.2.2. Conditions based on the EU treaties and regulations

Article 209(2) TFEU refers to article 208 TFEU and article 21 TEU. Article 208 TFEU states that the development aid provided by the EU is provided in order to fulfil the external principles of the EU. Those external principles are listed in article 21 TEU. In addition to this, article 205 TFEU, being the “general provisions on the union’s external action” already links these actions to those external principles. This is used to ensure the consistency of the EU policies including development policies relating to non-EU-countries.¹¹⁹

External principles and objectives are listed in article 21 TEU, while the European Council identifies “the strategic interests and objectives of the Union” in article 22 TEU. The principles are similar to the internal values and principles listed in article 2 TEU, which are fundamental for the EU.¹²⁰ Article 3 TEU lists the objectives of the union which correspond with those set out in article 21(2) TEU.¹²¹ While article 3(5) TEU refers to EU’s interest to the protection and promotion of the EU values in the context

¹¹⁶ Frank Hoffmeister „Artikel 2012 AEUV“ in Grabitz, Hilf, Nettesheim para. 19.

¹¹⁷ Ibid.

¹¹⁸ Rudolf Streinz „Artikel 208 AEUV“ in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ (ed.) 3.ed. (2018), para. 6-7

¹¹⁹ Martin Nettesheim „Artikel 205 AEUV“ in Streinz para 1.

¹²⁰ Elfriede Regelsberger, Dieter Kugelmann „Artikel 21 EUV“ in Streinz para 2, 4.

¹²¹ Ibid para 2.

of the wider world. The corresponding values and principles shall be propagated by article 21 TEU.¹²²

In order to broaden and build partnerships the EU seeks non-EU-countries which share the same principles mentioned in article 21(1) TEU.¹²³ Compliance with these principles and is a prerequisite by the EU for non-EU-countries to conclude partnerships with the EU.¹²⁴ These values and principles in terms of article 2 TEU are democracy, the rule of law, human rights and fundamental freedoms, respect for human dignity and the rights for minorities. The EU views these principles and values as being vital for development.¹²⁵ These principles and values are mentioned in all regulations relating to EU aid programmes, save for the Nuclear Safety program.¹²⁶ For some programmes, such as the pre-accession program the EU imposes further conditions like the requirement to comply with the principals of the market economy.¹²⁷ However, these are not programmes targeted at African countries.

The three core values of human rights, democracy and the rule of law are further elaborated on below.

a. Human rights: One of the essential requirements for African countries for cooperation with the EU is the respect for and protection of human and civil rights including those for minorities.¹²⁸ The organs of the EU themselves are bound to protect and preserve human rights, article 6 TEU. This article is binding on organs of the EU and aligns with the requirement set out in the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the rights emanating from the constitutional traditions of the EU member states. The aforementioned charter, convention and constitutional traditions are not binding on African countries. That being said the EU does require compliance with at least the core human rights which are recognized even beyond the treaty and charter noted above.¹²⁹ This contains for instance the right of live, prohibition of torture

¹²² Ibid para 2.

¹²³ Ibid para 3.

¹²⁴ Ibid para 6.

¹²⁵ Joint statement op cit note 49 para 61.

¹²⁶ EU Regulation No 230/2014 recite No 9; EU Regulation 231/2014 recite No 3; EU Regulation 232/2014 recite No 3, article 1(1); EU Regulation No 233/2014 recite No 5-7, 15, article 3(1), (7); EU Regulation No 234/2014 recite No 16, article 3(1); EU Regulation No 235/2014 – recite No 4-5, article 1.

¹²⁷ EU Regulation No 232/2014 recite 3; EU Regulation No 231/2014 recite 4.

¹²⁸ Regelsberger, Kugelmann op cit note 121 para 9.

¹²⁹ Meinhard Hilf, Frank Schorkopf "Artikel 2 EUV" in Grabitz, Hilf, Nettesheim, para 36.

and slavery, but also the right of privacy, freedom of religion, freedom of assembly, right of property or the prohibition of discrimination.¹³⁰ But, as stated in article 21(1) TEU, which recognize the universality and indivisibility of human rights and fundamental freedoms, it also contains economic, social and cultural human rights.¹³¹ Those are also mentioned in the provisions of the regulations of the development programmes.¹³²

The EU as such expects the prosecution of human rights violations and a public ban on the death penalty and other inhuman practices.¹³³ In line with this thinking the EU welcomes that “Angola became party to the Optional Protocol aiming to abolish the death penalty and a party to the Convention against Torture and other cruel inhuman or degrading treatment” in October 2019.¹³⁴ In general the EU excludes all non-EU-countries from a cooperation, not respecting human rights.¹³⁵ The EU also stops providing any financial aid or support to and ceases cooperation with countries that violate human rights.

b. Democratic principles: The EU also prioritises political stability. A lack of democracy is recognized as a source for conflicts.¹³⁶ The understanding of democracy in the EU is based on freedom and equality of the citizens and through recurring elections to determine public power.¹³⁷ The authority of public power, therefore, is based on the will of the citizens through periodic, unaltered, common and equal, secret elections.¹³⁸ This includes the freedom to establish political parties and the access to public administrative bodies.¹³⁹ The EU expects that any countries have democratic procedures in place or that such procedures will be established soon.¹⁴⁰ Accordingly the EU expects democratic elections, in recipient countries, which will be observed by EU election observers.¹⁴¹

¹³⁰ Ibid.

¹³¹ Ibid para 37.

¹³² EU Regulation 235/2014 recite No 8.

¹³³ Regelsberger Kugelman op cit note 121 para 9.

¹³⁴ European Union External Action - Statement by the Spokesperson on Angola’s accession to key human rights conventions (04.10.2019) available at: https://eeas.europa.eu/headquarters/headquarters-homepage/68407/statement-spokesperson-angola%E2%80%99s-accession-key-human-rights-conventions_en.

¹³⁵ Regelsberger, Kugelman op cit note 121 para 9.

¹³⁶ Regelsberger, Kugelman op cit note 121 para 7.

¹³⁷ Hilf, Schorkopf op cit note 130 para 28.

¹³⁸ Ibid.

¹³⁹ Hilf, Schorkopf op cit note 130 para 29.

¹⁴⁰ Regelsberger, Kugelman op cit note 121 para 7.

¹⁴¹ Ibid.

c. Rule of Law. For stability purposes the EU seeks to strengthen the rule of law in aid recipient countries. Under the rule of law, the public authorities shall be bound to the laws. Part of the rule of law is the guarantee of legal protection.¹⁴² If there is a rule of law foreign investors require a fair trial any certainty that their assets are secured. To measure the implementation of the rule of law the EU Commission examines the separation of powers between the various arms of the state, the independence of the judiciary and the fight against corruption.¹⁴³ As an example recently Mozambique as a recipient of aid from the EU faced the freezing of financial assistance, caused by corruption concerns raised by the EU and other donors.¹⁴⁴

A different example is the restoration of the judiciary in the Democratic Republic of the Congo after three decades of conflict.¹⁴⁵ The EU supported the restoration of the rule of law in that country through prosecution support units which aim to support the civil and military authorities to bring criminals to justice.¹⁴⁶ The project was funded through the IfSP and supported through United Nations organizations and non-governmental organizations.¹⁴⁷

2.2.3. The European Investment Bank and their Statute

Besides the EU Commission executing grants and technical assistance through the programmes, the European Investment Bank gives commercial and concessional loans. Article 209(3) TFEU refers to the European Investment Bank (“EIB”) and its Statute to contribute the measures referred to article 209(1) TFEU. The EIB is part of the EU but is a separate legal body in terms of article 308 TFEU. Members of the EIB are all member states of the EU.¹⁴⁸ The members provide the bank with its own capital, article 4 EIB-Statute. The EIB has functional autonomy and acts free from political influence as a private bank with equal conditions in the capital markets. However, it has also to act in the interest of the EU and is bound to the EU treaties especially the

¹⁴² Matthias Pechstein „Artikel 2 EUV“ in Streinz, para. 6.

¹⁴³ Hilf, Schorkopf op cit note 130 para 35.

¹⁴⁴ Human Rights Watch “World Report 2019 – Mozambique”, available at: <https://www.hrw.org/world-report/2019/country-chapters/mozambique>.

¹⁴⁵ European Commission “Restoring Faith in Justice in the Democratic Republic of Congo” available at: https://ec.europa.eu/fpi/showcases/restoring-faith-justice-democratic-republic-congo_en.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Article 308 TFEU.

principles of article 2 and 3 TEU, article 1 EIB-Statute.¹⁴⁹ It is as such bound on human rights, social rights and environmental principles too.¹⁵⁰

Article 309 TFEU lists the tasks of the EIB. As a regional bank it is mainly focused on the EU internal market. But further tasks are mentioned in the TFEU.¹⁵¹ In 1963 the EIB went global and the EU budget now gives guarantees for loans provided by the EIB to countries with political and sovereign risks.¹⁵² Nevertheless, investments made in non-EU-countries are restricted to the exception permit by the EU Parliament and the Council, article 16(2) EIB-Statute.¹⁵³ The EIB is also involved with development cooperation's in African countries.¹⁵⁴ Those cooperation's are based on Article 209(3) TFEU.¹⁵⁵ Article 309 TFEU obliges the EIB to contribute to the implementation of the measures referred to article 209(1) TFEU through article 209(3) TFEU.

Furthermore, the investments must conform to the external objectives of the EU.¹⁵⁶ The obligations of the EIB are mentioned in several international agreements, like the Cotonou Agreement (see 2.2.4) and as such the EIB is obliged to fulfil those duties on behalf of the EU. For instance, the latest finance protocol for the Cotonou Agreement empowers the EIB to support local private sectors and the development of socio-economic infrastructure.¹⁵⁷

Article 309 TFEU restricts the EIB from operating in the non-profit-making space. The EIB as such may not make any profit and may only cover its costs.¹⁵⁸ Consequently the EIB lending rates depend on capital market conditions and requirements and it covers the typical risks when granting credit.¹⁵⁹ Nevertheless, the EU shares some of the risk undertaken the EIB by backing EIB loans to developing countries with guarantees.¹⁶⁰

¹⁴⁹ Hachez, Nicolas; Wouters, Jan "A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability" 49 (2012) *Common Market Law Review* 62.

¹⁵⁰ *Ibid* at 60, 61.

¹⁵¹ Matthias Rossi "Artikel 309 AEUV" in Christian Calliess, Matthias Ruffert "EUV/AEUV" 5. ed. 2016, para. 1.

¹⁵² Hachez, Wouter op cit note 150 at 52.

¹⁵³ Peter-Tobias Stoll, Boris Rigod "Artikel 309 AEUV" in Grabitz, Hilf, Nettesheim para. 36.

¹⁵⁴ EIB "Part of the EU family" <https://www.eib.org/en/about/eu-family/index.htm>.

¹⁵⁵ Peter-Tobias Stoll, Boris Rigod "Artikel 308 AEUV" in Grabitz, Hilf, Nettesheim para. 4.

¹⁵⁶ EIB Activity Report 2014 p 36.

¹⁵⁷ EIB Annual Report 2016 On EIB Activity in Activity in Africa, the Caribbean and the Pacific, and the Overseas Countries and Territories.

¹⁵⁸ Article 17(1) EIB-Statute.

¹⁵⁹ Christoph Ohler "Artikel 309 AEUV" in Streinz para 15.

¹⁶⁰ Hachez, Wouters op cit note 150 at 52.

While the EIB must be compliant with EU laws, it must ensure that its borrowers do not violate EU rules.¹⁶¹ It must as such set the conditions discussed above for borrower in accordance with EU laws, especially article 21 TEU.¹⁶²

2.2.4. Conditions of the European Development Fund

After examining the EIB and the TFEU in relation to its aid programs and conditions the following section will focus on the Cotonou Agreement (“CA”). This is a multi-lateral trade agreement which contains the most comprehensive development instrument from the EU for African countries, the EDF. It was introduced as an individual instrument and thus far its budget is not part of the aid budget of the EU. It is the prime aid instrument from the EU to the ACP-countries.¹⁶³ In order to supplement its budget the EDF also gets support from the DCI for purposes of forming the strategic relationship with the African countries.¹⁶⁴ The development of the EDF (a.) and then its current conditions (b.) are described below.

a. From Yaoundé to Cotonou: The institution of the EDF was already provided for in the treaties of Rome which established the former organization of the EU the European Economic Community in 1957.¹⁶⁵ The aim of the fund was to promote the economic and social development of former colonies of Belgium, France, Italy and the Netherlands.¹⁶⁶ The first fund was launched in 1959, to provide progressive development in these areas.¹⁶⁷ Since then, the fund has been renewed every five to seven years.¹⁶⁸

The second EDF was integrated into the first so-called Yaoundé Agreement from 1964.¹⁶⁹ Most of the money paid out was non-repayable aid while the rest of it was paid out as loans which bear a special interest rate.¹⁷⁰ The Yaoundé Agreement

¹⁶¹ Ibid at 62.

¹⁶² Ibid at 51.

¹⁶³ European Development Fund available at <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=LEGIS-SUM:r12102>.

¹⁶⁴ Benedek op cit note 101 para 7.

¹⁶⁵ Amy Young-Anawaty “Human Rights and the ACP-EEC Lomé II Convention: Business as usual at the EEC” 13 (1980) *New York University Journal of International Law and Politics* 74.

¹⁶⁶ See article 131 Treaty of Rome (25.03.1957).

¹⁶⁷ See article 132(3) Treaty of Rome.

¹⁶⁸ European Development Fund available at <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=LEGIS-SUM:r12102>.

¹⁶⁹ Articles 15-28 Yaoundé Agreement 1964.

¹⁷⁰ Article 16 Yaoundé Agreement 1964.

made also provisions for a reciprocal preferential trade system for the ACP-countries to trade goods with European member states exempt from customs duties.¹⁷¹

In 1973 Britain joined the European Community and confirmed its obligation to support the EDF and the EU development targets. This was further confirmed in 1975 when the EDF was renewed and the former British colonies were brought into the Lomé Convention. The EDF now supports 46 countries. Besides providing development aid the trade agreement was turned into a non-reciprocal preferential system which entitled ACP-countries not to pay customs duties anymore when importing goods into the EU countries.¹⁷²

As a result of human rights violations especially in Uganda the EC tried to introduce a human rights clause in the second Lomé Convention. This clause sought to allow the donating EC to freeze aid and cease preferential treatments of ACP-countries which were violating human rights. Ultimately no such clause was introduced by the end of the negotiations. In the third Lomé Convention the preamble stated that the parties are bound to fundamental human rights.¹⁷³ A concrete clause was then introduced into the fourth Lomé Convention (Lomé IV) 1989. Article 5 Lomé IV states that development policies are closely linked to fundamental human rights.¹⁷⁴ In the revised version from 1995, democratic principles and the rule of law were added to article 5 Lomé IV.¹⁷⁵

The current agreement is the Cotonou Agreement from 2000 which expires in February 2020. To date three funds have been launched, and the current (11th) fund is the last within this agreement. The Cotonou Agreement is signed by 79 developing countries from Africa, Caribbean and Pacific, with 48 of these countries being from Africa.

b. The Cotonou Agreement: The agreement applies to those states who signed it. As the north-African countries have not signed it they are consequently no beneficiaries of the EDF. However, beneficiaries of the agreement can also be the African

¹⁷¹ Article 2 Yaoundé Agreement 1964.

¹⁷² Wolfgang Weiß „Artikel 207 AEUV“ in Grabitz, Hilf, Nettesheim para. 248.

¹⁷³ Third Lomé Convention (8.12.1984).

¹⁷⁴ Article 5 Fourth Lomé Convention (15.12.1989).

¹⁷⁵ Article 5 Agreement amending the fourth ACP-EC Convention of Lomé signed in Mauritius on 4.11.1995.

Union or other bodies authorized by ACP-states.¹⁷⁶ Moreover, to strengthen the private sector even companies can get financial support under this agreement.¹⁷⁷ Even so, non-state actors from ACP-states, parliaments and other bodies of ACP-states and development banks can be provided with financial support.¹⁷⁸

Article 59 CA states that those bodies created by the ACP-states or the regional body which are going to implement the project or program will receive financial support. In article 2 CA it is stated that the ACP-states shall determine their own development strategies and they shall be responsible for their own development strategies and the EU partners shall align their programs to those strategies.¹⁷⁹ And further those strategies shall consider and involve non-state actors, ACP national parliaments and local authorities.¹⁸⁰

The coordination of these strategies and programs takes place through dialogues with each party on a regularly basis. The Council of Ministers carries out political dialogue during an annual meeting at least.¹⁸¹ This dialogue can include discussions about the coordination of programs at a regional or continental level, as this is recognized in the revised version of the agreement.¹⁸² In addition the private and social sector shall be developed through reforms, cooperation and other support.¹⁸³ It also recognizes the cultural dimension which shall be integrated into development cooperation.¹⁸⁴ During the annual meetings the ministers are required to examine the process of development programs and to consider related problems.¹⁸⁵ All projects can demand technical support and assistance to build national and regional capabilities through the transfer of knowhow.¹⁸⁶

(i) *European Development Fund*: Articles 55 and 58 CA states that the finance cooperation shall support ACP-states, non-state-actors, regional organizations and also the AU to achieve their national and also regional development agendas. This is

¹⁷⁶ Article 58 (1)(b) CA.

¹⁷⁷ Article 58 (2)(b) CA.

¹⁷⁸ Article 58 CA

¹⁷⁹ Article 2 CA; Article 57 CA provides the ACP states with some guidelines what they need to provide for a project or program. Hereby non state actors may also be involved and become responsible for projects.

¹⁸⁰ Article 4 CA.

¹⁸¹ Article 15 (1)(2) CA.

¹⁸² Article 28, 29 CA.

¹⁸³ Article 21, 25 CA.

¹⁸⁴ Article 27 CA.

¹⁸⁵ Article 83(1)(2) CA Annex IC Multi-annual financial framework for the period 2014 to 2020 - No 7.

¹⁸⁶ Article 79 CA.

used to ensure effective use of the financial support in each receiving country based on its individual needs.¹⁸⁷ The aid is guided by the aid effectiveness agenda recognized in the preamble as 'results-oriented aid management'.¹⁸⁸

The financing can be provided directly to the programs or as credit lines. Human resources will be provided where required for the administration and evaluation of the relevant funding.¹⁸⁹ How each project is financed is determined by mutual agreements between ACP-beneficiaries and the EU.¹⁹⁰ The execution of the budget shall be led by the EIB if it is a loan otherwise the EU commission administrates the relevant financial resources in the form of grants.¹⁹¹ Loans are provided by the EIB to enterprises under the conditions of Annex II of the Cotonou Agreement. The programs of the ACP-states are granted at the beginning of each multi-annual financial framework of the funds, after a country has submitted its program.¹⁹²

The EDF provides budget support. Article 39 of the EU Council Regulation 2015/323 states that support will just be provided on the basis of mutual accountability and shared commitments of the parties to universal values.¹⁹³ These values are again democracy, human rights and the rule of law with the aim of achieving sustainable and inclusive economic growth to reduce poverty. The EU Commission as such defines and monitors these conditions. If the ACP-state shows no satisfactory progress no budget will be disbursed to it.¹⁹⁴ The review process is therefore used to measure the effectiveness of achieving the required values.¹⁹⁵

(ii) *Value Conditions*: In terms article 9 CA the parties are obliged to promote and protect all fundamental freedoms and human rights. The preamble gives more details about these human rights covers several international human rights conventions. From the Universal Declaration of Human Rights to special Conventions on the Rights of the Child, Women, against Racial Discrimination and Refugees. It also recognizes

¹⁸⁷ Article 56 CA.

¹⁸⁸ Article 2 CA.

¹⁸⁹ Article 61(1) CA.

¹⁹⁰ Article 63 CA.

¹⁹¹ EU Regulation 2015/323 of the Council (02.03.2015) on the financial regulation applicable to the 11th European Development Fund, Article 40; CA Annex IC Multi-annual financial framework for the period 2014 to 2020 - No 3; CA Annex IV Implementation and management procedures, article 1.

¹⁹² CA Annex IV Implementation and Management procedures – article 1, 4.

¹⁹³ EU Regulation 2015/323 op cite note 192 Article 39.

¹⁹⁴ Ibid.

¹⁹⁵ CA Annex IV Implementation and Management procedures – article 5, 33.

the human rights convention of the Council of Europe and the African Charter on Human and Peoples' Rights.

Article 9 CA also refers to democratic principles which ensure the legitimacy of a government authority and legality of the actions of such a government, which shall be founded on the rule of law. Under these principles it shall be ensured that good governance through transparency provides sustainable development.¹⁹⁶ In addition this article recognizes corruption and bribery as a violation of the agreement, which the parties shall fight against together.¹⁹⁷

Those three principles shall apply in domestic and international policies within this agreement as the essential elements, even in relation to political dialogue. The development of the principles is regularly evaluated during the dialogues of the parties.¹⁹⁸ In instances where article 9(2) CA is violated both the relevant EU member state and ACP-country are allowed to seek for dialogues with the violating party.¹⁹⁹ If no solution is found through consultations appropriate measures may be taken in accordance with international law.²⁰⁰ However, suspension from this agreement shall be the last resort.²⁰¹ The same process applies for serious cases of corruption.²⁰²

(iii) Preferential treatment and Economic Partnership Agreements: Economic and trade cooperation is the third pillar of the CA and is set out in title II of the agreement.²⁰³ The aim of this cooperation is to gradually integrate the ACP-states into the world economy while still respecting the sovereignty of the ACP-states.²⁰⁴

As stated in article 34(4) CA the cooperation shall be compliant with WTO laws. However, through article 35(3) CA the parties agree to special and differential treatment for the ACP-countries. This translates into non-reciprocal treatment as the Yaoundé Conventions provided. This allows the ACP-countries to import goods to the EU exempt of customs duties. In fact, the WTO recognized the preferential treatment as a

¹⁹⁶ Article 9(3) CA. Article 10(2) CA emphasise the importance of transparency regarding the social market economy and its competition rules to achieve the objectives of the partnership.

¹⁹⁷ Article 9, 33(2) CA.

¹⁹⁸ Article 8(4) CA.

¹⁹⁹ Article 96 (2)(a) CA.

²⁰⁰ Article 96 (2)(a)(c) CA.

²⁰¹ Article 96 (2)(c) CA.

²⁰² Article 97 (1) CA.

²⁰³ European Union "Cotonou Agreement" available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM%3Ar12101&from=FR>

²⁰⁴ Article 34(1) CA.

violation of the most-favored-nation principle stated in article I:1 of the General Agreement and Tariffs and Trade.²⁰⁵ As a reaction to the WTO violation statement the signatory states of the Cotonou Agreement requested a waiver at the WTO for the transition to a compliant agreement.²⁰⁶ This waiver ended on the 31 December 2007.

The EU and ACP-states agreed in article 36 CA to sign EPAs which are “WTO-compatible”. There are five EU-African EPAs, adjusted to cover regional circumstances.²⁰⁷ All five African agreements are finally negotiated but just the EPA of the Southern African Development Community, Eastern and Southern Africa region and the EPA of Central Africa (just for Cameroon) are already in force.²⁰⁸ The other two EPAs are currently in the process of being signed.²⁰⁹ In order to be compliant with WTO laws the EPAs will have to be reciprocal regarding preferential trade. In terms of the EPAs that are partly in force the ACP-states have to harmonize their customs duties to imports of the EU within a transition period.²¹⁰

It is worth noting that each of these agreements contain development aid clauses which refer to the articles of the CA.²¹¹ This means that the terms and conditions remain as is so far. The budget for this aid refers consequently to the EDF. However, the 11th EDF will end on the 29th February 2020. But the EDF, prospectively incorporated in the EU multiannual financial framework for 2021-2027, will be continued.²¹² Consequently, the budget has to be shared through the different EPAs.

2.3. Procurement and labour conditions

After describing the different programs which African countries can access when they acknowledge and promote the values of the EU, this section will discuss the process for tendering those projects. The second part of this section will review the labour standards which apply during the realization of the projects.

²⁰⁵ Weiß op cit note 173 para 247.

²⁰⁶ WTO “WT/MIN(01)/15 Decision of 14.11.2001 of the World Trade Organization Ministerial Conference”, accessible at: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_acp_ec_agre_e.pdf

²⁰⁷ European Commission “Economic Partnerships” (21.02.2019) available at: <https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>.

²⁰⁸ European Council “Cotonou Agreement” (16.01.2020) available at: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/>.

²⁰⁹ Ibid.

²¹⁰ <https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>.

²¹¹ See for instance article 75 EPA of the EAC-EU.

²¹² <http://www.europarl.europa.eu/factsheets/en/sheet/163/a-general-survey-of-development-policy>.

2.3.1. Procurement conditions for aid projects

The EU funds development projects in many African countries through its development aid budgets and the EDF. In order to tender for these projects the recipients have to implement the procurement rules of the EU for their external actions.²¹³ The procurement rules are set out in article 26 Annex IV CA.²¹⁴ These rules are fleshed out by the Practical Guide to Contract Procedures for EU External Actions (“PRAG”).²¹⁵ The PRAG applies to the other programmes in addition to the EDF.²¹⁶ If an aid project is supported by a loan by the EIB, the EIB may demand that the procurement requirements set out in its Statute be followed in tendering for the project.²¹⁷

Although, many African countries have implemented their own procurement laws to ensure effectiveness, the EU Commission sets its own rules.²¹⁸ The EU Commission is empowered to set procurement rules for projects funded under the CA.²¹⁹ The EU would like to secure the effectiveness of its aid and has in the past experienced issues when a lack of transparency could not prevent corruption or governance issues leading to the diminished effectiveness of its aid projects.²²⁰ It also seeks to achieve equal treatment and non-discrimination of eligible firms.²²¹ Furthermore, the rules of the CA provides that the aim is to encourage the participation of local industries and as such preferential tendering must be afforded to them.²²² Moreover, in case no tenderer of an ACP-state applies, the contract shall be tendered to the company with the strongest involvement of human resources of ACP-citizens.²²³

The PRAG provides seven procurement procedures for EU funded projects.²²⁴ Which of the procedure applies depends on the type of project, its nature and value of

²¹³ Fred Borson “EU Procurement Policy under Development Aid Financing” 11 (2016) *European Procurement & Public Private Partnership Law Review*, 220.

²¹⁴ *Ibid* at 221, 222.

²¹⁵ Practical Guide to Contract Procedures for EU External Actions (PRAG) (14.03.2013), available at: https://ufm-secretariat.org/wp-content/uploads/2014/01/PRAG_2013_en.pdf.

²¹⁶ PRAG p. 5.

²¹⁷ Article 18(5) EIB-Statute.

²¹⁸ Borson *op cit* note 215 at 220, 222.

²¹⁹ Article 19C Annex IV CA.

²²⁰ Borson *op cit* note 215 at 220.

²²¹ Borson *op cit* note 215 at 222.

²²² Article 26(1) Annex IV CA.

²²³ Article 26(2)(b) Annex IV CA.

²²⁴ See for all seven procurement procedures PRAG section 2.4.2. to 2.4.8.

contract as determined by section 2.4.1. PRAG.²²⁵ For instance the restricted procedure has selection criteria that must be satisfied.²²⁶ In the dynamic purchasing system the tender has to satisfy the requested criteria and must be submitted electronically.²²⁷ Under the negotiated procedure the contracting authority has the choice to invite candidates to submit tenders.²²⁸ However not all procedures apply in ACP-countries.²²⁹ The award is generally made to the best-value-for-money procedure²³⁰ for the most economically and quality advantageous tender.²³¹

The requirements that have to be complied with by tenderer to submit an application are set out in section 2.3. PRAG. This section also deals with who may be excluded from the tendering process, for the particular tender as well as from all future procedures finance by the EU should they making false declarations, substantial errors or commit irregularities or fraud in procurement procedure.²³² This provision ensures just the exclusion for the tendering procedure for EU aid, not for domestic procurements.²³³ A reason for this might be that the aid procurement happened mostly under EU execution.²³⁴ Therefore, the EU provides in each country an official to control and assist the local authorities for tendering aid projects.

2.3.2. Labour Conditions completing aid projects

When a project is tendered to a contractor certain labor standard apply to that contractor. The section below will examine the labor conditions set by the EU when completing projects linked to the provisions of development aid in African countries. The organs of the EU and EIB are bound to protect human rights.²³⁵ The demand for human rights already encompasses the protection of certain labor rights.²³⁶

²²⁵ Borson op cit note 215 at 222.

²²⁶ PRAG section 2.4.3.

²²⁷ PRAG section 2.4.6.

²²⁸ PRAG section 2.4.4.

²²⁹ Borson op cit note 215 at 226.

²³⁰ PRAG section 2.4.11.2.

²³¹ PRAG section 2.4.; Borson op cit note 215 at 226.

²³² PRAG section 2.3.4.

²³³ Borson op cit note 215 at 226.

²³⁴ EU Regulation 2015/323 op cite note 192 at Article 36(2)(b).

²³⁵ Hachez, Wouters op cit note 150 at 60-62; Rudolf Streinz "Artikel 6 EUV" in Streinz EUV/AEUV para 27; see also Article 6 TEU.

²³⁶ Franz Christian Ebert "Labour provisions in EU trade agreements: What potential for channeling labour standards-related capacity building?" 155 (2006) *International Labour Review* 411.

When the EIB provides loan, which are not subject to the CA or another program the rules relating to applicable labor conditions are less clear.²³⁷ When the EIB gives loans the loans may finance projects which can create employment opportunities. The EIB requires compliance with EU policies by the borrower, but not all of these policies apply to non-EU-citizens.²³⁸ In fact, local conditions in the relevant African countries might apply subject to the EU standards.²³⁹ The EIB is as such obliged to control these investments.²⁴⁰ The EIB uses an internal framework to examine if a project is consistent with its economic and social standards, which are based on the Charter of the Fundamental Rights of the European Union.²⁴¹ This guideline however an internal document and does not directly apply to the borrower.²⁴² But the EIB declared to finance no projects which could violate human rights.²⁴³

The general programs of the EU contains no concrete labor standards but only refers the human rights demand for the project realization in its regulations as the general condition even when they promote certain labor rights like decent work or gender equality.²⁴⁴ The demand for human rights is as already stated (see 2.2.4.) in the Cotonou Agreement but it also state to respect of basic labor rights like the freedom of association or collective bargaining.²⁴⁵ The parties of the CA reaffirmed the core labor conventions of the International Labor Organization (“ILO”).²⁴⁶ The core convention are for instance the Minimum Age Convention or the Forced Labor Convention.²⁴⁷

But the CA as a preferential trade agreement does not aim to directly regulate labor according to the EDF completing the aid projects. The acknowledgement of the ILO core labor conventions is subjected to the chapter of “Trade related areas”. It is

²³⁷ Hachez, Wouters op cit note 150 at 71, 94.

²³⁸ Ibid at 62.

²³⁹ Ibid at 63, 65.

²⁴⁰ Ibid at 62.

²⁴¹ Ibid at 69.

²⁴² Ibid.

²⁴³ Ibid at 70.

²⁴⁴ See Article 5(4) in conjunction with Annex 1, Part A, Paras I(b)(i), II(a)(ix), (b)(vii) and (xiii) of EU Regulation 233/2014.

²⁴⁵ Article 50(1) CA.

²⁴⁶ See article 50 and preamble CA; For the basic labor rights conventions see: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

²⁴⁷ See list for core labor standards convention of the ILO: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

therefore used more for labor through the trade and economic cooperation.²⁴⁸ Regardless, the EDF is subject to the CA and those standards also apply for contractors who complete the aid projects when the African country has implemented the conventions.

In addition, they aim to strengthen labor reforms and exchange information.²⁴⁹ In terms of article 24 of Annex IV of the Cotonou Agreement direct labor operations have to be implemented by agencies or departments of the African countries while complying with the rules and standards laid down by the EU. And if disputes arise between the host-country and the contractor, national or arbitrational procedures will be implemented.

Overall, the EU does not directly set labor conditions but rather focuses on general human rights compliance, however, through the Cotonou Agreement it is able to raise the standards set by the ILO core labor conventions. So, it is expected that these are implemented into the national laws of the African country.

2.4. Conclusion

This chapter discussed the EU legal framework and its terms and conditions for development aid in Africa (and other developing countries). The EU which has specific programs and the EDF which finances projects seek to strengthen certain values like human rights, democratic principles, the rule of law and socio-economic and cultural development through these programs and projects.

However, in order to access these programs or implement their own projects through the EDF, the recipient countries have to acknowledge, promote and implement these values. The EU believes on these values as a catalyst for sustainable development. Besides the grants and concessional loans for the programs provided the EDF, the European Investment Bank also assist and also provides loans to African countries.

The EU has implemented its own procedural framework called PRAG for the tendering process of EU aid projects. PRAG is which is overseen by an EU official in each ACP-country. The labour standards which apply to projects are human rights

²⁴⁸ Chapter 5 "Trade related areas" CA.

²⁴⁹ Article 22(1)(b)(ii) CA.

standards and the core labour standards promulgated the ILO conventions under projects of the CA.

3. Chapter: Chinas Legal Framework for Investments in Africa

3.1. Introduction

The first chapter introduced China's common historical background with Africa and also discussed its commercial interest in that continent. The structure of the previously discussed chapter followed its legal bases cannot use to introduce China's Investment Legal Framework. Chinese foreign relations are strongly policy driven, even when the legal system itself is influenced by the European continental legal system unfortunately a legal basis empowering Chinas government to invest or spend aid abroad was not found during the author's research for this thesis.²⁵⁰ Besides these bilateral investment agreements which deal with general or specific conditions are not publicly accessible.

This chapter will investigate Chinese policies and laws which contain terms and conditions for the purposes of comparing access, tender and labor conditions for Chinese investments in Africa. It will cover Chinas white paper for foreign aid, the One-China principle, the going global strategy, economic policies which could influence those investments following China's Africa policy, FOCAC and the Chinese Export-Import Bank (Exim-Bank) which provides the loans to African countries and has a certain impact on the tendering process. The conditions which apply for the procurement and labor standards is investigated through short case studies below.

3.2. China's White Paper on Foreign Aid

In April 2011 the Information Office of the State Council published the first white paper on China's Foreign Aid which contains a lot of information.²⁵¹ The paper emphasized in its preface that China has provided aid since the 1950s, without any political conditions to the recipient countries.²⁵² Those recipient countries are developing countries like China.²⁵³ It also points out that it promoted the South-South cooperation

²⁵⁰ Junwei Fu "China" in Jan M. Smits *"Elgar Encyclopedia of Comparative Law"* 2. ed., (2012), 137.

²⁵¹ White Paper on China's Foreign Aid (21.04.2011).

²⁵² Ibid.

²⁵³ Ibid.

which is based, amongst others things on equality and mutual benefits, which is also emphasized in FOCAC and China's white papers for Africa.²⁵⁴

The paper is based on 'The Eight Principles for Economic Aid and Technical Assistance to Other Countries', introduced by the Chinese government in 1964.²⁵⁵ Those principles are: (1) Equality and mutual benefit in providing aid to other countries; (2) respecting the sovereignty of recipient countries without attaching conditions (no political strings attached) or asking for privileges.²⁵⁶ (3) China has the pace for the repayment of economic aid of interest-free or low loans and extends the time limit if necessary.²⁵⁷ Indeed, China did so in the past, most recently for Ethiopia.²⁵⁸ (4) The recipient countries shall become self-reliance and independent in their economic development and not dependent on China.²⁵⁹ (5) China supports recipient countries in completing projects faster in order to receive their income.²⁶⁰ (6) The Chinese government provides equipment and materials manufactured by China.²⁶¹ (7) For technical assistance China ensures that the personnel of the recipient countries will be trained to use the technology.²⁶² (8) Chinese dispatched experts will have the same standard of living as the experts of the recipient countries.²⁶³ With these principles the government set itself a certain framework of how they wishes to provide assistance to other countries. However, as pointed out in section 1.7.3. China does however also have a commercial interest and seeks a mutual benefit in providing aid or finance.

The paper states that the government studied the economic and long-term effects of aid. To make it more flexible and individualized for the recipient countries the paper espouses the use domestic capacities of the recipient countries to build up their economies with local personnel and technical forces.²⁶⁴ China offers tailored aid, if possible. Therefore, foreign aid is provided through bilateral agreements and not

²⁵⁴ Ibid. See section 3.6 and 3.7.

²⁵⁵ Ibid.

²⁵⁶ Ibid; White Paper on China's Foreign Aid (21.04.2011) Annex I: China's Eight Principles for Economic Aid and Technical Assistance to Other Countries.

²⁵⁷ Ibid.

²⁵⁸ Laura Zhou "Ethiopia in talks with China to ease 'serious debt pressure' tied to New Silk Road rail link, envoy says" (24.03.2019) *South China Morning Post*, available at: <https://www.scmp.com/news/china/diplomacy/article/3002957/ethiopia-talks-china-ease-serious-debt-pressure-tied-new-silk>

²⁵⁹ White Paper on China's Foreign Aid White Paper (21.04.2011) Annex I.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ White Paper on China's Foreign Aid (21.04.2011)

through multilateral frameworks or certain programs.²⁶⁵ However, China acknowledges reforms and innovations and uses its experiences of foreign aid to improve its work.²⁶⁶

China provides foreign aid in eight different forms which are financed by financial instruments (section 1.7.3.) administered by the Ministry of Commerce.²⁶⁷ These are the following: (1) Complete projects for which China is fully or in part responsible in terms of planning, designing and realizing the project (for instance in the infrastructure sector) that is handed over to the recipient country when it is complete.²⁶⁸ (2) Goods and materials – for production and living but also single-item equipment, which is often delivered to complete projects to improve their equipment capacity.²⁶⁹ These first two types of aid referred to in (1) and (2) may also be provided in combination depending on the project financed through grants or interest-free loans to the social sector (hospital or schools) or commercial loans for economically profitable projects (infrastructure and manufacturing).²⁷⁰ (3) Technical cooperation which is provided through dispatched experts which give guidance on the production or maintenance of complete projects, or train locals as technical personnel, for instance to grow crops.²⁷¹

(4) Human resource development cooperation to train government officials through education programs, technical training programs and also personnel exchange programs in sectors of the economy, agriculture, health care and environmental protection.²⁷² One of China's oldest forms of aid which was launched in 1963 is medical support.²⁷³ (5) Medical teams sent to recipient countries to provide free medical devices and medicines.²⁷⁴ (6) Volunteer programs which were established in 2002 for young Chinese citizens who are sent to developing countries, like Ethiopia to serve in education, medicine and health care and other social sectors for a period of time.²⁷⁵

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Rong Xiang "Regulation of Foreign Aid: China" (06.09.2015) *Library of Congress*, available at: <http://www.loc.gov/law/help/foreign-aid/china.php#Framework>.

²⁷¹ White Paper on China's Foreign Aid (21.04.2011)

²⁷² Ibid.

²⁷³ Xiang op cit note 272.

²⁷⁴ White Paper on China's Foreign Aid (21.04.2011).

²⁷⁵ Ibid. White Paper on China's Foreign Aid (10.07.2014); Xiang op cit note 272.

(7) Humanitarian aid in the form of materials, cash or the dispatch of relief personnel which is provided in emergencies when a country suffers from a natural or humanitarian disaster.²⁷⁶ (8) Debt relief for interest-free loans provided to deeply indebted countries by China.²⁷⁷ China announced such reliefs during the FOCAC summits in 2000, 2006 and 2009 for some African countries.²⁷⁸

In July 2014 China published its second policy on Foreign Aid which summarizes China's global assistance from 2010 to 2012.²⁷⁹ The white paper presents a broad overview of completed aid projects in social and economic sectors for that period, however, no concrete data for specific projects was given.²⁸⁰ It emphasized the principles of non-interference, mutual benefits, win-win and the independence of choosing a development model.²⁸¹ In the conclusion of the policy paper China pledges to continue its development cooperation with the world.²⁸² No additional foreign papers have been released, which could provide more information in relation to about China's global aid engagements and contribution. The Chinese government might publish more data and studies through the new agency CIDCA.²⁸³

3.3. The One-China Principle as a pre-condition

To get access to financial assistance as described in section 1.7.3. and such aid programs described in the previous section, African countries must have diplomatic relations with China.²⁸⁴ The One-China principle requires that the African countries not recognize Taiwan as a sovereign state.

This issue goes back to the civil war in China in the 1940s, where the communist party gained control of the mainland and the dissidents fled to the island of Taiwan. The government of Taiwan subsequently claimed to be a sovereign state and established a democratic government, which was broadly recognized by the international community until 1979 when the UN withdrew their recognition of Taiwan espoused the

²⁷⁶ White Paper on China's Foreign Aid (21.04.2011).

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ White Paper on China's Foreign Aid (10.07.2014).

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Cheng op cit note 80.

²⁸⁴ FOCAC Action Plan 2018, section 4.1.4.

principles of a democratic society and has the view that its citizens have to choose if they want to reunify with China.²⁸⁵

When China proclaimed its communist constitution in 1949 it laid down in the preamble the aim for a peaceful reunification with Taiwan.²⁸⁶ The Chinese communist party understands itself as the legitimate government for mainland China but also for the island of Taiwan. The mention of the One-China principle in the constitution emphasized the importance for China of a peaceful reunification with Taiwan. Besides this, the principle is mentioned in China's Africa policies discussed below.

There are however still countries which acknowledge the sovereignty of Taiwan which assists with providing the country with a voice in the international community.²⁸⁷ On the other side China tries to convince these countries to acknowledge China's rights claim to Taiwan. When the first FOCAC in 2000 only 44 of over 54 African countries were part of the forum.²⁸⁸ African countries which acknowledged the sovereignty of Taiwan were not invited to the forum. Nevertheless, China kept dialogue open with the countries and tried to convince them to withdraw their recognition of Taiwan's sovereignty and acknowledge China's claim by dangling prospective investments.²⁸⁹

In 2012, four African countries, namely Burkina Faso, the Gambia, Swaziland (now Eswatini) and Sao Tomé and Príncipe, still has diplomatic relations with the government of Taiwan.²⁹⁰ China sought consultations with those four countries and attempted to entice them by offering similar investments like the other FOCAC recipients.²⁹¹ As a consequence of China's efforts, the Gambia recalled its relations with Taiwan in 2016 and recognized China instead.²⁹² Since then, the Gambia and China agreed to their partnership and China supports the Gambia with investments in infrastructure projects.²⁹³ Sao Tomé and Príncipe had diplomatic relations with China until 1997. Between 1997 and 2016 Sao Tomé and Príncipe had diplomatic relations with

²⁸⁵ Kim, Yejoon "Africa – The People's Republic's exclusive playground?" 71 (2012) *African East Asian Affairs*; Larry Madowo "eSwatini – Taiwan's last friend in Africa" (14.01.2019) *BBC News*.

²⁸⁶ Constitution of the People's Republic of China 1982.

²⁸⁷ Yejoon op cit note 287.

²⁸⁸ FOCAC Action Plan 2000.

²⁸⁹ Madowo op cit note 287.

²⁹⁰ Yejoon op cit note 287.

²⁹¹ Lunga Masuku "Taiwan's last African ally holds out despite overtures by China (31.08.2018) *Reuters*.

²⁹² Robert Birsell "Gambia president tells China previous Taiwan ties a 'huge mistake' (06.09.2018) *Reuters*.

²⁹³ *Chinadaily* "China-Gambia relations see rapid development on all fronts: Chinese FM" (06.01.2019).

Taiwan which is why China discontinued its relations with term. These diplomatic relations were restored in 2016 when Sao Tomé and Príncipe withdraw its recognition for Taiwan.²⁹⁴ In May 2018 Burkina Faso reestablished its ties with China by withdrawing its diplomatic relations with Taiwan.²⁹⁵

53 African countries were represented at the 2018 FOCAC summit which discussed economic cooperation between China and the African continent. Most recently China held consultations with Eswatini in August 2018, short before the latest FOCAC summit.²⁹⁶ However, Eswatini has rejected China offers so far and it is the last country on the African continent with diplomatic relations to Taiwan.²⁹⁷

For China the One-China policy is a fundamental requirement for diplomatic relations with other countries.²⁹⁸ Therefore, this precondition is mentioned in both Chinese Africa policies from 2006 and 2015.²⁹⁹

3.4. The Going Global strategy and the Outbound Investment Regulation

Besides governmental investments China's companies also seek investment opportunities abroad. President Deng Xiaoping opened China for foreign investors in 1978. Since then China's economy has developed and grown even stronger. The Chinese economy which is strongly controlled by the government did however become limited in terms of its growth within its domestic market by the end of the 1990s. As a consequence the government published a policy named "going global strategy" in 1999.³⁰⁰ This policy encouraged Chinese companies, which are mostly state-owned and some non-state-owned companies to move abroad and invest in the booming world economy (outbound direct investments).³⁰¹ Because of the growing economy the production of goods in China became more and more expensive. Wages for the Chinese employees are increasing significant, moving China away from a low-cost

²⁹⁴ The Associated Press "China Resumes Ties with Sao Tomé Which Turned Away from Taiwan" (26.12.2016) *The New York Times*.

²⁹⁵ Ben Blanchard "China wins back Burkina Faso, urges Taiwan's last African ally to follow" (26.05.2018) *Reuters*.

²⁹⁶ Masuku op cit note 293.

²⁹⁷ Madowo op cit note 291.

²⁹⁸ China's second Africa policy (05.12.2015).

²⁹⁹ Ibid; China's first Africa policy (20.09.2006).

³⁰⁰ "China Going Global between ambition and capacity" (2017) *Working Paper of China Policy* 3.

³⁰¹ Ibid; Wang, Hongying; Hu, XueYing "China's "Going-Out" Strategy and Corporate Social Responsibility: Preliminary Evidence of a "Boomerang Effect"" 26 (2017) *Journal of Contemporary China* 820.

country.³⁰² The policy guided them to find markets and resources, using business practices that worked in China, albeit, the outcome varied.³⁰³

In March 2018 the Chinese National Development and Reform Commission (NDRC) renewed the law for outbound investments by the Administrative Measures for Overseas Investments by Enterprises.³⁰⁴ The regulations for outbound investments have been in place since the 1990s.³⁰⁵ This regulation requires that Chinese companies (state-owned and private-owned), joint-ventures in host-countries which are controlled by a Chinese majority and individuals should register their planned outbound investment and get approval from authorities.³⁰⁶ State-owned enterprises have even more requirements to fulfil in order to get approval.³⁰⁷ This section will be focus only on the process. The process is different depending on the type of investment.

A distinction is made between investments categorized as sensitive and non-sensitive. The investments are also categorized according to their transaction value. The NDRC lists sensitive countries, with which China limited or no diplomatic relations, and industries which need an approval. On the sensitive list of industries are hotels, sports clubs or entertainment companies.³⁰⁸ Investments supporting the Belt and Road Initiative, which will be explained below (section 3.5.3.), are classified as not sensitive anymore and are in the renewed regulation.³⁰⁹ For a sensitive investment an approval from the NDRC and the Ministry of Finance and Commerce is always required. A notification must be filed online; in case a non-sensitive investment includes credits or guarantees from a Chinese company to the relevant African countries. And, if the transaction value for a non-sensitive investment is higher than \$US 300 million the investor must submit an investment report. However, if the transaction value is less than \$US 300 million an investment in a non-sensitive industry must just be notified without further process.³¹⁰

³⁰² China Policy "China Going Global between ambition and capacity" (2017) Working Paper of China Policy 5.

³⁰³ Ibid at 3.

³⁰⁴ Jakob Riemenschneider "Latest Trends of China Overseas Direct Investment Regulations" (29.01.2018) *Taylor-Wesing*.

³⁰⁵ Ibid.

³⁰⁶ Ibid. Michael Fischer "Legal Framework for Chinese Outbound Investments" *Deloitte*; Jack Yu "China's Outbound Investment Regulation Update" (06.11.2017) *Fasken*.

³⁰⁷ Michael Fischer "Legal Framework for Chinese Outbound Investments" *Deloitte*.

³⁰⁸ Michael Sheng, Daniel Öhval "Chinese outbound investment regulations for a new year" (17.01.2018) *Ashurst*.

³⁰⁹ Ibid.

³¹⁰ Fischer op cit note 309.

These rules aim to increase the competitiveness of Chinese investors abroad and to minimize uncontrolled capital outflows.³¹¹ Domestic regulation affects Chinese investors in a procedural way. However, an approval can take up to two years, depending on the type of investment. A potential African country seeking investment from any Chinese company should therefore consider whether it would meet the relevant criteria set throughout the approval process.

3.5. China's policies and initiatives for economic growth

China's economic policies should guide its economy to growth. For instance, the reform of the outbound investment regulation discussed in the previous section is based on the 13th Five-Year Plan.³¹² Some policies also show an impact on Africa. The most important policies will as such be examined on their potential impact and requirements for investments in Africa. Beginning with the coordinating 13th Five-Year Plan, which introduced the policy Made in China 2025 and finally the One Belt One Road Initiative (BRI).

3.5.1. 13th Five-Year Plan

The Chinese Five-Year plan is an administrative social and economic plan governing the national budget and resources for future development.³¹³ Those plans are known as economical instruments in socialist countries.³¹⁴ The first plan was published in 1953 some years after the adoption of the constitution of the People's Republic of China. Since then almost every five years the Chinese government has published a new plan. The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020) which was adopted in March 2016, is the latest Five-Year Plan of China.³¹⁵ This plan has a "*development philosophy*" that should drive China for more "innovation", "coordination", "green" (sustainable), "opening up" by going global and engage with the global economy for mutual benefits, and

³¹¹ Ibid.

³¹² Chapter 50 Section 2 13th Five-Year-Plan for Economic and Social Development of the People's Republic of China (2016-2020).

³¹³ Owen Haacke "Understanding China's 13th Five-Year Plan" (12.02.2015) *China Business Review*.

³¹⁴ Ibid.

³¹⁵ 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020).

“share” the benefits of development with the people.³¹⁶ The aim of mutual benefits is based on early principles of China like the Eight Principles for Economic Aid and Technical Assistance to Other Countries (see section 3.2.). The plan establishes the agenda for reforms and projects for the economy, like the reform of the outbound law. Besides its development philosophy it integrates and coordinates other national policies in its plan too.

Chinese aid for developing countries is briefly discussed in Chapter 53 of the Five-Year Plan but does not make reference to Africa. In this chapter China promises to improve its aid and offer more skill trainings.³¹⁷ Looking forward to expand, China seeks foreign cooperation in science, technology, environmental governance and some other sectors.³¹⁸ Besides this China plans to implement the United Nations 2030 Agenda for Sustainable Development and is part of UN peacekeeping mission combating terrorism.³¹⁹

3.5.2. Made in China 2025

One of those policies, mentioned in the Five-Year plan, is the Made in China 2025 policy.³²⁰ This policy aims to develop China’s economy in to an innovation driven manufacturing economy and with quality at the heart of its brand.³²¹ In terms of this policy China aims to become a high-end equipment producer in ten sectors, and produce, amongst other things for rail equipment, modern agricultural machinery, medical equipment and chemical machinery. The Five-Year plan sets out how to develop, present and secure the quality of relevant goods through engaging enterprises.³²²

The aim of this policy is to overcome the middle-income-trap.³²³ For this purpose, China wants to improve its industry so that it is advanced and has the capacity to provide innovative productions. It plans to even surpass Western industries.³²⁴ This

³¹⁶ Chapter 4 13thFive-Year-Plan for Economic and Social Development of the People’s Republic of China (2016-2020).

³¹⁷ Chapter 53 13thFive-Year-Plan.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Chapter 22 13thFive-Year-Plan.

³²¹ Ibid.

³²² Chapter 22 Section 1-5 13thFive-Year-Plan.

³²³ James McBride, Andrew Chatzky “Is ‘Made in China 2025’ a Treat to Global Trade?” (13.05.2019) *Council on Foreign Relations*.

³²⁴ Ibid.

is part of the reason Chinese companies sought to acquire innovative high-tech technology.³²⁵ This led to Western countries accusing China of intellectual property theft and violating WTO rules.³²⁶ Western companies now have to compete with Chinese companies when in order to succeed.³²⁷ It can therefore be expected that China will offer African countries new industrialized goods in the future. Low-wage industries like the textile industry which were important for China in the last decade have already shifted to other Asian countries.³²⁸ Some companies have even moved to Africa.

3.5.3. One Belt One Road Initiative

One further important economic initiative mentioned in the Five-Year Plan is the BRI which aims to connect countries and regions in multiple sectors through transport infrastructure.³²⁹ Africa is mentioned only once explicitly in the Five-Year Plan, when reference is made the BRI.³³⁰ The BRI was launched in September 2013 by Chinese president Xi Jinping. The initiative was based on the ancient Silk Road which connected Asia, Europe and Africa through several sea and land routes.

It aims to strengthen the global economy through “peace, development, cooperation and mutual benefit”.³³¹ In its principles the initiative states that it is open to every country and international and regional organizations.³³² The economic cooperation aims to provide “exchanges and mutual learning between different civilizations” along the routes.³³³ Indeed, the initiative helps China to open up its economy even further under its policies mentioned above.³³⁴ Moreover, it seeks to strengthen its cooperation on energy, resources and production chains as it does already in Africa.³³⁵

³²⁵ Kristen Hopewell “What is ‘Made in China 2025’ – and why is it a threat to Trump’s trade goals?” (03.05.2018) *The Washington Post*.

³²⁶ McBride, Chatzky op cit note 327.

³²⁷ Hopewell op cit note 329.

³²⁸ Gabriel Dominguez “‘Made in China 2025’ – The next stage of China’s economic rise?” (02.06.2015) *DW*.

³²⁹ Chapter 51 13thFive-Year-Plan.

³³⁰ Chapter 51, Section 2 13thFive-Year-Plan.

³³¹ Action plan on the Belt and Road Initiative (28.03.2015).

³³² *Ibid.*

³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ Chapter 51 Section 2 13thFive-Year-Plan.

The BRI uses regional cooperation and economic integration to push the initiative forward.³³⁶ However, cooperation with China based on bilateral relations. The initiative will integrate each country's development strategy and coordinate the project through consultations to satisfy all interests.³³⁷ To achieve this ambitious plan, China offers most countries loans for railways and other infrastructure projects to build the belt and road. It also seeks to attract international capital to finance these initiatives.³³⁸

China has become the biggest trading partner for the African continent and the BRI will facilitate the transportation of goods.³³⁹ The BRI links Africa and China via Africa's east coast, through ports like Djibouti and others. But it is not only east African countries that benefit from or are engaged with the BRI. Since the FOCAC supports the implementation of the BRI in Africa, China announced a Belt and Road Africa infrastructure development fund, worth \$US 1 billion.³⁴⁰ It is worth noting that there exists strong engagement between East-African countries when it came to inter-continent connections. Especially through railway links, like the first African electric railway from Addis Ababa to Djibouti, where China's maritime silk road enters Africa.³⁴¹ These projects were made possible mostly through investments by Chinese companies and with new concessional loans to African countries.

Consequently, none of the Five-Year Plan, Made in China 2025 or the BRI have any legal requirements for investments in Africa. However, they show how China is developing its economy and seeking new investment opportunities in Africa.

3.6. China's Africa policies

Even in instances where China does not mention Africa in its general economic policies and infrastructure initiatives in Africa policies it discusses its interests and aims on the continent in its two Africa policies.

In 2006 China presented its first Africa policy with objectives and steps on how to achieve these objectives in Africa.³⁴² The policy was used to guide the development

³³⁶ Action plan on the Belt and Road Initiative (28.03.2015).

³³⁷ Ibid.

³³⁸ Chapter 51 Section 1 13th Five-Year-Plan.

³³⁹ Wade Shepard "What China Is Really Up to in Africa" (03.10.2019) *Forbes*.

³⁴⁰ Ibid; FOCAC Action Plan 2018, section 1.3-1.5.

³⁴¹ Paul Nantulya "Implications for Africa from China's One Belt One Road Strategy" (22.03.2019) *Africa Center for Strategic Studies*.

³⁴² China's first African Policy (20.09.2006).

of China-Africa relations on the basis of peaceful coexistence.³⁴³ The policy emphasizes the independent choice of types of development for African countries.³⁴⁴ Comparing part IV of the Africa policy with the FOCAC action plan from 2006, it is clear that most of the objectives in the Africa policy are similar to or are the same as objectives in the FOCAC action plan.³⁴⁵ Action plans in the sense of FOCAC are joint statements of Chinese and African countries setting common interests for socio-economic cooperation and investments in the future.

The One-China principle (section 3.3) is seen as the foundation for China's relations with African countries. The Africa policy does however state that economic assistance will be provided without any political strings being attached.³⁴⁶ This may be understood as a hint to western donor countries and international organizations who expect political or economic reforms. The One-China principle and investments without political strings requirement were confirmed in the second Africa policy.³⁴⁷

The second Africa policy was published in December 2015 by the Chinese government at the end of the sixth FOCAC summit. The paper recognized the full implementation of the first African policy whilst emphasizing the need for each other and the compatibility of their development strategies.³⁴⁸ Like the first policy it contains much of the FOCAC action plan from 2015, although this time it was published later than the action plan. The policy discusses several points which are broader than the first policy or the action plan and just states its intentions to cooperate with Africa.

3.7. Forum on China-Africa Cooperation

Shortly after China started promoting outbound investments to its domestic enterprises, the Forum on China-African Cooperation was launched by China and 44 African countries in Beijing in 2000.³⁴⁹ At the present 53 African countries are part of the China-Africa exclusive forum.³⁵⁰ It is a diplomatic forum to facilitate investment deals

³⁴³ Ibid, China's second Africa Policy (05.12.2015).

³⁴⁴ China's first Africa Policy (20.09.2006).

³⁴⁵ FOCAC Action Plan 2006, China's first African Policy (20.09.2006).

³⁴⁶ China's first Africa Policy (20.09.2006).

³⁴⁷ China's second Africa Policy (05.12.2015).

³⁴⁸ Ibid.

³⁴⁹ Beijing Declaration of the Forum on China-Africa Cooperation of the 10-12 October 2000.

³⁵⁰ Aiping Zeng; Zhan, Shu China "Origin, Achievements, and Prospects of the Forum on China-Africa Cooperation" (2018) *International Studies* 90; FOCAC Action Plan 2018 section 1.2.

for social and economic development for the members who have common fundamental interests.³⁵¹ Consequently, China requires diplomatic relations between the relevant member African country and itself (see section 3.3 and 3.6).³⁵²

Every three years FOCAC adopts a so-called “Action Plan” for which China pledges a certain amount of money. In the recent FOCAC action plan China pledged \$US 15 billion for grants, zero-interest loans and concessional loans, \$US 20 billion of commercial credit lines, \$US 15 billion for funds like the China-Africa Development Fund for equity investments in Africa and \$US 10 billion for Chinese companies.³⁵³ In those plans FOCAC members agree to cooperate in different sectors, for social and economic development and peace, especially in those sectors where Africa needs investments.³⁵⁴ However, this cooperation shall be based on “mutual benefit” through “Win-Win-Cooperation”, which is emphasized in each action plan since, consequently China’s interests are expressed too.³⁵⁵

The recent Action Plan of 2018 and former plans start off by reviewing and confirming statements of the improvement of their relations and cooperation.³⁵⁶ But they also recognize further initiatives like Chinas Belt and Road Initiative (section 3.5) or the signing of the African Continental Free Trade Agreement.³⁵⁷ They also announce new initiatives. In section 1.8 of the recent action plan China announced the launch of eight major initiatives to promote industrial growth, infrastructure connectivity, green development, trade facilitation, capacity building, health care, people-to-people exchange and a peace and security initiative.³⁵⁸ Those initiatives are financed through

³⁵¹ Beijing Declaration of the Forum on China-Africa Cooperation of the 10-12 October 2000; Meibo, Huang; Xie, Qi “Forum on China-Africa Cooperation: Development and Prospects” 74 (2013) *African East Asian Affairs* 13; Lucy Corkin “Redefining Foreign Policy Impulses toward Africa: The Roles of the MFA, the MOFCOM and China Exim Bank” 4 (2011) *Journal of Current Chinese Affairs* 63.

³⁵² FOCAC Action Plan 2018 section 4.1.4.

³⁵³ Sun op cit note 11.

³⁵⁴ Beijing Declaration of the Forum on China-Africa Cooperation of the 10-12 October 2000.

³⁵⁵ Ibid; FOCAC Action Plan 2018 section 1.7.

³⁵⁶ FOCAC Action Plan 2018 section 1.2.

³⁵⁷ Ibid section 1.3, 1.4, 2.4.5.

³⁵⁸ Ibid section 1.8.

the budget China provides.³⁵⁹ The aim is to strengthen a closer China-Africa community.³⁶⁰ For instance on industrial promotion the Chinese government will promote Chinese companies to invest in Africa even more.³⁶¹

The action plans are not very clear regarding programs or projects. But the types of investments and aid projects are given are stated in Chinas Foreign Aid policy (section 3.2). Unlike in previous action plans no debt relief is granted under the most recent Action Plan. China's volunteer program was introduced in the third action plan, dispatching young volunteers to African countries to work in medicine, education and other fields.³⁶² Medical teams have been sent to African countries since the first Action Plan, for instance to Uganda and Tanzania.³⁶³ Humanitarian aid is not always mentioned, in the 2018 plan China provided a budget for food assistance and send agriculture experts to Africa.³⁶⁴

To develop human resources the action plans for instance promote the education sector through scholarships and exchange programs.³⁶⁵ Besides this they also aim to strengthen their cooperation in the science and technology sector through the exchange of information, experience and knowledge transfer.³⁶⁶ Since the third FO-CAC action plan China has sent experts from the agricultural sector to provide technical assistance, build up local capacities and transfer technology to Africa.³⁶⁷

Many of the cooperation's described above, were not part of the first action plan from 2000. The cooperation expanded over time and the plans became broader reaching into more and more fields. When it started in 2000 the action plan focused a lot more on trade and investments, as China had just released its 'going global strategy' pushing its companies out to invest abroad (section 3.4). The forum was a way to facilitate investment and trade opportunities.

³⁵⁹ Andrew Mizner "China to invest USD 60 billion in Africa" (01.10.2018) *African Law & Business* available at: <https://www.africanlawbusiness.com/news/8609-china-to-invest-usd-60-billion-in-africa/>.

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² FOACAC Action Plan 2006, section 5.9.3.

³⁶³ Long Wang, Joshua Bateman "China's Medical Aid in Africa" (14.03.2018) *The Diplomat* available at: <https://thediplomat.com/2018/03/chinas-medical-aid-in-africa/>.

³⁶⁴ FOACAC Action Plan 2018, section 3.1.3.

³⁶⁵ FOACAC Action Plan 2018, section 4.3.1-4.3.4.

³⁶⁶ FOACAC Action Plan 2018, section 4.5.2, 4.5.4.

³⁶⁷ FOACAC Action Plan 2018, section 3.1.1, 3.1.6.

Still this is the larger part of each plan. By building industries, the partners agree to industrialize African countries through projects and through creating special economic zones and industrial parks.³⁶⁸ Bilateral investment treaties and other mechanisms shall be renewed and concluded to reduce investment barriers.³⁶⁹ The economic cooperation of the action plan contemplates utilizing infrastructure projects in the air transport and the communication and information sector to strengthen connectivity in Africa.³⁷⁰ Moreover, both sides agree to raise their imports and exports through market access, modernize the customs services and regulations.³⁷¹ China promises to extend concessional loans and find new financing models to facilitate all the cooperation mentioned above.³⁷² This means there could be further projects to be completed through investment packages which also could contain Chinese materials.

The wording of those plans is kept very vague and general and there are no concrete details on what the parties concerned will agree on. Furthermore, the plans are not legally binding on the parties. Specific projects are not named in the Action Plans and reference is not to who should implement these projects.³⁷³ Therefore, China concludes with each African state bilateral treaties for those investments and cooperation projects.³⁷⁴

3.8. China's Investment Agencies

China uses its agencies to realize all the different investments and the transfers of budgets. The Agricultural Development Bank of China, China Development Bank and Exim-Bank are China's policy banks which execute state policies locally and internationally.³⁷⁵ Such policies are discussed above. In addition the agency CIDCA has since April 2018 granted concessional and interest-free loans (\$US 15 billion and above) for the period of 2019-2021 only to African sovereign recipients.³⁷⁶ Until 1995, China's foreign aid was only provided in the form of grants and no-interest loans for

³⁶⁸ FOCAC Action Plan 2018, section 3.2.2, 3.2.4.

³⁶⁹ FOCAC Action Plan 2018 section 3.7.2

³⁷⁰ FOCAC Action Plan 2018 section 3.3.2 to 3.3.8.

³⁷¹ Ibid section 3.8.1, 3.8.3, 3.8.6, 3.8.7.

³⁷² Ibid section 3.9.1.

³⁷³ See for instance FOCAC Action Plan 2018 section 3.2.3: "various projects"; or section 3.2.5. "African countries".

³⁷⁴ White Paper on China's Foreign Aid (21.04.2011).

³⁷⁵ Paper of Friends of the Earth United States "China Development Bank and China Export-Import Bank" (January 2016) 11.

³⁷⁶ Cheng op cit note 80.

construction work through the existing financial channels.³⁷⁷ However, the execution of the China-Africa Development Fund, other funds and commercial loans remain under the control of the policy banks which are controlled by the Ministry of Commerce.³⁷⁸ The following section described how the Exim-Bank provides commercial loans and how it previously provided concessional loans.

In 1995 China began to offer concessional loans through the Exim-Bank which is a state-owned bank established in 1994.³⁷⁹ The Exim-Bank is one of the most active Chinese banks in Africa but also in the BRI which provides countries with loans.³⁸⁰ Those loans come often as “packaged financing” of political and economic cooperation, aid, investments, concessional loans, cooperation on exports but also exchange programs.³⁸¹ Consequently CIDCA is now involved in such transactions.

To receive a commercial loan African countries have to submit a request to the Exim-Bank.³⁸² One of the prerequisites for approval of the loan is that the relevant African country has to be compliant with the One-China principle (section 3.3).³⁸³ Before signing a framework agreement the Ministry of Commerce (MOFCOM) evaluates the request. Then the Exim-Bank determines the interest rate of the loan through a risk analysis process.³⁸⁴ Once the project is completed, the (mostly Chinese) contractors present their invoices to the relevant African host-country, which passes them onto the Exim-Bank for payment.³⁸⁵ The African governments pay their loan and interest to the Exim-Bank.³⁸⁶ By using this procedure the Exim-Bank supports the fight against corruption.³⁸⁷

³⁷⁷ Jean-Rephael Chaponniere “Chinese Aid to Africa, Origins, Forms and Issues” in Meine Pieter van Dijk “*The New Presence of China in Africa*” (2009) 61; White Paper on China’s Foreign Aid (21.04.2011).

³⁷⁸ Cheng op cit note 80.

³⁷⁹ Chaponniere op cit note 377; Todd Moss, Sarah Rose “China Exim Bank and Africa: New Lending, New Challenges” (2006) *Center for Global Development CGD Notes*, 1.

³⁸⁰ White Paper on China’s Foreign Aid (21.04.2011); Sebastien Le Belzic “China’s Exim bank: Africa’s largest financier looks for an even bigger role” (25.10.2012) *The Africa Report*, available at: <https://www.theafricareport.com/6472/chinas-exim-bank-africas-largest-financier-looks-for-an-even-bigger-role/>; Corkin op cit note 351 at 69.

³⁸¹ Peter Bosshard “China’s Role in Financing African Infrastructure” (2007) *International Rivers Network*, 4; Dzaka-Kikouta, Kern, Gonella op cit note 9 at 42-43.

³⁸² Chaponniere op cit note 377 at 61.

³⁸³ Moss, Rose op cit note 379 at 2.

³⁸⁴ Chaponniere op cit note 377 at 61; Corkin op cit note 351 at 71.

³⁸⁵ Chaponniere op cit note 377 at 61.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

To backup and secure loans provided by Exim-Bank African countries sometimes provide certain mining rights to Chinese companies which entitle them to mine natural resources (“the Angola Model”).³⁸⁸ The revenue from the raw minerals is used to repay the relevant loan(s).³⁸⁹ If a project is completed the Exim-Bank is in charge of assessing results while other aid forms, like technical cooperation, are implemented and assessed by CIDCA.³⁹⁰

Loans are used for instance for infrastructure projects, procuring mechanical and electrical products or for completing plants which provides African countries with economic and social benefits.³⁹¹ The policy for social responsibility of the Exim-Bank is not available on its official website although it is mentioned in the Exim-Bank 2018 annual report.³⁹² The bank stated in its 2018 annual report that it “served the real economy, promoted balanced development among regions”, but is concentrated on local counties.³⁹³ The policy exists since 2004 and requires that the relevant borrower comply with local laws of a recipient country, however, their standards and procedures are not publicly available.³⁹⁴

3.9. Case Studies for Procurement and Labor Conditions

The previous sections of this chapter provided an overview of China’s investment policies. It noted that the One-China principle has to be adhered to in order to get access to Chinese loans and investments.³⁹⁵ To frame the applicable legal conditions further this section will focus on the procurement and labor conditions relating to Chinese investments in Africa. As implied in section 1.7.3. Chinese commercial loans and concessional loans are often indistinguishable and as such it can be presumed that the same procurement and labor conditions apply to both types of loans. To investigate these conditions case studies are used because legal documents are lacking.

³⁸⁸ Ibid.

³⁸⁹ Ibid at 62.

³⁹⁰ White Paper on China’s Foreign Aid (21.04.2011).

³⁹¹ White Paper on China’s Foreign Aid (21.04.2011).

³⁹² The Export-Import Bank of China “Annual Report 2018”.

³⁹³ Ibid at 80.

³⁹⁴ Moss, Rose op cit note 379 at 2-3.

³⁹⁵ Ibid.

3.9.1. Procurement Conditions for Chinese Investments in Africa

It has already been espoused above that in terms of China's Foreign Aid white paper China offers aid in various forms or projects which are complete or in parts through Chinese companies. Due to their commercial interests' Chinese companies go abroad and seek as many contracts as possible. As an example Huawei a Chinese tech-company and a Sierra Leone state-own telecom company negotiated the extension of telephone infrastructure in 2006.³⁹⁶ Later the Sierra Leone government requested a concessional loan from the Exim-Bank, which was issued and the contract was awarded to Huawei.³⁹⁷ In 2007 Ghana signed an Engineering, Procurement and Construction agreement which was linked to a concessional loan of the Exim-Bank to build the Bui Dam which was contracted out to a Chinese construction company to build.³⁹⁸

One of the most prominent examples are the investment loans and construction contracts provided for Angola.³⁹⁹ After the end of a long civil war Angola needed loans to rebuild its infrastructure which were provided by China for the first time in 2004.⁴⁰⁰ The loan has a concessional interest rate and was repayable in oil.⁴⁰¹ As a result Angola became one of China's biggest oil suppliers. The agreement between Angola and China involved over thirty contracts relating to construction work in the infrastructure, energy, education and communication sectors.⁴⁰² A second loan accompanied by additional contracts was provided by China to Angola in 2007.⁴⁰³ A major condition for these investment agreements was that the relevant projects had to be completed by Chinese companies.⁴⁰⁴ This however had to be within the limits set by Angolan laws which required that at least 30 per cent of the contracts had to be awarded to domestic companies.⁴⁰⁵

³⁹⁶ Brautigam op cit note 4 at 140.

³⁹⁷ Ibid.

³⁹⁸ Martyn Davis, Hannah Edinger, Nastasya Tay, Sanusha Naidu "How China delivers development assistance to Africa" (2008) *Center for Chinese Studies* 40.

³⁹⁹ Corkin op cit note 351 at 77.

⁴⁰⁰ Indira Campos; Alex Vines "Angola and China – A Pragmatic Partnership" (2005) *Working Paper Presented at a CSIS Conference* p. 6.

⁴⁰¹ Ibid; Justyna Szczudlik-Tatar "Soft Power in China's Foreign Policy" 19 (2010) *Polish Quarterly of International Affairs* 60

⁴⁰² Campos & Vines op cit note 400.

⁴⁰³ Ibid.

⁴⁰⁴ Xiaoyang Tang "Bulldozer or Locomotive? The Impact of Chinese Enterprises on the Local Employment in Angola and the DRC" 45 (2010) *Journal of Asian and African Studies* 352.

⁴⁰⁵ Brautigam op cit note 4.

There was a condition for many loans that 70 per cent of the underlying projects had to be contracted to Chinese companies, while the remaining 30 per cent had to be contracted to locals as it happened in Angola.⁴⁰⁶ Kenya benefited from Chinese loans provided for several construction projects, which were implemented primarily by Chinese contractors.⁴⁰⁷

In the Democratic Republic of the Congo (“DRC”) a similar agreement was backed by raw-materials, like in Angola which became famous under the Angola-model, was signed in 2007.⁴⁰⁸ The DRC negotiated that Chinese contractors had subcontract 10 to 12 per cent of contracts to Congolese firms.⁴⁰⁹

The practices described above are used by the Exim-Bank which provides concessional loans to African countries on the condition that Chinese contractors are awarded the underlying tenders or contracts.⁴¹⁰ In such instances the number and value of contracts which may be obtained by Chinese companies is dependent on the limits set by domestic laws (i. e. Angola) or what is negotiated between the parties. Moreover, MOFCOM which is involved in the loan provision process tender the Chinese contractor which will implement the relevant investment project, presumably under the auspices of Chinese procurement law.⁴¹¹ Chinese companies which wish overseas must as such first be approved by the Chinese government (section 3.4).⁴¹² Another requirement to obtain the loan is that at least 50 per cent of the equipment, materials, technology or services used for the project must be made in China.⁴¹³

Other than the above-mentioned condition the Chinese government also provides an alternative way to support its companies. Where there is a formal tendering process in the local country for a contract, for example, the Chinese government will subsidise the tendering company so that its bid price is 30 per cent lower than the other competitors for tender.⁴¹⁴ However, these subsidies are not a condition set within the legal framework for the investments, the condition is set in the loan so as to enable the awarding of the contract to Chinese companies.

⁴⁰⁶ Szczudlik-Tatar op cit note 401; Campos & Vines op cit note 400 at 24.

⁴⁰⁷ Daniel Fiott “The EU and China in Africa: The Case of Kenya” 3 (2010) *Madariaga Paper* 9.

⁴⁰⁸ Tang op cit note 404 at 352.

⁴⁰⁹ Dzaka-Kikouta, Kern & Gonella op cit note 9 at 52.

⁴¹⁰ Corkin op cit note 351 at 69; Chaponniere op cit note 377 at 61, 71.

⁴¹¹ Xiang op cit note 270; Chaponniere op cit note 377 at 61, 71.

⁴¹² Corkin op cit note 351 at 80.

⁴¹³ Ibid at 69.

⁴¹⁴ Dzaka-Kikouta, Kern & Gonella op cit note 9 at 49.

3.9.2. Labor Standards in Chinese Investments in Africa

A Chinese company in charge of completing parts or all of a project has to be comply with the labor standards which are required by domestic laws of the host-country and those required by any investment agreements that may apply. It is difficult to discern what labor standards are imposed by these investment agreements as the investment agreements are not made public.

African countries also regulate foreign investments through bilateral investment treaties. Many African countries have such BITs with China, however, none of these BITs regulate labor related issues.⁴¹⁵ The parties do not set labour conditions in the investment agreement and as such the contracted Chinese company has to comply with labour conditions set by domestic laws and regulations.⁴¹⁶ The Exim-Bank for instance contemplates its social responsibility assessment of a contractor that the contractor is aware of local laws, which implies that there are no labour standards that are set by the Chinese government in these cases.⁴¹⁷

Nevertheless, certain labour customs are recognized by Chinese companies in Africa. One of the most referenced cases that deal with labour standards involved a copper mine in Zambia that was reopened by Chinese state-owned company.⁴¹⁸ In 2005, fifty-one workers were killed in an explosion on the copper mine and the Chinese state-owned company was heavily criticised to its lax safety standards.⁴¹⁹ One year later Zambian workers on the mine protested for higher wages. The protest turned into a riot and a Chinese manager shot one protester dead and injured five others.⁴²⁰

In Ethiopia, China has built several factories to manufacture shoes and clothes. While the workers are Ethiopians the supervisors are primarily Chinese who try to consider the cultural differences between Ethiopians and Chinese as well as the nuances of African labour culture.⁴²¹ Local low-skilled worker in the construction industry have

⁴¹⁵ Won Kidane "China-African Investment Treaties: Old Rules, New Challenges" 37 (2014) *Fordham International Law Journal* 1069.

⁴¹⁶ Lusanda Raphulu "Chinese Companies in SA" (24.01.2018) *Bowmanslaw* available at: <https://www.bowmanslaw.com/insights/employment/chinese-companies-sa/>.

⁴¹⁷ Moss, Rose op cit note 397 at 3.

⁴¹⁸ Brautigam, op cit note 4 at 5-6.

⁴¹⁹ Ibid.

⁴²⁰ Ibid.

⁴²¹ Kevin Hamlin, Ilya Gridneff, William Davison "Ethiopia Becomes China's China in Search for Cheap Labor" (22.06.2014) *Bloomberg* available at: <https://www.bloomberg.com/news/articles/2014-07-22/ethiopia-becomes-china-s-china-in-search-for-cheap-labor>.

no safety clothing and are not happy working the long hours demanded by Chinese supervisors.⁴²² Language barriers between Chinese supervisors and local workers also cause conflicts.⁴²³ The activities by Chinese companies in Africa are not altruistic and are amongst other things, spurred on by cheap labour. While in China the average wage for a worker in the manufacturing sector is around 560 US\$ per month the average wage for the same worker in Ethiopia is 30 US\$.⁴²⁴

Some Chinese companies also seem to focus more on substantive rights rather than on proceedings. In one case a local African employee was fired by a Chinese company that had not gone to the disciplinary enquiry commission to discuss the employee's violation of company rules.⁴²⁵ Labour contracts are sometimes agreed verbally which can cause further complications for instance there can be a misunderstanding about whether an employee is hired for a probationary periods.⁴²⁶ Under southern African labour laws terms have to be written in a contract.⁴²⁷

To summarize this section China does not set legal labour standards which are applicable to companies that tender to complete investment projects in Africa. But as these cases show Chinese companies violate local customs and are unfamiliar with local labour laws.

3.10. Conclusion

This chapter discussed the Chinese legal framework and its terms and conditions for investments in Africa. China offers some assistance to Chinese companies that tender to complete partial or full projects in Africa. However, different economic policies displayed its commercial interest sending Chinese companies abroad to invest. Under the FOCAC Chinese government facilitates investments by offering grants and loans. The forum helps with tailoring China's and Africa's cooperation in promoting socio-economic development.

⁴²² Heike Klovert "Wer den Bauboom in Afrika vorantreibt" (23.11.2019) *Der Spiegel* available at: <https://www.spiegel.de/politik/ausland/chinesen-in-aethiopien-wer-den-bauboom-in-afrika-vorantreibt-a-1279872.html>; Liu Yang, Cyprian Nugah Doh "China and Botswana: legal and cultural differences in labour laws" (2013) *African East-Asian Affairs* 51.

⁴²³ Yang & Doh op cit note 422.

⁴²⁴ Hamlin, Gridneff & Davison op cit note 421.

⁴²⁵ Yang & Doh op cit note 422 at 67.

⁴²⁶ Ibid at 66.

⁴²⁷ Ibid.

In China's early principles it bound itself to non-interference with local laws and standards. However, as seen in relation to the China and Taiwan conflict, China enforces the One-China principle. Compliance with the principle is a pre-condition to fostering diplomatic relations with China and obtaining financial assistance from China. As noted above China used these incentives to convince countries not to acknowledge Taiwan's sovereignty.

The tendering process for investments and contracts is completed differently. Some Chinese companies negotiate contracts with African governments directly and others are awarded contracts with the help of Chinese financial agencies which provide loans to relevant African governments as an incentive.

If it is an investment package with different contracts China offers to complete all these contracts. Domestic laws in Africa usually require that a certain number of contracts are completed by local companies which is considered in the agreement or they are able to negotiate some contracts to locals. In completing these projects China does not set its own labour standards for the Chinese companies operating in Africa but rather the domestic labour laws of the host-countries apply. Chinese contracted companies are partly unfamiliar with local laws and customs which causes conflicts between employees and employers.

Chapter 4: The Comparative Analysis of the Legal Frameworks for Investments in Africa by China and the European Union

4.1. Introduction

This chapter is synthesizing the terms and conditions which were examined in the previous two chapters, which considered the historical, socio-economic and financial approaches explained in chapter one. After describing the method of analysis, the evaluation and comparison for each sub-question made in section 1.2. is given to find out which of these legal frameworks contains fairer conditions for investments to African countries.

4.2. The Method of Analysis

Comparative law is its own discipline in law studies.⁴²⁸ Its main aim is to obtain knowledge through legal comparison.⁴²⁹ The variety of solution and approaches found in the different legal systems could provide the opportunity to find “better solutions” for a legal system under analyses.⁴³⁰ There are two main comparison approaches. The “macrocomparison” approach is done on the basis of researching methods which manage legal materials and procedures for resolving and deciding disputes.⁴³¹ So, one can compare the technique of interpreting of the materials for instance.⁴³² The other approach is “microcomparison” which focuses on concrete problems, legal solutions and particular conflicts of interests.⁴³³ This approach compares for instance rules for the liability of a manufacturer for defective goods.⁴³⁴ These approaches however sometimes blur into each other when used simultaneously.⁴³⁵

Using the macrocomparison approach would not reflect the actual impact of an investment project on an African country. The microcomparison approach is as such used to determine the conditions of the investments and the legal framework that could work for African countries. It is important that the relevant legal frameworks are examined through the lenses of domestic laws, bi- and multilateral contracts, which apply to the African countries. The methods of comparative law of, comparing different legal systems, can also be transferred to international law by comparing international treaty law.⁴³⁶ Treaties in the international context are a main source of international law.⁴³⁷ Comparative law as such helps also to interpret and compare international law.⁴³⁸

⁴²⁸ H. Patrick Glenn “The aims of comparative law” in Jan M. Smits “Elgar Encyclopedia of Comparative Law” 2. Ed., (2012) 66-67.

⁴²⁹ Ibid.

⁴³⁰ Zweigert & Kötz op cit note 17 at 15.

⁴³¹ Ibid at 4.

⁴³² Ibid.

⁴³³ Ibid.

⁴³⁴ Ibid.

⁴³⁵ Ibid at 5.

⁴³⁶ Ibid at 8.

⁴³⁷ Article 38(1)(a) Statute of the International Court of Justice; Statute of the International Court of Justice (18.04.1946). The wording “convention” in article 38 (I)(a) of the Statute may be interpret as international agreement, pacts, general acts, charters or statutes, too, (Malcolm N. Shaw “International Law” 6. ed. (2008) 93).

⁴³⁸ Zweigert & Kötz op cit note 17 at 8.

But there is no absolute set of established methodological principles.⁴³⁹ Each method has its limits and cannot cover everything.⁴⁴⁰ Moreover, there is doubt whether it is possible to find a logical and self-contained methodology which might work perfectly.⁴⁴¹ There will always be areas of law where sound judgment, common sense, or intuition can help.⁴⁴² In addition to that the critical criterion mostly might be the practical evidence.⁴⁴³

The basic method is that of functionality, therefore comparable rules must have the same function.⁴⁴⁴ The functional method should reflect the purpose of a rule which provides a standard that can evaluate how well this rule serve its purpose.⁴⁴⁵ The purpose of the rules helps to interpret the rules.⁴⁴⁶ However, the result of the comparison can lead to the decision that neither rule is the best because both have their advantages and disadvantages or that another rule is better than the other.⁴⁴⁷ This method works when different legal systems are used to try to solve the same problem or matter.⁴⁴⁸

The system for the comparison follows a simple structure and must be flexible enough to consider different approaches to same issue.⁴⁴⁹ Each of the following three sections will start with a description of how the legal frameworks discussed in chapter two and three should be applied. Regarding the sub-questions in section 1.2. the evaluation will point out the purpose of the rules imposed by the legal framework and if it functions well in African countries. This will be followed by a critical comparison of the two counterparts. The conclusion could be that one set of rules is better, equal to or worse than the other set of rules.⁴⁵⁰ The decisive argument often might be a political, historical or economic one.⁴⁵¹

⁴³⁹ Zweigert & Kötz op cit note 17 at 33.

⁴⁴⁰ Simone Glanert "Method?" in Pier Giuseppe Monateri "Methods of Comparative Law" (2012) 69.

⁴⁴¹ Zweigert & Kötz op cit note 17 at 33-34.

⁴⁴² Ibid.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

⁴⁴⁵ James Gordley "The functional method" in Pier Giuseppe Monateri "Methods of Comparative Law" (2012) 109.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Zweigert & Kötz op cit note 17 at 44-45.

⁴⁵⁰ Zweigert & Kötz op cit note 17 at 47.

⁴⁵¹ Doris Forster "On the Methods for Comparative Law Research in Legal Studies" (2018) *Ancilla Iuris: Constellations of Law*, 109.

Consider for example a fictitious case in which a certain African country wishes to apply for investments or aid and it considers aid or investment loan from the EU or China. The money received will be used for a project to build a highway through economic centers. This case is used to demonstrate how the different frameworks will work. After detailing the used case the following section will show the frameworks may be applied and conclude by a comparing the different results.

4.3. Access to aid-investments through political conditions

4.3.1. Applying for investments/ aid

As a precondition an African country must first consider the rules when applying for investment loans. Following the EU framework, it must-submit its application to the European Commission and apply to a specific program, or signed the CA to access to the EDF. If it has signed the CA, it must also submit its application also to the European Commission who acts on behalf of the EU.⁴⁵² One requirement of the programs and the EDF is that the government of the applying country must protect and practice the following values that are non-negotiable for the EU: namely human rights, democratic principles and the rule of law.

If an African country wishes to apply for investments from China, it first needs to establish diplomatic relations with China. In order to successfully obtain such investments, the applicant African country, amongst other things, may not acknowledge the sovereignty of Taiwan Once diplomatic relations with China have been established the relevant African country can apply for investment loans from one of China's investment loan agency. The legal conditions applicable to a request for investment are presumably the same between different Chinese investment agencies.

At first glance it seems as if these two rules are not comparable as both rules are alignments differently. However, if one considers both rules from an abstract perspective it becomes clear that both aim to demand a political decision from the African country. Therefore, the African country must to hold its acknowledgement of political commitment which otherwise causes the suspension of investment loans under both rules. However, while the Chinese rule requires a decision to receive investments, the EU rule demands development through the required rule and it sanctions violation of

⁴⁵² See article 16 of Annex IV CA.

the rule.⁴⁵³ Both rules go back to constitutional beliefs or objectives of their respective legal systems.

The sub-question is, how compatible are the required political conditions with African legal systems to get access financial assistance? For the purposes of comparing these political conditions, the practical implementation is used as the indicator to determine the compatibility for African countries. As those rules demand a political decision an evaluation can just be set out on the will of the governments of the African countries to implement or acknowledge these rules.

4.3.2. Evaluation of the EU rule

The purpose of demanding the rule of law, democracy and human rights is to promote these as the fundamental values of the EU which are stated in the main treaties and regulations of the EU.⁴⁵⁴ The demand globally for democracy and good governance started with the end of the Cold War, when international institutions began to promote these principles and development.⁴⁵⁵ The aforementioned three principles are interrelated.⁴⁵⁶ The evaluation will begin with a short overview of the development concept followed by the evaluation of each of the three principles.

a. The development concept assumes that a country will develop better when countries implement these three principles. This view is also stated in article 9 of the Cotonou Agreement where the values are noted as being “*integral part of sustainable development.*”⁴⁵⁷

In order for sustainable development to occur there must be an effective and legitimate government based on legitimacy.⁴⁵⁸ A government will gain legitimacy if it is

⁴⁵³ Karen E. Smith “The Use of Political Conditionality in the EU’s Relations with Third Countries: How Effective?” 3 (1998) *European Foreign Affairs Review* 256; Peter Hipold “EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June and the Principle of Good Governance” 7 (2002) *European Foreign Affairs Review* 65.

⁴⁵⁴ See article 3(5) TEU, Article 21 TEU, Article 208(1) TFEU.

⁴⁵⁵ Rita Abrahamsen “Discourses of democracy, practices of autocracy: shifting meanings of democracy in the aid-authoritarianism nexus” in Tobias Hagmann, Filip Reyntjens “*Aid and authoritarianism in Africa - Development without Democracy*” (2016) 21, 24; Missiroli op cit note 52 at 133; Hipold op cit note 453 at 61.

⁴⁵⁶ Hipold op cit note 453 at 65; Article 9(2) CA.

⁴⁵⁷ Article 9(1) CA.

⁴⁵⁸ Deborah Brautigam “Governance and Economy: A Review, Policy and Review Department” (1991) *The World Bank* 14.

democratically elected, which is why pluralistic political structures are needed.⁴⁵⁹ A private economy is able to effectively engage with an elected government as well as articulate its interests and keep the political discourse alive by demanding accountability.⁴⁶⁰ A government gains further legitimacy complying with laws and regulations.⁴⁶¹ There is a strong link between corruption and poverty, which can be reduced through transparent proceedings and accountability of the relevant government.⁴⁶² An independent judicial system can combat corruption through implementing laws on procurement and transparency.⁴⁶³ The judiciary also protect human rights and secure property rights to ensure a return on investments.⁴⁶⁴

The success of development through implementing these principles can be seen in role models like Ghana and Mauritius.⁴⁶⁵ Both African countries are democracies who developed their economy with an accountable government and by privatizing their economies.⁴⁶⁶ However, many African countries have difficulties in implementing these principles.

b. The rule of law should be implemented and provide a system of justice to enforce human rights and protect democratic principles and there should be checks and balances of governmental powers.⁴⁶⁷ Even where the CA sets out the requirement for the rule of law a clear definition of what this concept means is missing.⁴⁶⁸ Certainly, the EU applies to external agreements in quiet similar understanding of the rule of law as it does internally.⁴⁶⁹ The EU is bound by its own laws and principles which makes it impossible to deviate from its own standards.⁴⁷⁰

⁴⁵⁹ Abrahamsen op cit note 455 at 24.

⁴⁶⁰ Brautigam op cit note 458 at 2.

⁴⁶¹ Ibid at 14.

⁴⁶² Bryan Mercurio "Growth and development: Economic and Legal Conditions" 30 (2007) *University of New South Wales Law Journal* 454-455.

⁴⁶³ Claes Sandgren "Legal Development Cooperation: Conditions, Principles, and Methods, Studies in International Financial" 6 (2003-2004) *Economic and Technology Law* 20.

⁴⁶⁴ Mercurio op cit note 462 at 450.

⁴⁶⁵ Ibid at 465-471.

⁴⁶⁶ Ibid.

⁴⁶⁷ Sandgren op cit note 463 at 20; Till Patrik Holterhus "The Legal Dimensions of Rule of Law Promotion in EU Foreign Policy: EU Treaty Imperatives and Rule of Law Conditionality in the Foreign Trade and Development Nexus" 9 (2018) *Goettingen Journal of International Law* 92.

⁴⁶⁸ Hipold op cit note 453 at 66.

⁴⁶⁹ Holterhus op cit note 467 at 72, 88.

⁴⁷⁰ Ibid at 79, 88.

The rule of law entails, amongst other things as stated in the CA, transparency and accountability of the government.⁴⁷¹ Frankly, many African countries resist implementing the rule of law, despite the fact that this is crucial for attracting external investments and achieving the benefits of trade and integration with the international economy.⁴⁷²

The demand for the rule of law is a demand for accountability, as well-defined property rights to secure private (including foreign direct) investments.⁴⁷³ To prove accountability African countries need transparent structures which reduces corruption. Many African countries have implemented laws and regulations against corruption and adopted the regional African Union Convention on Preventing and Combating Corruption and the international UN Convention against Corruption.⁴⁷⁴ Data from Transparency International shows that the majority of countries in the world have improved little or not at all in the fight against corruption in the last eight years.⁴⁷⁵ The average score for western Europe and the EU is 66 which makes it to the best performing region even though it is not immune to corruption.⁴⁷⁶

If for instance one compares this score with Sub-Saharan Africa, which has an average score of 32 (and is therefore one of the most inactive world-regions in the fight against corruption) it is obvious that some African countries fail in implementing this aspect of the rule of law.⁴⁷⁷ In many African countries public officials and elites have monopoly positions and lack the will to fight corruption which is supported through political instability and inefficient bureaucracy.⁴⁷⁸

⁴⁷¹ Article 9(3) CA; Ibid at 89.

⁴⁷² Pawel Baginski "Provisions and Implications of the Cotonou Agreement" 12 (2003) *Polish Quarterly of International Affairs*, 88.

⁴⁷³ Brautigam op cit note 458 at 2-3.

⁴⁷⁴ Nwabueze, Caroline J ; Pofinet, Diana "The Rule of Law and Integrity: Appraising the Place and Role of Anti-Corruption Standards in the Fight against Corruption within the Central African Economic and Monetary Community" 51 (2018) *The Comparative and International Law Journal of Southern Africa* 209; African Union Convention on Preventing and Combating Corruption, UN Convention against Corruption.

⁴⁷⁵ Transparency International "Corruption Percentage Index 2019: Global Highlights" (23.01.2020), available at: https://www.transparency.org/news/feature/cpi_2019_global_highlights#CountriesToWatch.

⁴⁷⁶ Transparency International "Corruption Percentage Index 2019: Western Europe & European Union" (23.01.2020) available at: https://www.transparency.org/news/feature/cpi_2019_global_highlights#CountriesToWatch.

⁴⁷⁷ Transparency International "Corruption Percentage Index 2019: Sub-Saharan Africa" (23.01.2020) available at: https://www.transparency.org/news/feature/cpi_2019_Sub_Saharan_Africa.

⁴⁷⁸ Caroline J Nwabueze and Diana Pofinet – The Rule of Law and Integrity: Appraising the Place and Role of Anti-Corruption Standards in the Fight against Corruption within the Central African Economic and Monetary Community – The Comparative and International Law Journal of Southern Africa, Vol LI No 2, 2018, p. 207 (211, 219,

c. *Democracy* is promoted by the EU as one of their values but it is accepted that democratic countries do not go to war with each other.⁴⁷⁹ Democracy is therefore a strategy for security and peace which is another interest of the EU.⁴⁸⁰ Furthermore, the promotion of democratic principles manifests the universal appeal of human rights and legitimate the actions of public authority.⁴⁸¹ Although, African countries commit themselves to a democratization process to obtain aid by signing the CA or subject themselves to programs many of these countries do not comply with democratic principles.⁴⁸²

The Economist Intelligence Unit's Democracy Index covers the worldwide state of democracy. The index shows that Africa has with Mauritius just one full democracy just 4.5 per cent of the world population live in such a democracy.⁴⁸³ The broad majority of governments are still authoritarian regimes.⁴⁸⁴ The other are flawed democracies or hybrid regime, a mix of authoritarian and democratic structures.⁴⁸⁵ The index shows that there have been small developments that have improve democracies in Africa in the last decade which have however degraded.⁴⁸⁶

There are several reasons for the weak transition to democratic governments. For instance, many countries were unwilling to effectively implement democratic principles and good governance when it was first time negotiated.⁴⁸⁷ Another aspect is the disagreement between the EU and ACP-countries on a definition of democracy.⁴⁸⁸ Moreover, African communities are less familiar with democratic principles and trust more autocratic regimes than a periodically changing government.⁴⁸⁹ Some countries which have democratic values have no free press so the government can use propaganda its interests and stay in power over several elections which ends up looking like

240); Transparency International – CPI 2019: Sub-Saharan Africa, 23 January 2020, accessible at: https://www.transparency.org/news/feature/cpi_2019_Sub_Saharan_Africa.

⁴⁷⁹ Smith op cit note 453 at 255.

⁴⁸⁰ Abrahamsen op cit note 455 at 22.

⁴⁸¹ Smith op cit note 453 at 256.

⁴⁸² The Economist "The retreat of global democracy stopped in 2018 (08.01.2019) available at:

<https://www.economist.com/graphic-detail/2019/01/08/the-retreat-of-global-democracy-stopped-in-2018>

⁴⁸³ Ibid.

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Baginski op cit note 472 at 77.

⁴⁸⁸ Hipold op cit note 453 at 66.

⁴⁸⁹ Abrahamsen op cit note 455 at 28, 30.

an autocratic regime, for example in Zambia.⁴⁹⁰ Several African countries have had to make legal adjustments to strengthen democratic principles.

d. Human rights should be protected through the rule of law and promoted through democratic principles. The demand for human rights for the economic cooperation to provide aid is still criticized by African countries. In the first FOCAC declaration in 2000 African countries and China stated that the conditionality of human rights to provide economic assistance should be rejected and constitute a violation on human rights itself.⁴⁹¹ In the same year the CA was signed. The basis of the argument by African countries is that this requirement infringes on their sovereignty and that this can be seen as foreign domination of African countries. The latter argument is especially sensitive because African countries obtained their independence from former colonial European countries only a few decades ago.⁴⁹² The former colonies of the European powers are therefore suspicious of the concept of human rights that is developed by these former colonial powers.⁴⁹³

When the Universal Declaration on Human Rights from 1948 was adopted in the UN General Assembly just four African countries were member of the UN. South Africa with its apartheid regime abstained from voting for the declaration.⁴⁹⁴ Most African countries did however sign several of the eighteen UN human rights conventions.⁴⁹⁵ The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which cover the rights of the Universal Declaration on Human Rights are signed by nearly all African countries.⁴⁹⁶ Furthermore, the Organisation of African Unity released the Banjul Charter on Human and Peoples' Rights which came into force 1986 and is signed by 53 African countries.⁴⁹⁷ The Banjul Charter includes the typical civil and political rights, economic, social and cultural rights as well as the rights to development, a good environment and duties of the individual to the state, society and family which are unknown in western regional

⁴⁹⁰ Ibid.

⁴⁹¹ Beijing Declaration of the Forum on China-Africa Cooperation of the 10-12 October 2000, No 4, accessible at: https://www.focac.org/eng/zywx_1/zywj/t606796.htm.

⁴⁹² Toby King "Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?" (1999) *European Journal of International Law* 314.

⁴⁹³ Ibid.

⁴⁹⁴ Besides South Africa were Liberia, Ethiopia and Egypt member of the United Nations, since 1945.

⁴⁹⁵ See <https://indicators.ohchr.org/>

⁴⁹⁶ International Covenant on Economic, Social and Cultural Rights (1966) are signed by all African countries, except South Sudan, Mozambique and Botswana. The International Covenant on Civil and Political Rights is except for South Sudan, signed by all African countries.

⁴⁹⁷ African Charter on Human and Peoples' Rights (1986).

human rights conventions.⁴⁹⁸ This shows that African countries accept normative human rights.

As the criticism shows the interference by third parties like the EU in the domestic affairs of African countries is, not welcomed. The prohibition of sovereign interference is broadly acknowledged in international law.⁴⁹⁹ However, a reinterpretation of this principle is given in the human rights field and interference is possible because African countries which have signed relevant international treaties promoting human rights have subjected themselves to the protection and promotion of universal human rights.⁵⁰⁰ At least under the Banjul Charter African countries cannot argue that human rights is a foreign concept which they do not acknowledge, promote and protect. Additionally, by signing several international conventions they have subjected themselves to the international community which recognizes the prevention of human rights abuses as being in the interests of all nations and as being a matter of international concern.⁵⁰¹ Also, they signed the Cotonou Agreement which allows the EU to sanction human rights violations.⁵⁰²

e. Sanctions can be imposed on countries which violates one of the principles noted above. This is provided for in the CA. For a violation of the principles discussed above a political dialogue is given through article 96 CA. If the dialogue fails sanctions can be imposed as the last resort.⁵⁰³ The budget can then be disbursed to the population or NGOs directly instead of the government.⁵⁰⁴ The EU has however imposed sanctions in the past.

The imposition of sanctions should always be considered critically. First and foremost, sanctions must be applied consistently to all countries. The EC has not always imposed sanctions consistently. For example the EC sought to impose sanctions on Uganda for human rights violations while the EC maintained economic relations

⁴⁹⁸ Shaw op cit note 437 at 391-392.

⁴⁹⁹ See article 2(7) Charter of the United Nations.

⁵⁰⁰ *Miha v. Equatorial Guinea*, CCPR/C/51/D/414/1990, 10 August 1994, Human Rights Committee, para 6.3, accessible at: http://ccprcentre.org/files/decisions/414_1990_Miha_v_Equatorial_Guinea_.pdf; Shaw op cit note 437 at 272-273, 279-280; Georg Nolte "Article 2 (7)" in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus "The Charter of the United Nations – A Commentary, Volume I", 3. ed, (2012) 296-297; Smith op cit note 453 at 257.

⁵⁰¹ Nolte op cit note 500.

⁵⁰² Article 96(1) CA

⁵⁰³ Article 96(1)(c) CA

⁵⁰⁴ Holterhus op cit note 467 at 106.

with South Africa's apartheid regime.⁵⁰⁵ Another example is where the EC had limited reaction to human rights violations in Nigeria on the Ogoni tribe in 1995.⁵⁰⁶ While the European Parliament called for an oil embargo the European Council feared an increase in oil prices and took into account the interest of European companies like Shell and ultimately no embargo was placed.⁵⁰⁷ Finally during the genocide in Rwanda the European position was influenced by France's ties to Rwanda which resulted in a common European position only being published when the genocide was over.⁵⁰⁸ Even when the CA provides that there should be political dialogue prior to imposing sanctions, the decision whether to impose sanction on a country ultimately solely relies on EU internal decisions. Those decisions are influenced by the economic or political ties of EU member states to their former colonies.

Sanctions for violations of democratic principles are also imposed differently. Countries like Uganda which function as a one-party state underwent economic reforms and did not lose their access to aid while being undemocratic.⁵⁰⁹ Another aspect which refuses the imposition of sanctions is that of security. As long as an autocratic regime provides peace in a given region or helps fight terrorism western donors including the EU hold back on imposing sanctions on the relevant countries.⁵¹⁰

Frankly, there is a double standard in relation to some countries depending whether there are economic or strategic advantages for Europe.⁵¹¹ Consequently, the EU lacks coherency in applying her external policies regarding development assistance, trade and security. The EU's different interests often conflict with each other.

In conclusion it can be said that the majority of African countries struggle with at least one of the three principles discussed above, even when the relevant legal rules are already in place existing. In the meantime, however, the EU does not use sanctions strictly. The EU seems rather to be led by economic, diplomatic and security considerations in deciding whether sanctions should be imposed.

⁵⁰⁵ Michael K. Addo "Some Issues in European Community Policy and Human Rights" 15 (1988) *Legal Issues of European Integration* 73; Adogamhe op cit note 37 at 12.

⁵⁰⁶ King op cit note 492 at 330.

⁵⁰⁷ Ibid.

⁵⁰⁸ Ibid; EU Council Decision (24.10.1994) – 94/697/CFSP.

⁵⁰⁹ Abrahamsen op cit note 455 at 28, 30.

⁵¹⁰ Ibid at 34-39.

⁵¹¹ Smith op cit note 453 at 273.

4.3.3. Evaluation of Chinas rule

Chinas condition is different to the EU's rule discussed above. China has only one condition. The condition aims to achieve China's constitutional aim of a peaceful unification with Taiwan. This serves only China's own purpose. The Taiwanese population rejects Deng Xiaoping's doctrine of "one country two systems" which will lead to a gradual unification.⁵¹² The recently democratically re-elected government of Taiwan keep it distance to mainland China.⁵¹³

The condition is used to isolate Taiwan completely and convince the last countries which acknowledge the sovereignty of Taiwan and are represented in the UN not to continue to do so.⁵¹⁴ There are two theories in international law that deal with the recognition of states. The constitutive theory provides that a new state with legal personality is constituted through its recognition of other states.⁵¹⁵ Taiwan would lose its legal personality if no other country recognizes it anymore. According to the declaratory theory a state is constituted through its own declaration which can be recognized through other states.⁵¹⁶ This implies that a state can exist without any recognition by other states through its own declaration. In practice a combination of these theories is used and a state exists through the recognition of a constitutional act by other states which confirm basic requirements of being a state.⁵¹⁷

Consequently, when all countries reject Taiwan the status of it as a state must be questioned even more. The One-China principle itself has no legal impact on foreign legal systems. Frankly, it takes a political and economic decision by each government.⁵¹⁸ Thus, countries around the world must decide, if they will maintain diplomatic relations with Taiwan or with mainland China. Through this policy China has barred diplomatic relations with both governments.

For the recognition of China with officially legal authority over the island Taiwan speaks the historical argument. Historically, the communist party won the civil war and

⁵¹² Jean-Pierre Cabestan "Taiwan's Mainland Policy: Normalization, Yes; Reunification, Later", 148 (1996) *China Quarterly* 1261.

⁵¹³ Liu Zhen "China 'will continue to oppose Taiwan independence' after Tsai Ing-wen's election victory" (20.01.2020) *South China Morning Post* available at: <https://www.scmp.com/news/china/politics/article/3046757/china-will-continue-oppose-taiwan-independence-after-tsai-ing>

⁵¹⁴ Yejoop op cit note 287 at 25; Birsell op cit note 294.

⁵¹⁵ Shaw op cit note 437 at 445.

⁵¹⁶ Ibid at 446.

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

became the legal successor which is why the Taiwanese government is seen as illegal.⁵¹⁹ The people of the republic of China joined the United Nations in 1971 while Taiwan was rejected by of the organization. Many countries withdrew their recognition for Taiwan even the USA acknowledged the communist government as the official authority in China during the Cold War.⁵²⁰

The economic decision needs a consideration of the benefits of diplomatic relations with one of those countries. Both offer aid and investments to their allies and trade relations.⁵²¹ In the past, countries like Burkina Faso swapped relations choosing the best offer of financial and technical assistance several times.⁵²² However, many countries who acknowledge China trade with Taiwan too. Even the industrialized nations like the USA have economic but no diplomatic relations to Taiwan.⁵²³ So, trading with Taiwan is possible without official diplomatic relations whilst not fearing any sanctions from mainland China.

The practice shows that the condition is accepted by all African countries except, Eswatini. This country decided to stay for “diplomatic and political morality” reasons with Taiwan.⁵²⁴ They understand their ties with Taiwan as successful cooperation based on mutual respect, friendship and loyalty.⁵²⁵ Hence, Eswatini’s government rejects Chinas offers for aid and investments through diplomatic relations.⁵²⁶ Regardless, the rest of the continent has made the political decision to maintain diplomatic relations with China and gather the associated benefits.

4.3.4. Comparing

The following evaluation will compare the EU rule which is poorly implemented in many of the African countries and is also weak enforced by the EU and Chinas rule which is confirmed by nearly all African states. The One-China principle is the preferable rule compared to the political strings attached to the EU framework. This view is

⁵¹⁹ G. F. Hudson “One China or Two” 10 (1962) *China Quartely* 80.

⁵²⁰ Yejoop op cit note 287 at 25.

⁵²¹ Ibid at 26.

⁵²² Blanchard op cit note 297.

⁵²³ Cabestan op cit note 512 at 1272.

⁵²⁴ Madowo op cit note 287.

⁵²⁵ Eswatini Government Press Statement No: 18/2019 Eswatini, Taiwan Relations, (28.07.2019), available at: <http://www.gov.sz/index.php/latest-news/2291-eswatini-taiwan-relations>.

⁵²⁶ Madowo op cit note 287.

confirmed by a statement in the latest FOCAC Action Plan which states that the African countries appreciate China's assistance without political conditions.⁵²⁷ It is interesting to note that the rejection of Taiwan is not even recognized as a condition itself, even when the Chinese policies are mentioned.

The requirement is accomplished through a one-time decision and serves only China's own interest. The condition has no impact on Africa's domestic legal or governmental systems while the EU conditions require in most countries huge effort and willingness to comply with the condition. China solely expects a political decision to give access to its financial funds. Contrary to this the condition imposed by the expectation of the EU is there should be transformation of the African countries to a government and development model like that of the EU member states. In contrast to that China's eight principles on economic aid interdict China to please other nations to adopt their political system. China merely shares its development experience and leaves it up to the relevant African countries to choose their own development.⁵²⁸

The European development concept can be doubted. Research shows that the establishment especially of the rule of law and democratic principles alone guarantees no economic growth.⁵²⁹ Considerably more, needed is human capital to shape institutional and productive capacities of a society.⁵³⁰ In addition to that it is impossible to convey concepts to other societies individually without considering historical, political and socio-economic circumstances.⁵³¹ China itself is the perfect counter model to the Western development concept. It experienced with Mao Zedong one of the worst dictators and for growth and with Deng Xiaoping one of the best.⁵³²

Western critics argue that China would undermine the effectiveness of their efforts developing Africa attaching no demand for Western values.⁵³³ However, research by the German Development Institute came to the conclusion that China's engagement in Africa has no to little impact on the development concept of the EU for Africa or aid

⁵²⁷ FOCAC Action Plan 2018 section 4.1.1.

⁵²⁸ FOCAC Action Plan 2018 section 4.1.2.

⁵²⁹ Edward L. Glaeser, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer "Do Institutions Cause Growth?" 9 (2004) *Journal of Economic Growth* 297-298.

⁵³⁰ Ibid.

⁵³¹ Ibid.

⁵³² Ibid.

⁵³³ Christine Hackenesch "European Good Governance Policies Meet China in Africa: Insights from Angola and Ethiopia – Working Paper" (February 2011) *German Development Institute* 7.

receiving countries.⁵³⁴ Furthermore, the demand by Western critics that China should also promote the rule of law, democracy and human rights misses the fact China's understanding of these values differs to those of the West.⁵³⁵ For instance China is led by one party and other parties are subjected to that party.⁵³⁶ It is not very convincing demanding China to demand for these (EU) principles as well. This request for human rights amongst others would not comply with China's principles of non-interference which is one of China's basic principles for foreign relations. There will there basically be no change in the future.⁵³⁷

However, even when China's governmental structures are different to Western countries, China started to privatize its economy slowly and Xi Jinping started the fight against corruption in its country. China also lacks transparency like most African countries however it is reforming the rule of law as part of the 13th Five-Year Plan.⁵³⁸ When China published the first Africa white paper, it reported some figures on former investments in Africa. Those figures were generalized and not very concrete. The EU publishes through its annual reports, data about its aid-spending which can help African communities to demand accountability from the EU but also from African governments.⁵³⁹ In contrast to the published details from the EU investments neither the MOFCOM nor the Exim-Bank release any public publication or data on their transactions with African countries.⁵⁴⁰ Even the FOCAC does not report any details on its investments. Hence, it can be argued that the EU demand for more transparency is probably the most advantageous aspect of its conditions.

The critic on the demand of the EU conditions are however contrary to the ambitions of regional integration. Africa recognizes the benefit of regional and continental integration which is governed by democratic values, rule of law and good governance.⁵⁴¹ However, the discontinuity of the EU sanctions for breaches of their condition

⁵³⁴ Ibid at 36.

⁵³⁵ Juan Pablo Bohoslavsky "A Human Rights Focus to Upgrade China's International Lending" 5 (2019) *The Chinese Journal of Global Governance* 90-93; Cai Congyan "Human Rights Conditionality and International Economic Relations: A Chinese Lawyer's Perspective" 1 (2008) *Journal of East Asia and International Law* 89.

⁵³⁶ Jiang Wei "A Chinese Solution" 99 (2018) *The Africa Report* 15.

⁵³⁷ Congyan op cit note 535 at 93.

⁵³⁸ Transparency International – CPI 2019; China's 13th Five-Year-Plan, p. 17, 36.

⁵³⁹ Publish what you found "Aid Transparency Index 2018" available at: <http://www.publishwhatyoufund.org/reports/2018-Aid-Transparency-Index.pdf>.

⁵⁴⁰ Publish what you found "China – Ministry of Commerce (MOFCOM)" available at: <https://www.publishwhatyoufund.org/the-index/2018/china-mofcom/>.

⁵⁴¹ Adogamhe op cit note 37 at 21.

last negative too. Moreover, the sanctions often fail to influence the economic situation and rarely produce the intended effects.⁵⁴² The EU's conditionality is not consistent.⁵⁴³ Countries which are considered by the EU as important for commercial or political purpose generally suffer less or not at all from measures.⁵⁴⁴

Lastly, it goes without saying that China's condition relating to Taiwan will become obsolete if Taiwan unites with mainland China. It can be assumed that the EU will, as it has done so in the past, included such conditions in future agreements.⁵⁴⁵ African countries will have to consider whether they agree with those conditions and are able to keep the process alive. Thus, China's condition is not too complex and is easy to implement which is why it is better for and more compatible with all African governments.

4.4. The implementation of the investment project – the procurement rules

The previous section discussed the different conditions to access an investment loan or grant. This section will follow up with the fictitious case (see 4.2.) and evaluate and compare the rules which apply to tender for construction contracts financed through investment loans provided by the EU and China (see 2.3.1. and 3.9.1).

4.4.1. the case

In relation to the fictitious case the African country whose projects were accepted and the loan going to be issued has to tender the project through a public bidding process.

Under the EU framework the relevant African country has to tender the contracts under the Practical Guide to Contract Procedures for EU External Actions ("PRAG") framework. Consequently, the domestic procurement laws do not apply to the tender and in addition the process is supervised by an EU official. However, the EU Commission can exclude tenderers who made false declarations or are accused of fraud in previous bidding processes.

⁵⁴² Baginski op cit note 472 at 88.

⁵⁴³ Smith op cit note 453 at 273-274.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid at 263.

Chinese condition can be negotiated. China offers complete projects by Chinese governments, however, if domestic laws apply or the host-country negotiate a certain amount of the contracts have to be tendered to local contractor the other to Chinese. The local contractor will be awarded under the procurement process of the host-country while for the Chinese contracts the Chinese ministry of commerce (MOFCOM) tendered the contracts to Chinese companies through Chinese domestic procurement laws.

Both frameworks aim to procure contracts for companies which will complete the investment project in the host-countries. Through the same aim both rules can be well compared. In the evaluation the question is how are projects tendered under the legal frameworks?

4.4.2. Evaluation of the EU rule

The purpose of the EU procurement framework is to tender for projects which are provided under the European Development Fund or other EU programs. The aim is to ensure that there is equal treatment and no-discrimination in the bidding process which promotes competition.⁵⁴⁶ However, many African countries have implemented and amended their laws to comply with these standards using international recognized models.⁵⁴⁷ An example of this is the project relating to the building of a hydropower plant in Ethiopia in 2003.⁵⁴⁸ The Ethiopian Gilgel Gibe II hydropower plant worth over 270 million Euro, which was financed through loans provided by the Italian government and the EIB and the tender to build the project was awarded to a company without any national or international bidding process.⁵⁴⁹ The framework applies so as to secure transparency in the tendering process and avoid corruption or other governmental issues which might lower effectiveness. However, in case a joint assessment shows that domestic procedures and transparency are well, domestic procurement

⁵⁴⁶ Borson op cit note 215 at 222, 231.

⁵⁴⁷ Fred Borson "Foreign Aid Procurement Policies of Development Partners in Africa: The Case of Ghana" 61 (2017) *Journal of African Law* 389.

⁵⁴⁸ Emanuele Fantini, Luca Puddu "Ethiopia and international aid: development between high modernism and exceptional measures" in Tobias Hagmann, Filip Reyntjens "*Aid and authoritarianism in Africa – Development without Democracy*" (2016) 109-110.

⁵⁴⁹ Ibid.

laws may be used.⁵⁵⁰ As pointed out in the previous section many African governments lack transparency, corruption remains a systematic problem and donors like the EU and others do not trust their systems.⁵⁵¹

The applicable PRAG framework causes the need for domestic adjustments in African countries of procurement regulations. For instance, there is a need for a rule that allows the application of that foreign framework as it does in Ghana.⁵⁵² In addition the procurement officer involved in the tender might have to content with both the domestic and the EU procurement framework. Furthermore, other donor states and organisations will also apply their own procurement regulations to tender for their aid too.⁵⁵³ This leads to a duplication of rules.⁵⁵⁴

The broad options on tendering procedures that are available under the PRAG offer procedures many African countries are unfamiliar with.⁵⁵⁵ An example of such a procedure is E-procurement facilities which are just in their infancy in Africa.⁵⁵⁶ The negotiation procedures and other flexible methods are in many African countries restricted to limit the possibility of corruption.⁵⁵⁷ However, the officers have to take time off to receive trainings where they learn new skills and knowledge.⁵⁵⁸ Understanding new procedures could also push reforms in the national procurement system.⁵⁵⁹

Besides different procedures the EU framework may exclude a tenderer from bidding further if they have made false declarations or there are any irregularities with their tender such as fraud, corruption or misconduct when the tenderer is convicted by a final judgement of a domestic court of an EU member state.⁵⁶⁰ This implies that a tender convicted under domestic laws of an ACP-country may apply in the PRAG-bidding process.⁵⁶¹ In fact, this goes against many domestic laws of ACP-states which

⁵⁵⁰ See article 19C (2) Annex IV CA, OECD "Paris Declaration on Aid Effectiveness" (02.03.2015) section 29.

⁵⁵¹ Borson op cit note 546 at 379, 389.

⁵⁵² Dominic N. Dagbanja "The regulatory framework for public procurement in Ghana" in S. Arrowsmith & G. Quinot "Public Procurement Regulation in Africa" (2013) 89.

⁵⁵³ Borson op cit note 546 at 382.

⁵⁵⁴ Borson op cit note 215 at 220.

⁵⁵⁵ Ibid at 227.

⁵⁵⁶ Ibid.

⁵⁵⁷ Ibid; PRAG section 2.4.4.; section 2.4.7.

⁵⁵⁸ Borson op cit note 215 at 227.

⁵⁵⁹ Ibid.

⁵⁶⁰ PRAG section 2.3.4.; 2.3.3.

⁵⁶¹ Borson op cit note 215 at 230.

could be avoided by excluding everyone who was convicted of a violation of tendering procedures of any sovereign state.⁵⁶²

To conclude this evaluation, the EU rules relating to tendering aid to African countries gives the option to strengthen the competition within the ACP-countries offering them the preference to tender within the ACP-countries. However, this framework duplicates existing rules and conflicts with domestic compliance rules of the process.

4.4.3. Evaluation of Chinas rule

China's purpose in implementing the rule is to tender for contracts. The aim is for as many as possible to be awarded to Chinese companies within the investment agreement. Consequently, China has a commercial interest in obtaining these contracts. Being familiar with the tendering process assists Chinese companies with their bids. However, it cannot be argued that the process is transparent for the relevant African country which is probably unfamiliar with Chinese procurement rules. This exacerbated by the fact Chinese procurement procedure are not transparent and often incomprehensible to the relevant African country.⁵⁶³ Furthermore, when the host-country tenders, at least this amount of contacts would be risked to be procured in an "untransparent" procedure.

The critical point is, that China divests the relevant African country which should be accountable for the investment project, the authority over to regulate the procurement process. Public procurement is a tool that can be used to ensure public welfare and if it is run well it reflects governmental efficiency.⁵⁶⁴ The importance of purchasing goods and services publicly is for instance provided for in section 217 of South Africa's Constitution as a constitutional principle.⁵⁶⁵ Consequently, the host-country cannot fulfil this obligation anymore or just for the amount they claimed for themselves. This weakens the authority of the African country.

⁵⁶² Ibid at 230.

⁵⁶³ Chaponniere op cit note 377 at 72.

⁵⁶⁴ James Tsabora "Public Procurement in Zimbabwe: Law, Policy and Practice" (2014) *African Public Procurement Law Journal* 1

⁵⁶⁵ Phoebe Bolton "Government Procurement as a Policy Tool in South Africa" 6 (2006) *Journal of Public Procurement* 203; Section 217 Constitution of South Africa (08.05.1996).

An alternative to this procedure would be that the host-country tenders the contracts through a closed tender process whilst just the Chinese are involved. However, Chinese authorities will still have certain impact on the process due to their Outbound Investment Law (see 3.4.). This law requires an approval by Chinese authorities before a Chinese company can invest abroad. This requirement applies in relation to investments provided via a tendering process too.⁵⁶⁶ Thus, an awarded Chinese company rely than on the approval. Moreover, in terms of the Chinese procurement process Chinese state-owned enterprises are preferred because of their longer establishment this compromise the competition with private competitors.⁵⁶⁷

The second way that China obtains contracts is by directly negotiating for certain services in the way that Huawei did in Sierra Leone or ZTE (a Chinese state-owned company) did in Ethiopia.⁵⁶⁸ In both cases the companies negotiated contracts with the relevant African country and as an incentive for awarding the contract a loan was provided by Chinese policy bank. The contracts were awarded without Huawei or ZTE going through a bidding process.⁵⁶⁹ That this procedure is legal across Africa is doubtful since such award should be made via public procurement process.

One of the other conditions that show how China prioritises its commercial interests when making investments is that at least 50 per cent of materials, equipment, technology or services should be provided by Chinese suppliers for these projects in African countries.⁵⁷⁰ This practice unduly excludes local suppliers from at least 50 per cent of supply to a project. This practice is not unique to China however and is also done by Western donor countries.⁵⁷¹

However, this does not justify the fact, that it undermines the official procurement procedure of the relevant African country. Even here China prioritises its commercial interests which is confirmed by the fact that the Chinese government controls the procurement process.

⁵⁶⁶ Frank Tang "China sets new rules overseas investment for its biggest deal makers" (27.12.2017) *South China Morning Post* available at: <https://www.scmp.com/news/china/economy/article/2125725/china-sets-new-rules-overseas-investment-its-biggest-deal-makers>.

⁵⁶⁷ Corkin op cit note 531 at 80.

⁵⁶⁸ Alemayehu Geda, Atenafu G. Meskel "Impact of China-Africa Investment Relations: Case Study of Ethiopia" (2010) *African Economic Research Consortium Collaborative Research on the Impact of China on Africa* 19.

⁵⁶⁹ Ibid at 19.

⁵⁷⁰ Chaponniere op cit note 377 at 72.

⁵⁷¹ Fiott op cit note 407 at 9-10; Brautigam op cit note 4 at 343.

4.4.4. Comparing

Considering that the EU and China transfer ownership of realizing projects to the recipient country both have a voice in the procurement process as pointed out in the evaluation above and the sections 2.3.1 and 3.9.1.⁵⁷² It should be noted that the domestic procurement process in many African countries is done through a competitive transparent bidding process which shall be fairly and equally to the competitors.⁵⁷³ The legal conditions of the EU are preferable in that they provide a system of rules which covers these elements and are keeping in line with the process in the host-country too.

However, as pointed out in the evaluation above the procurement rules of the EU require that some African countries adjust their domestic laws align them with these rules and provide training to officials who are involved in the process of tendering for contracts. This can be beneficial because for the officials as they acquire new skills. This however causes complexity for to the competitor which has to familiarise with external rules. Another issue is the EU rules may conflict with domestic rules relating to compliance of competitors who are excluded from the tendering process under the EU or local regulations. This conflict should be fixed so that uniform rules apply which will reduce the possibility for abuses of the bidder. However, if one understands the procurement process as a sovereign right and obligation of a government (see South Africa's Constitution), this framework, which is supervised by EU officials, is preferable to the Chinese demand of the complete tendering process.

The legality in African countries of an offer by Chinese companies to complete projects in those countries, without going through the public tendering process in cases where a Chinese agency simultaneously provides a loan to an African country cannot be accessed. This manner of procuring contracts by African countries avoids a fair and equal bidding process. The alternative process which avails a number of contracts to local contractors in African countries through their procurement process, revoke the full tendering of the recipient. It therefore limits the African countries to choose in terms of it wishes to tender the other contracts to. Moreover, whether the aim of transparency of proceedings is achieved can be questioned. Most foreign donor

⁵⁷² Baginski op cit note 472 at 86; Article 2 CA; China's Eight Principles for Economic Aid and Technical Assistance to Other Countries.

⁵⁷³ Borson op cit note 546 at 377; Elinor Caborn, Sue Arrowsmith "Procurement methods - in the public procurement systems of Africa" in S. Arrowsmith and G. Quinot *"Public Procurement Regulation in Africa"* (2013), 274.

states and organizations provide their own procurement regulations for spending their budget in African countries.⁵⁷⁴ This is caused through a lack of trust in the domestic procurement regulations and the aim to reduce the risk of corruption.⁵⁷⁵ The procurement process under these frameworks is conducted with the involvement of the recipient-country such as under the EU framework but that is not the case here. The option to win contracts through by applying domestic laws and to have the ability to negotiate these contracts good and helpful but then in general should it not be the case that a law has to benefit local contractors and supplier and enable them to have excess to domestic projects.

In addition, China's demand that at least 50 per cent of the goods used for local projects should be supplied by Chinese suppliers shows that China prioritises protecting its commercial interests above all else. This practice excludes local suppliers from 50 per cent of the project. This requirement can be contrasted with the support provided by the EDF and its rules for local contractors and suppliers and those of African countries which give local suppliers preference and encouragement, even when European companies are contracted to complete the project.⁵⁷⁶ Indeed, it is noteworthy that Chinese companies deliver goods and tender for projects at unbeatable price, which must be considered.⁵⁷⁷ However, when considering this process from a legal perspective are these unbeatable prices a threat to equal and fair competition because the companies are subsidised by the Chinese government – this ultimately leads to distortion of competition.⁵⁷⁸

In conclusion the EU framework has its issues, but it offers a fairer alternative for African countries which apply for investment project.

4.5. The labour rules used in the investment project

This section evaluates and compares the labour rules which apply to a contracted party under the EU and Chinese Investment legal frameworks. The factious case (section 4.2.) will be further discussed and used as an aid to evaluate the labour

⁵⁷⁴ Borson op cit note 546 at 375, 381

⁵⁷⁵ Ibid.

⁵⁷⁶ Article 26 Annex IV CA, Fiott op cit note 407.

⁵⁷⁷ Das Deutsche Baugewerbe "Robl: Keine Steuergelder an chinesische Staatsunternehmen! Deutsches Baugewerbe fordert bei EU-kofinanzierten Bauvorhaben ausschließliche Vergabe an Unternehmen aus EU-Mitgliedsstaaten" (15.04.2010).

⁵⁷⁸ Ibid.

rules found referred to in section 2.3.2. and 3.9.2. The results will in conclusion be compared to find out which legal framework protects employees who are hired to work on the project better.

4.5.1. the case continues

A contractor who has won a tender to complete a project has to be comply with certain labour laws and standards. Besides the national laws and regulations of the African country the investor or donor can raise or lower the required labour standards through its agreement with the relevant host-country.

Under the EU framework the contractor has to be comply with human rights standards and labour standards set by the ILO. The African country are as such encouraged to implement these conventions into domestic laws. Contrary to this applies the Chinese side no labour standards but labour customs used in Chinese companies who are awarded to complete the project. These customs used in Chinese companies who are awarded to realize the project. These customs are for example concluding labour contracts verbally, forcing workers to work afterhours with no compensation and paying low wages.

These two approaches do not compatible while the one side sets condition the other side already has certain custom and practices in place. But by practicing these legal customs the Chinese contractor aims to rule labour matters. Thus, through the demand of customs and conditions a comparable set of labour rules provided.

The evaluation below will not consider the assessment procedures of the European Investment Bank and Chinese policy banks and aid agencies caused by the lack of information.

4.5.2. Evaluation of the EU rule

There is little literature about those labour standards set by the EU when completing development projects or assistance. The demand for labour standards in the Cotonou Agreement is not linked to the purpose of development aid but rather trade. This reveals another incoherent of EU policies. The EU integrates labour standards in

all trade agreements with non-EU-countries but does not link it to the development.⁵⁷⁹ But because the EDF is linked to the trade agreement of the CA the core labour rights are given and benefit so the aid projects too. The African country therefore raises its labour standards which the contractor has to comply with during the completion of the aid project.⁵⁸⁰ However, it is clear that in EU aid programs such standards are not expected which causes further inconsistency when different aid programs (general and EDF) apply different standards.

The purpose of setting international labour standards is to harmonise the employment relations of the private sector with those of governments.⁵⁸¹ This also supports the economic wellbeing of workers because workers are more productive when they are treated fairly and with respect.⁵⁸² Through the implementation of international labour standards into the domestic legal system the contractor is bound by these standards while employees can demand the right to bargain.

The harmonisation is helping if the foreign contractor has the same understanding of the core labour standards, laid down in the ILO conventions. Most African countries have ratified these conventions except for a few.⁵⁸³ This shows that they have an interest in these matters. The exchange of information provides foreign companies or contractors with the opportunity to become familiar with labour standards under the domestic laws in the relevant African country where the aid project is being completed.

The eight-core labour conventions of the ILO however do not cover all labour issues in all African countries since the laws and issues in these countries' divers.⁵⁸⁴ For example the core conventions do not cover unemployment or poverty wages.⁵⁸⁵ The individual worker is not protected through these standards. The CA provides a dispute resolution mechanism for conflicts between the contractors who are tasked

⁵⁷⁹ James Harrison et al. "Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda" 18 (2019) *World Trade Review* 636, 644.

⁵⁸⁰ Franz Christian Ebert "The Comprehensive Economic and Trade Agreement (CFTA): Are Existing Arrangements Sufficient to Prevent Adverse Effects on Labour Standards?" 33 (2017) *International Journal of Comparative Labour Law and Industrial Relations* 319; James Harrison et al op cit note 578 at 644.

⁵⁸¹ Estella Aryada "Emerging Disciplines on Labour Standards in Trade Agreements" (2016) *TCS Emerging Issues Briefing Note (4) 2*

⁵⁸² Ibid.

⁵⁸³ ILO "Ratifications of fundamental Conventions by country", available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F

⁵⁸⁴ Giovanni Gruni "Enforcing labour standards via EU free-trade agreements" (18.02.2019), available at: <https://www.socialeurope.eu/enforcing-labour-standards>

⁵⁸⁵ James Harrison et al op cit note 578 at 645.

with completing the aid project in African countries and the host-country but not the workers. Labour issues between the contractor and its employees are not part of it. Thus, the parties can remain inactive, while the employee is let to the jurisdiction.⁵⁸⁶

The demand for human rights and indirect reference through the trade clauses in the CA to core labour rights reveals another incoherence in EU's external relations. The demand for these standards does not cover all relevant issues and as such these standards are not good enough for protecting workers. However, the majority of African countries have ratified the ILO conventions and have given the conventions normative acknowledgement.

4.5.3. Evaluation of the China rule

As pointed out in section 3.9.2 China sets no labour conditions and not even the minimum human rights conditions are expected as discussed in the previous section. Therefore, just the labour laws and regulations of the relevant African country take effect. The reason why there are no labour standards is that there is the aim to localize Chinese enterprises in the domestic market, by hiring locals for example.⁵⁸⁷ However, certain customs are demanded by the Chinese companies.

Since the accident in the Zambian copper mine in 2005 the safety standard did not change until 2011 as found by a Human Rights Watch Report.⁵⁸⁸ It is unclear if anything has changed since then. However, as described in the construction sector low safety standards also set, when Chinese companies employ local workers. When compared with Chinese domestic customs one has to ask whether there are similarities in terms of low safety standards.⁵⁸⁹ Chinese mines are known for being prone to accidents and they have a lack of safety standards too.⁵⁹⁰ In addition to that Chinese companies' treat migrant workers in China worse than the locals.⁵⁹¹ As example of this

⁵⁸⁶ Ebert op cit note 238 at 413.

⁵⁸⁷ Cristelle Maurin, Pichamon Yeophantong "Going Global Responsibly? China's Strategies Towards "Sustainable" Overseas Investments" 86 (2013) *Pacific Affairs* 288.

⁵⁸⁸ Human Rights Watch "You'll Be Fired if You Refuse" (04.11.2011) available at: <https://www.hrw.org/report/2011/11/04/youll-be-fired-if-you-refuse/labor-abuses-zambias-chinese-state-owned-copper-mines>.

⁵⁸⁹ Anthony Yaw Baah, Herbert Jauch "Chinese investments in Africa" in Anthony Yaw Baah, Herbert Jauch "Chinese Investments in Africa: A Labour Perspective" (2009), African Labour Research Network, 61.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid at 57.

is that Chinese construction workers who are often the supervisor and hold higher positions, are equipped with safety clothes while African locals have none.⁵⁹² Thus discrepancy in treatment and attitude by the Chinese is often carried over into African countries too.⁵⁹³

The right of bargaining and joining labour unions in China is not helpful. Even when employees strike the only labour union is a union controlled by government which does not support workers.⁵⁹⁴ Contrary to that in African countries labour unions are a platform to fight for better working conditions. Chinese companies however have developed strategies to avoid the bargaining processes by introducing short-term contracts or by pressuring their employees and causing fear of dismissal.⁵⁹⁵

The fact that Chinese companies in some sectors like the textile and clothing sector pay low wages is common in China, but this practice becomes problematic when transferred to African countries as many of these countries have domestic legislation which set standards for minimum wage. The same applies in relation to forcing workers to work afterhours. African countries have rules in relation to the amount on hours per day and week that workers should work based on health reasons. Several cases are described that Chinese companies demand afterhours with no compensation and they are allowed only a few breaks.⁵⁹⁶ It seems to be the norm for Chinese workers to work more than eight hours a day and six to seven days a week.

As it was reported it is a prevailing practise that Chinese companies do not enter into written contracts with workers but rather conclude verbal contracts. This practice in most African countries causes makes it difficult to proof and enforce labour rights such as the right of the payment of wages or the implementation of a probation period.⁵⁹⁷ An excuse that is often used by Chinese employers is that they are unfamiliar with domestic laws, however, this excuse does not justify the applicable breach of the law. Some African countries have even started to translate labour laws into Chinese.⁵⁹⁸ Although China introduced its first labour law in 1994, these rules are often

⁵⁹² Ibid at 69.

⁵⁹³ Klovert op cit note 422.

⁵⁹⁴ Baah & Jauch op cit note 588 at 59, 63.

⁵⁹⁵ Ibid at 73.

⁵⁹⁶ Ibid at 66. 69.

⁵⁹⁷ Ibid at 66.

⁵⁹⁸ Brautigam op cit note 4 at 300.

violated especially in the informally employment sector.⁵⁹⁹ Indeed, some argue that the Chinese are ignorant regarding domestic labour laws in African countries.⁶⁰⁰ What it shows is a legal cultural gap in labour law.⁶⁰¹

In 2008 a Chinese official advised Namibia to sacrifice implementing labour standards in order to attract more investments for developments which will benefit future generations.⁶⁰² Considering that such practices were used to develop China, one can comprehend why such partly unlawful practices would be transferred to African countries as China's development model. But this contradicts with China's principles that recipients should choose their own development strategy. Even when there is no direct demand of certain customs is, it shows a transfer of work attitude which developed China. These practices however are probably not working for African country when the labour standards of just its Chinese companies are used.

That being said China became aware of certain labour issues and implemented a law relating to corporate social responsibility in 2006. Companies which go abroad to Africa should be aware of local laws.⁶⁰³ However, these cases show that there are still Chinese labour practices which are unlawful in Africa's legal systems.

4.5.4. Comparing

The EU sets a normative approach on labour conditions which is not very high. On the other side Chinese state-owned and private companies practice Chinese labour customs and encourage hard work under risky conditions without any clause agreed with the host-country. Those customs harm people and are prohibited in African countries by laws and regulations. African countries should enforce and apply their domestic labour rules. This enforcement is lacking in many African states although this is important for the safety of the people. The EU labour standards such as contain fairer conditions than Chinese labour conditions. The EU labour standards have been confirmed by African countries though the ratification of human rights and ILO conventions.

⁵⁹⁹ Baah & Jauch op cit note 588 at 57.

⁶⁰⁰ Brautigam op cit note 4 300; Baah & Jauch op cit note 588 at 66, 68, 71.

⁶⁰¹ Yang & Doh op cit note 422 at 50.

⁶⁰² Herbert Jauch, Iipumbu Sakaria "Chinese Investments in Namibia: A Labour Perspective" (March 2009) *Labour Resource and Research Institute* 22.

⁶⁰³ Maurin & Yeophantong op cit note 586 at 287-288.

The EU labour standards lack case studies relating to how well are EU funded projects in African countries complied with labour and human rights standards. The EU can be criticised for its lack of consistency in applying external relations. There is no direct demand for core labour standards for development funded programs rather these apply through the trade agreements which are linked to the EDF. On the other side the Development Cooperation Instrument program of the EU tries to strengthen labour standards in African societies.

It also must be noted that while China primarily uses Chinese companies to complete projects the EU tries to procure suppliers and contractors from locals in the relevant ACP-countries (section 4.4.). Those are more familiar with local customs and laws, and by using a harmonised system of labour standards it provides an understanding for bargaining and striking. China for instance has just signed four of the ILO core labour conventions. If China were to sign the ILO bargaining convention and the freedom of assembly, it could drastically improve its labour practices.

However, afterhours were there prohibited or low safety standards are unacceptable. But it has to be noticed that those case studies, and there are several, do not cover all Chinese companies which are active in African countries.⁶⁰⁴ Even when the EU and China agree with African countries to exchange information. However, having a stronger legal approach in the investment legal framework and providing legal advises to companies who invest abroad and making them aware of cultural differences could avoid many unlawful acts.

The gap between the laws and standards imposed by China and those imposed by the EU can perhaps be explained by the difference in legal background. EU laws are rooted in its member states which were colonial powers which introduced their rules in Africa. This has provided African countries with a different jurisprudential understanding to China. The Chinese legal system is rooted in Chinese old laws and on German and Japanese legal systems which are not that pervasive on the African continent.⁶⁰⁵

The EU approach is low, but acceptable for African host-countries to complete projects, foreign unknown customs can apply but this is limited through the process of tendering to locals. Not all Chinese companies act unlawfully in Africa. The described

⁶⁰⁴ Yang & Doh op cit note 422 at 51.

⁶⁰⁵ Fu op cit note 252.

customs undermine unjust labour laws which are protected by local governments. With some conditions African countries could provide a stronger compliance from Chinese companies.

4.6. Conclusion

This chapter evaluates the terms and conditions found in chapter two and three and compared the results considering the different approaches described in section 1.7. The chapter answered the research questions which of both investors set fairer conditions to African countries as recipients of investments.

The political conditions for giving access to grants and loans are motivated by the constitutional beliefs of both parties. It has been shown that the political conditions of the EU lack the willingness to implement in the majority of African communities. Furthermore, it has been shown that the EU is inconsistent in its implementation of external policy and is poor in its enforcement of sanctions as a punishment for human rights, democratic principles or the rule of law. Contrary to this is the One-China principle is easy to implement.

The procurement rules applied by China and the EU display different socio-economic approaches. While China tries to obtain as many contracts as possible through its tendering conditions the EU offers its own tendering framework to procure contracts preferable to locals, to support the socio-economic development of the relevant African country.

China's attempt to comply with local domestic labour laws in African countries has failed in many cases. Its lack on conditions and unwillingness to familiarise with local laws causes the transfer of Chinese labour customs to African countries which leads to violations of local labour laws. The EU however sets low human rights and ILO labour standards which are easy to implement and also uses local companies who are familiar with the laws and customs of the African countries.

Chapter 5: Conclusion and final remarks

This thesis presented a comparative analysis of legal frameworks for investments in Africa by China and the European Union. The aim was to analyse the legal conditions and compare them with their counterparts for a better understanding and to

find which conditions are fairer for African countries. The thesis considered two different approaches backed by historical events, socio-economic and financial interests. Those approaches were found again in the legal terms and conditions of both parties.

The EU with member states which were previously colonial powers have tried in their form of concessional loans and grants, so-called official development assistance, to mitigate historically caused economic deficits in Africa. They have also tried to fight poverty and provide a secure and reliable continent which they can trade with. The EU legal framework is an abstract civil law-based regime which is applied incoherence so as to further trade and security interests of the EU and its member states in Africa.

China shares its historical background with African countries as they were both colonised and became emerging economies which developed their industries in the last four decades. China has also reduced its poverty rate to a minimum. Its aim to become an industrialized nation has caused it to search for new markets and resources. Although China also gives grants and interest-free-loans the majority of its investments are made to with China's commercial interests. Investing abroad should bring a win-win situation for both sides, so loans can be financed with raw materials which Africa has a lot of. The Chinese government encourages Chinese companies to invest abroad. China's external relations are policy-driven and have fewer concrete provisions, than the EU laws.

In order to give access to aid or investments both parties demand a political decision from Africa's recipient countries. China asks for the rejection of Taiwan as a sovereign state to isolate the country from the international community and cause a peaceful unification. The unification is a constitutional objective of China. Except for Eswatini all other African countries accept the rule and benefit from China's investments.

The EU demands the acknowledgement and promotion of human rights, democratic principles and the rule of law. These are also basic principles of constitutional treaties of the EU which should be promoted in non-EU-countries. Furthermore, in theory should these principles provide a sustainable development in countries who implement those values. But studies show that most African countries lack these values and the political leaders of African countries are not willing to implement them. Addition to that are sanctions from the EU for the breach of those values just imposed when no

economic or security interest is given, which causes incoherence in their external actions between development aid, trade and security issues.

The analysis of political conditions from a legal perspective can be provided from a practical point of view. How African countries implemented these rules and demand the enforcement of human rights was measured from a practical legal point of view. Thus, for the simplicity of China's rule was it as the fairer one rated especially has the rule no impact on Africa's political or legal systems. However, caused by the fact that the promotion of values is laid down in their constitutional treaties it cannot be expected that they are willing to re-negotiate these rules.⁶⁰⁶

When a loan for a project is given the project must be tendered to a contractor. Here is little literature regarding African procurement systems but especially regarding its external influence.⁶⁰⁷ The EU provides its own legal framework which has to be implemented by the African countries which causes duplications and the exclusion of certain bidder are not excluded under national laws. However, the host-countries government keeps the control of the tendering process which is supervised by EU officials to ensure transparency and fair conditions for the bidder. Moreover, under the EDF preference is given to local contractors and suppliers in the African host-country and other ACP-countries.

Contrary to that Chinese firms negotiate directly with African governments and provide an option for loans if they contracted. Alternatively, the country requests a loan from a Chinese agency and China offers full project management, however, many African countries have laws which demand a certain portion of the contract be awarded to a local bidder. So, the amount on contracts for Chinese companies is then tendered under Chinese laws to Chinese enterprises with an untransparent procedure. In addition, China demands that 50 per cent of materials for the project be provided by Chinese companies. This is evidence of the fact that China prioritises its commercial interests, which are also laid down in economic policies which lead Chinese economy. Through the exclusion of the tendering process and the fact that African governments have no free choice which company they hire was this a reason to give the EU terms the preference.

⁶⁰⁶ Holterhus op cit note 467 at 79-80.

⁶⁰⁷ Caborn & Arrowsmith op cit note 572 at 262.

Regarding the labour condition are at least for EU standards little reflected studies available while China sets no direct condition but many companies implement Chinese labour customs. Those labour customs violate local labour laws in most African countries such as those relating to safety in the work place or exploitation of workers by requiring workers to work afterhours. Even more Chinese companies intervene in the freedom of strike and bargaining which displays a cultural labour rights gap. This could be fixed through a stronger enforcement of labour laws in African countries and also through BITs. In the latest FOCAC Action Plan they agreed to renew and sign new BITs.⁶⁰⁸ A role model could be the BIT model of the Southern African Development Community which contains a labour standard which is similar to the EU standard.⁶⁰⁹

As a minimum the EU expects basic human rights standards to be followed. The Cotonou Agreement to which the EDF is connected, contains conditions for core labour standards of the ILO. This does not cover all essential labour issues in African countries but it sets some standards. It also harmonises labour standards so that foreign contractors are familiar with these standards for instance the Convention for Collective Bargaining which China has not signed. Nevertheless, the ILO conventions are not demanded but are promoted in other EU funded programs which causes another incoherence and displays to the EU the importance of trade-related issues. Through the demand for those rights the EU sets conditions which are acknowledged by the African countries through signing those conventions. Since the partly implemented customs by the Chinese often conflict with the domestic labour laws in African countries the EU standards are again the better conditions even when it is unclear if the latter are good enough.

This thesis showed that Chinese conditions are economically demanding and are less compatible to African legal systems less than the conditions set by EU. However, the conditions of the EU sometimes conflict with EU internal decisions regarding trade or security issues. These conflicting issues can result in incoherent actions by the EU with regards to their development aid to African countries which raises concerns.

⁶⁰⁸ FOCAC Action Plan 2018 section 3.7.2.

⁶⁰⁹ Article 15 Southern African Development Community Model Bilateral Investment Treaty Template - <https://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf>.

Through their involvement with foreign partners in the last two decades' African countries have gotten the opportunity to consider relevant legal conditions in addition to the financial and socio-economic aspects of receiving foreign investment or aid. Further research into the legal frameworks covering foreign investments must be made. Agreements concluded between China and African countries relating to investment and aid are not publicly accessible and as such this work is limited. However, the legal frameworks concluded with other investors and donor countries and organizations such as Britain with other emerging nations like India or Russia who also engage in Africa must also be studied.

This work only analysed the legal compatibility of these terms and conditions. In addition to that research should be done regarding the effects of legal terms and conditions on African economies and development. The EU and China are well represented investors in Africa that is why they were chosen for this study but African countries have other investors to observe too. With the emerging prosperity on the African continent its governments can begin to negotiate and demand conditions which are more beneficial to their nations and demand that their investors become liable.

Bibliography

Primary Sources

Constitutions

Constitution of the People's Republic of China, 1982

Constitution of the Republic of South Africa, 1996

International Treaties

African Union Convention on Prevention and Combating Corruption, 2006

Agreement Between the Government of the People's Republic of China and the Government of the Republic of South Africa concerning the Reciprocal Promotion and Protection of Investments, 1998

Banjul Charter - African Charter on Human and Peoples' Rights, 1986

Charter of the United Nations, 1945

Cotonou Agreement – Partnership Agreement between the Members of the African Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part signed at Cotonou, 2000

International Covenant on Economic, Social and Cultural Rights, 1966

The Treaty of the European Union, 2009

The Treaty of the Function of the European Union, 2009

The Treaty of Rome, 1957 (invalid)

Yaoundé Agreement, Agreement on the Association between the European Economic Community and the African countries and Madagascar associated with this community - 1963 (invalid)

III Lomé Convention - Third ACP-EEC Convention signed at Lomé, 1984 (invalid)

IV Lomé Convention – Fourth ACP-EEC Convention signed at Lomé, 1989 (invalid)

Economic Partnership Agreement between the East African Community Partner States, of the one part and the European Union and its Member States of the Other Part, 2016.

Statute of the International Court of Justice, 1946

United Nations Convention against Corruption, 2005

EU Regulations

EU Council Regulation (EURATOM) No 237/2014 (13.12.2013) establishing an Instrument for Nuclear Safety Cooperation

EU Regulation No 230/2014 of the European Parliament and of the Council (11.03.2014) establishing an instrument contributing to stability and peace

EU Regulation No 231/2014 of the European Parliament and of the Council (11.03.2014) establishing an Instrument for Pre-accession Assistance

EU Regulation No 232/2014 of the European Parliament and of the Council (11.03.2014) establishing a European Neighborhood Instrument

EU Regulation No 233/2014 of the European Parliament and of the Council (11.03.2014) establishing a financing instrument for development cooperation for the period 2014-2020

EU Regulation No 234/2014 of the European Parliament and of the Council (11.03.2014) establishing a Partnership Instrument for cooperation with third countries

EU Regulation No 235/2014 of the European Parliament and of the Council (11.03.2014) establishing a financing instrument for democracy and human rights worldwide

EU Regulation 2015/323 of the Council (02.03.2015) on the financial regulation applicable to the 11th European Development Fund

Practical Guide to Contract Procedures for EU External Actions (PRAG), (14.03.2013)

Cases

Ceskoslovenska obchodni banka, a.s. v. Slovak Republic – International Centre for Settlement of Investment Dispute - Case No. ARB/97/4.

Miha v. Equatorial Guinea, at Human Rights Committee (10 August 1994) CCPR/C/51/D/414/1990, available at: http://ccprcentre.org/files/decisions/414_1990_Miha_v_Equatorial_Guinea_.pdf

Secondary Sources

Abrahamsen, Rita “Discourses of democracy, practices of autocracy: shifting meanings of democracy in the aid-authoritarianism nexus” in Tobias Hagmann, Filip Reyntjens *Aid and authoritarianism in Africa - Development without Democracy*, 2016

Addo, Michael K. “Some Issues in European Community Policy and Human Rights” 15 (1988) *Legal Issues of European Integration* p. 73

Adogamhe, Paul G. “PAN-AFRICANISM Revisited: Vision and Reality of African Unity and Development” 2 (2008) *African Review of Integration* p. 1

Aryada, Estelle “Emerging Disciplines on Labour Standards in Trade Agreements” (2016) *TCS Emerging Issues Briefing Note (4)*

Baah, Anthony Yaw; Jauch, Herbert “Chinese investments in Africa” in Anthony Yaw Baah, Herbert Jauch *“Chinese Investments in Africa: A Labour Perspective”* (2009), African Labour Research Network

Baginski, Pawel “Provisions and Implications of the Cotonou Agreement” 12 (2003) *Polish Quarterly of International Affairs*, p. 73

Benedek, Wolfgang „Article 208 AEUV“ in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim *“Das Recht der Europäischen Union – Band I-III EUV/AEUV“* (2019)

Benedek Wolfgang „Article 209 AEUV“ in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim *“Das Recht der Europäischen Union – Band I-III EUV/AEUV“* (2019)

Birsel, Robert “Gambia president tells China previous Taiwan ties a ‘huge mistake’ (06.09.2018) *Reuters*, available at: <https://www.reuters.com/article/us-china-africa-gambia/gambia-president-tells-china-previous-taiwan-ties-a-huge-mistake-idUSKCN1LM1HV>

Blanchard, Ben “China wins back Burkina Faso, urges Taiwan’s last African ally to follow” (26.05.2018) *Reuters*, available at: <https://www.reuters.com/article/us-china-burkina/china-wins-back-burkina-faso-urges-taiwans-last-african-ally-to-follow-idUSKCN1IR09W>

Bohoslavsky, Juan Pablo “A Human Rights Focus to Upgrade China’s International Lending” 5 (2019) *The Chinese Journal of Global Governance* p. 69

Phoebe Bolton “Government Procurement as a Policy Tool in South Africa” 6 (2006) *Journal of Public Procurement*, p. 193

Borson, Fred “EU Procurement Policy under Development Aid Financing” 11 (2016) *European Procurement & Public Private Partnership Law Review*, p. 220

Borson, Fred “Foreign Aid Procurement Policies of Development Partners in Africa: The Case of Ghana” 61 (2017) *Journal of African Law* p. 373

Bosshard, Peter “China’s Role in Financing African Infrastructure” (2007) *International Rivers Network*

Brautigam, Deborah “Governance and Economy: A Review, Policy and Review Department” (1991) *The World Bank*

Brautigam, Debora “The Dragon’s Gift” (2009)

Cabestan, Jean-Pierre “Taiwan’s Mainland Policy: Normalization, Yes; Reunification, Later”, 148 (1996) *China Quarterly* p. 1260

Caborn, Elinor, Arrowsmith, Sue “Procurement methods - in the public procurement systems of Africa” in S. Arrowsmith and G. Quinot *“Public Procurement Regulation in Africa”* (2013)

Campos, Indira; Vines, Alex “Angola and China – A Pragmatic Partnership” (2005) *Working Paper Presented at a CSIS Conference*

Cheng, Cheng “The Logic Behind China’s Foreign Aid Agency” *Carnegie Endowment for International Peace* (21.05.2019), available at: <https://carnegieendowment.org/2019/05/21/logic-behind-china-s-foreign-aid-agency-pub-79154>.

Chinadaily “Backgrounder: Five Principles of Peaceful Coexistence” (22.04.2015) available at: https://www.chinadaily.com.cn/world/2015xivisitpse/2015-04/22/content_20509374.htm

Chinadaily “China and Zhou Enlai lay basis for the future at Bandung Conference” (22.04.2015), available at: https://www.chinadaily.com.cn/world/2015xivisitpse/2015-04/22/content_20509367.htm

Chinadaily “China-Gambia relations see rapid development on all fronts: Chinese FM” (06.01.2019) available at: <http://www.chinadaily.com.cn/a/201901/06/WS5c31b2b7a31068606745f154.html>

Chinese Government “13thFive-Year-Plan for Economic and Social Development of the People’s Republic of China” (2016-2020), available at: https://en.ndrc.gov.cn/policyrelease_8233/201612/P020191101482242850325.pdf

Chinese Government “China’s Action plan on the Belt and Road Initiative” updated March 2015, available at: http://english.www.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm

Chinese Government “China’s first Africa policy” (20.09.2006), available at: <https://www.fmprc.gov.cn/zflt/eng/zgdfztc/t481748.htm>

Chinese Government “China’s second Africa policy” (05.12.2015), available at: http://www.china.org.cn/world/2015-12/05/content_37241677_2.htm

Chinese Government “China Going Global between ambition and capacity” (2017) *Working Paper of China Policy* available at: <https://policycn.com/wp-content/uploads/2017/05/2017-Chinas-going-global-strategy.pdf>

Chinese Government “White Paper on China’s Foreign Aid” (21.04.2011), available at: http://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284620.htm

Chinese Government “White Paper on China’s Foreign Aid” (10.07.2014) available at: http://english.www.gov.cn/archive/white_paper/2014/08/23/content_281474982986592.htm

Congyan Cai “Human Rights Conditionality and International Economic Relations: A Chinese Lawyer’s Perspective” 1 (2008) *Journal of East Asia and International Law* p. 71

Corkin, Lucy “Redefining Foreign Policy Impulses toward Africa: The Roles of the MFA, the MOFCOM and China Exim Bank” 4 (2011) *Journal of Current Chinese Affairs* p. 63

Dagbanja, Dominic N. “The regulatory framework for public procurement in Ghana” in S. Arrowsmith & G. Quinot “*Public Procurement Regulation in Africa*” (2013)

Das Deutsche Baugewerbe “Robl: Keine Steuergelder an chinesische Staatsunternehmen! Deutsches Baugewerbe fordert bei EU-kofinanzierten Bauvorhaben ausschließliche Vergabe an Unternehmen aus EU-Mitgliedsstaaten“ (15.04.2010), available at: <https://www.verbaende.com/news.php/Robl-Keine-Steuergelder-an-chinesische-Staatsunternehmen-Deutsches-Baugewerbe-fordert-bei-EU-kofinanzierten-Bauvorhaben-ausschliessliche-Vergabe-an-Unternehmen-aus-EU-Mitgliedsstaaten?m=68503>

Davis, Martyn; Edinger, Hannah; Tay, Nastasya; Naidu, Sanusha “How China delivers development assistance to Africa” (2008) *Center for Chinese Studies* p. 57

Dominguez Gabriel “‘Made in China 2025’ – The next stage of China’s economic rise?” (02.06.2015) *DW*, available at: <https://www.dw.com/en/made-in-china-2025-the-next-stage-of-chinas-economic-rise/a-18490377>

Dreher, Axel; Fuchs, Andreas; Parks, Brad; Strange, Austin M.; Tierney, Michael J. “Apples and Dragon Fruits: The Determinants of Aid and Other Forms of State Financing from China to Africa” 62 2018 *International Studies Quarterly* p. 182

Dzaka-Kikouta, Théophile; Kern, Francis; Gonella, Chiara “Chinese economic cooperation with Central Africa and the transfer of knowledge and know-how” (2013) 2 *African East-Asian Affairs*, p. 39

The Economist “The retreat of global democracy stopped in 2018 (08.01.2019) available at: <https://www.economist.com/graphic-detail/2019/01/08/the-retreat-of-global-democracy-stopped-in-2018>

Ebert, Franz Christian “Labour provisions in EU trade agreements: What potential for channelling labour standards-related capacity building?” 155 2006 *International Labour Review* p. 407

Ebert, Franz Christian “The Comprehensive Economic and Trade Agreement (CFTA): Are Existing Arrangements Sufficient to Prevent Adverse Effects on Labour Standards?” 33 (2017) *International Journal of Comparative Labour Law and Industrial Relations* p. 295

Eswatini Government “Press Statement No: 18/2019 Eswatini, Taiwan Relations”, (28.07.2019), available at: <http://www.gov.sz/index.php/latest-news/2291-eswatini-taiwan-relations>

EU Commission “2017 Annual Activity Report – Service for Foreign Policy Instruments”, available at: https://ec.europa.eu/fpi/sites/fpi/files/documents/fpi-aar-2017-annexes_en.pdf

European Commission “Aid for Trade Report 2015” (22.06.2015)

European Commission “Economic Partnerships” (21.02.2019) available at: <https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>.

European Commission “International development Aid” available at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/international-development-aid_en (accessed on 09 February 2020)

European Commission “Restoring Faith in Justice in the Democratic Republic of Congo” available at: https://ec.europa.eu/fpi/showcases/restoring-faith-justice-democratic-republic-congo_en

European Council “Cotonou Agreement” (16.01.2020) available at: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/>

EU Council Decision 94/697/CFSP (24.10.1994)

EU Council Decision 2010/427/EU (26.07.2010)

European Development Fund, available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=LEGISSUM:r12102>

European Investment Bank (EIB) “Activity Report 2014”

European Investment Bank (EIB) “Annual Report 2016 On EIB Activity in Activity in Africa, the Caribbean and the Pacific, and the Overseas Countries and Territories”

Europa Parliament “Fact Sheets on the European Union – Multiannual Financial Framework” May 2019, available at: <http://www.europarl.europa.eu/fact-sheets/en/sheet/29/mehrjaehriger-finanzrahmen>

European Union “EU Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission”, 2017/C210/01, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42017Y0630\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42017Y0630(01)&from=EN)

European Union External Action “Statement by the Spokesperson on Angola’s accession to key human rights conventions” (04.10.2019) available at: https://eeas.europa.eu/headquarters/headquarters-homepage/68407/statement-spokesperson-angola%E2%80%99s-accession-key-human-rights-conventions_en

The Export-Import Bank of China “Annual Report 2018”

Fantini, Emanuele; Puddu, Luca “Ethiopia and international aid: development between high modernism and exceptional measures” in Tobias Hagmann, Filip Reyntjens “*Aid and authoritarianism in Africa – Development without Democracy*” (2016)

Fiott, Daniel “The EU and China in Africa: The Case of Kenya” 3 (2010) *Madariaga Paper* p.1

Fischer Michael “*Legal Framework for Chinese Outbound Investments*” Deloitte, available at: <https://www2.deloitte.com/dl/en/pages/legal/articles/chinese-outbound-investments.html#>

Friends of the Earth United States “China Development Bank and China Export-Import Bank” (January 2016)

Forum on China-Africa Cooperation (FOCAC) “Action Plan 2000”

Forum on China-Africa Cooperation (FOCAC) “Action Plan 2006”

Forum on China-Africa Cooperation (FOCAC) “Action Plan 2018”

Forum on China-Africa Cooperation (FOCAC) “Beijing Declaration of the Forum on China-Africa Cooperation of the 10-12 October 2000”, available at: https://www.fo-cac.org/eng/zywx_1/zywj/t606796.htm.

Forster, Doris “On the Methods for Comparative Law Research in Legal Studies” (2018) *Ancilla Iuris: Constellations of Law* p.98

Fu Junwei “China” in Jan M. Smits “*Elgar Encyclopedia of Comparative Law*” 2. ed., (2012)

Geda, Alemayehu; Meskel, Atenafu G. Meskel “Impact of China-Africa Investment Relations: Case Study of Ethiopia” (2010) *African Economic Research Consortium Collaborative Research on the Impact of China on Africa*

Glanert, Simone “Method?” in Pier Giuseppe Monateri “Methods of Comparative Law” (2012)

Glaeser, Edward L.; La Porta, Rafael, Lopez-de-Silanes, Florencio; Shleifer, Andrei “Do Institutions Cause Growth?” 9 (2004) *Journal of Economic Growth* p. 271

Glee, H. Patrick “The aims of comparative law” in Jan M. Smits “*Elgar Encyclopedia of Comparative Law*” 2. ed. (2012)

Grimm, Sven “Afrika in der internationalen Politik – Die Verträge von Lomé und Cotonou“ (2009) 2 *Informationen zur politischen Bildung* 63, available at: <https://www.bpb.de/izpb/7954/afrika-in-der-internationalen-politik?p=5>

Gordley, James “The functional method” in Pier Giuseppe Monateri “Methods of Comparative Law” (2012)

Gruni Giovanni “Enforcing labour standards via EU free-trade agreements” (18.02.2019), available at: <https://www.socialeurope.eu/enforcing-labour-standards>

Haacke, Owen “Understanding China’s 13th Five-Year Plan” (12.02.2015) *China Business Review*, available at: <https://www.chinabusinessreview.com/understanding-chinas-13th-five-year-plan/>

Hachez, Nicolas; Wouters, Jan “A Responsible Lender? The European Investment Bank’s Environmental, Social and Human Rights Accountability” 49 (2012) *Common Market Law Review* p. 47

Hackenesch, Christine “European Good Governance Policies Meet China in Africa: Insights from Angola and Ethiopia – Working Paper” (February 2011) *German Development Institute*

Hamlin, Kevin; Gridneff, Ilya; Davison, William “Ethiopia Becomes China’s China in Search for Cheap Labor” (22.06.2014) *Bloomberg* available at: <https://www.bloomberg.com/news/articles/2014-07-22/ethiopia-becomes-china-s-china-in-search-for-cheap-labor>

James Harrison, Mirela Barbu, Liam Campling, Franz Christian Ebert, Deborah Martens, Axel Marx, Jan Orbie, Ben Richardson, Adrian Smith (James Harrison et al.) “Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission’s Reform Agenda” 18 (2019) *World Trade Review* p. 635

Haroz, David “China in Africa: Symbiosis or Exploitation?”, Vol. 35 2011, *The Fletcher Forum of World Affairs* p. 67

Hilf, Meinhard, Schorkopf, Frank “Artikel 2 EUV” in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim “*Das Recht der Europäischen Union – Band I-III EUV/AEUV*“ (2019)

Hipold, Peter “EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June and the Principle of Good Governance” 7 (2002) *European Foreign Affairs Review* p. 53

Hoffmeister, Frank „Artikel 2012 AEUV“ in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim “*Das Recht der Europäischen Union – Band I-III EUV/AEUV*“ (2019)

Holterhus, Till Patrik “The Legal Dimensions of Rule of Law Promotion in EU Foreign Policy: EU Treaty Imperatives and Rule of Law Conditionality in the Foreign Trade and Development Nexus” 9 (2018) *Goettingen Journal of International Law* p. 71

Hopewell Kristen “What is ‘Made in China 2025’ – and why is it a threat to Trump’s trade goals?” (03.05.2018) *The Washington Post*, available at: <https://www.washingtonpost.com/news/monkey-cage/wp/2018/05/03/what-is-made-in-china-2025-and-why-is-it-a-threat-to-trumps-trade-goals/>

Huang, Meibo; Qi, Xie “Forum on China-Africa Cooperation: Development and Prospects” 74 (2013) *African East Asian Affairs*, p. 10

Hudson, G. F. “One China or Two” 10 (1962) *China Quarterly* p 78

Human Rights Watch “World Report 2019 – Mozambique”, available at: <https://www.hrw.org/world-report/2019/country-chapters/mozambique>

Human Rights Watch “You’ll Be Fired if You Refuse” (04.11.2011) available at: <https://www.hrw.org/report/2011/11/04/youll-be-fired-if-you-refuse/labor-abuses-zambia-chinese-state-owned-copper-mines>

International Labor Organization (ILO) “Ratifications of fundamental Conventions by country”, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F

Jauch, Herbert, Lipumbu Sakaria “Chinese Investments in Namibia: A Labour Perspective” (March 2009) *Labour Resource and Research Institute*

Kidane, Won “China-African Investment Treaties: Old Rules, New Challenges” 37 (2014) *Fordham International Law Journal* p.1035

King, Toby “Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?” (1999) *European Journal of International Law*, p. 313

Kiruga, Morris, “Ethiopia’s China challenge” (27.03.2019) *The Africa Report*, available at: <https://www.theafricareport.com/11080/ethiopias-china-challenge/>

Klovert, Heike “Wer den Bauboom in Afrika vorantreibt” (23.11.2019) *Der Spiegel* available at: <https://www.spiegel.de/politik/ausland/chinesen-in-aethiopien-wer-den-bauboom-in-afrika-vorantreibt-a-1279872.html>

Koepf, Tobias, “Afrika in der internationalen Politik – Rolle Frankreichs und Großbritanniens“ (2009) 303 *Informationen zur politischen Bildung*, available at: <https://www.bpb.de/izpb/7954/afrika-in-der-internationalen-politik?p=2>

Krajewski, Markus “*Wirtschaftsvölkerrecht*” 4 ed (2017)

Le Belzic, Sebastien “China’s Exim bank: Africa’s largest financier looks for an even bigger role” (25.10.2012) *The Africa Report*, available at: <https://www.theafricareport.com/6472/chinas-exim-bank-africas-largest-financier-looks-for-an-even-bigger-role/>

Madowo, Larry “eSwatini – Taiwan’s last friend in Africa” (14.01.2019) *BBC News*, available at: <https://www.bbc.com/news/world-africa-46831852>

Masuku, Lunga “Taiwan’s last African ally holds out despite overtures by China (31.08.2018) *Reuters*, available at: <https://www.reuters.com/article/us-china-africa-swaziland/taiwans-last-african-ally-holds-out-despite-overtures-by-china-idUSKCN1LG0L6>

Maurin, Cristelle, Yeophantong, Pichamon “Going Global Responsibly? China’s Strategies Towards “Sustainable” Overseas Investments” 86 (2013) *Pacific Affairs* p. 281

McBride, James; Chatzky, Andrew “Is ‘Made in China 2025’ a Treat to Global Trade?” (13.05.2019) *Council on Foreign Relations*, available at: <https://www.cfr.org/background/made-china-2025-threat-global-trade>

Mercurio Bryan “Growth and development: Economic and Legal Conditions” 30 (2007) *University of New South Wales Law Journal* p. 437

Missiroli, Antonio “The EU and the World: Players and Policies Post-Lisbon: A Handbook” *European Union Institute for Security Studies* (2016)

Mitchell, Ian; Elliot, Kimberly Ann “Brexit: What Next for Trade and Development?” (30.01.2020) *Center for Global Development*, available at: <https://www.cgdev.org/blog/brexit-what-next-trade-and-development>

Mizner, Andrew “China to invest USD 60 billion in Africa” (01.10.2018) *African Law & Business* available at: <https://www.africanlawbusiness.com/news/8609-china-to-invest-usd-60-billion-in-africa>

Moss, Todd; Rose, Sarah “China ExIm Bank and Africa: New Lending, New Challenges” (2006) *Center for Global Development CGD Notes*

Müller, Peter “Auf nach Afrika” (07.12.2019) *Der Spiegel*, available at: <https://www.spiegel.de/politik/ausland/ursula-von-der-leyen-besucht-aethiopien-addis-abeba-statt-washington-a-1300225.html> (accessed on 09 February 2019)

Nantulya, Paul “Implications for Africa from China’s One Belt One Road Strategy” (22.03.2019) *Africa Center for Strategic Studies*, available at: <https://africacenter.org/spotlight/implications-for-africa-china-one-belt-one-road-strategy/>

Nettesheim, Martin „Artikel 205 AEUV“ in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ (ed.) 3.ed. (2018) available at: <https://www.theafricareport.com/421/the-world-bank-and-imf-are-necessary-evils-julius-maada-bio-president-sierra-le-one/#ixzz5clcS27h4>

Nolte, Georg “Article 2” in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus – *The Charter of the United Nations – A Commentary*, Volume I, 3. ed, (2012)

Norbook, Nicholas; Smith, Patrick “The World Bank and IMF are necessary evils” (2018) 106 *The Africa Report* p. 48

Nwabueze, Caroline J; Pofinet, Diana “The Rule of Law and Integrity: Appraising the Place and Role of Anti-Corruption Standards in the Fight against Corruption within the Central African Economic and Monetary Community” 51 (2018) *The Comparative and International Law Journal of Southern Africa* p. 207

OECD “DAC List of ODA Recipients”, available at: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC-List-of-ODA-Recipients-for-reporting-2018-and-2019-flows.pdf>

OECD “Net ODA (indicator)”, available at: <https://data.oecd.org/oda/net-oda.htm>

OECD “Official Development Assistance” available at: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.htm>

OECD “Official Development Assistance, What is ODA?” April/2019 available at: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/What-is-ODA.pdf>

OECD “Paris Declaration on Aid Effectiveness” (02.03.2015)

Ohler, Christoph “Artikel 309 AEUV” in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ (ed.) 3.ed. (2018)

Pechstein, Matthias „Artikel 2 EUV“ in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ (ed.) 3.ed. (2018)

Perry Alex “In Afrika: Reise in die Zukunft” (2016)

Publish what you found “Aid Transparency Index 2018” available at: <http://www.publishwhatyoufund.org/reports/2018-Aid-Transparency-Index.pdf>

Raphulu, Lusanda “Chinese Companies in SA” (24.01.2018) *Bowmanslaw* available at: <https://www.bowmanslaw.com/insights/employment/chinese-companies-sa/>

Publish what you found “China – Ministry of Commerce (MOFCOM)” available at: <https://www.publishwhatyoufund.org/the-index/2018/china-mofcom/>

Regelsberger Elfriede, Dieter Kugelmann „Artikel 21 EUV“ in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ (ed.) 3.ed. (2018)

Riebau, Anne Meike “Rückübernahmeabkommen und partnerschaftliche Steuerungsinstrumente: Menschenrechte als wirtschaftliche Tauschware auf dem politischen Tableau?“, (2015) *Zeitschrift für Ausländerrecht und Ausländerpolitik* p. 61

Riemenschneider Jakob “Latest Trends of China Overseas Direct Investment Regulations” (29.01.2018) *TaylorWesing*, available at: <https://china.taylorwessing.com/en/latest-trends-of-china-overseas-direct-investment-regulations>

Rossi, Matthias “Artikel 309 AEUV” in Christian Calliess, Matthias Ruffert “EUV/AEUV” 5. ed. 2016

Saigal, Kanika “London Calling Africa” (2018) 103 *The Africa Report*, p. 56

Sandgren, Claes “Legal Development Cooperation: Conditions, Principles, and Methods, Studies in International Financial” 6 (2003-2004) *Economic and Technology Law* p. 15

Schmidt, Siegmund , “Afrika in der internationalen Politik – Die Afrikanische Union“ 303 (2009) *Informationen zur politischen Bildung* 53, available at: <https://www.bpb.de/izpb/7954/afrika-in-der-internationalen-politik?p=0>

Shaw, Malcolm N. “International Law” 6. ed. (2008)

Sheng, Michael ; Öhvall, Daniel “Chinese outbound investment regulations for a new year” (17.01.2018) *Ashurst*, available at: <https://www.ashurst.com/en/news-and-insights/legal-updates/chinese-outbound-investment-regulations-for-a-new-year/>

Shepard, Wade “What China Is Really Up To in Africa” (03.10.2019) *Forbes*, available at: <https://www.forbes.com/sites/wadeshepard/2019/10/03/what-china-is-really-up-to-in-africa/#1fd7f4695930>

Smith, Karen E. “The Use of Political Conditionality in the EU’s Relations with Third Countries: How Effective?” 3 (1998) *European Foreign Affairs Review* p. 253

Smith Patrick “Africa’s place in the world” 101 (2018) *The Africa Report* p. 4

Stoll, Peter-Tobias; Rigod Boris “Artikel 309 AEUV” in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim “*Das Recht der Europäischen Union – Band I-III EUV/AEUV*“ (2019)

Stoll, Peter-Tobias; Rigod Boris “Artikel 309 AEUV” in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim “*Das Recht der Europäischen Union – Band I-III EUV/AEUV*“ (2019)

Streinz, Rudolf “Artikel 6 EUV” in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ 3.ed. (2018)

Streinz, Rudolf „Artikel 208 AEUV“ in Rudolf Streinz „*Becksche-Kurz-Kommentar EUV/AEUV*“ 3.ed. (2018)

Sun, Yun “China’s 2018 financial commitments to Africa: Adjustment and recalibration” (05.09.2018) *Brookings*, available at: <https://www.brookings.edu/blog/africa-in-focus/2018/09/05/chinas-2018-financial-commitments-to-africa-adjustment-and-recalibration/>

Szczudlik-Tatar, Justyna “Soft Power in China’s Foreign Policy” 19 (2010) *Polish Quarterly of International Affairs* p. 45

Tang, Frank “China sets new rules overseas investment for its biggest deal makers” (27.12.2017) *South China Morning Post* available at: <https://www.scmp.com/news/china/economy/article/2125725/china-sets-new-rules-overseas-investment-its-biggest-deal-makers>

Tang, Xiaoyang “Bulldozer or Locomotive? The Impact of Chinese Enterprises on the Local Employment in Angola and the DRC” 45 (2010) *Journal of Asian and African Studies* p. 386

The Associated Press “China Resumes Ties With Sao Tomé Which Turned Away From Taiwan” (26.12.2016) *The New York Times*, available at: <https://www.nytimes.com/2016/12/26/world/asia/china-taiwan-sao-tome-diplomatic-relations.html>

Transparency International “Corruption Percentage Index 2019: Global Highlights” (23.01.2020), available at: https://www.transparency.org/news/feature/cpi_2019_global_highlights#CountriesToWatch

Transparency International “Corruption Percentage Index 2019: Sub-Saharan Africa” (23.01.2020) available at: https://www.transparency.org/news/feature/cpi_2019_Sub_Saharan_Africa

Transparency International “Corruption Percentage Index 2019: Western Europe & European Union” (23.01.2020) available at: https://www.transparency.org/news/feature/cpi_2019_global_highlights#CountriesToWatch

Tiezzi Shannon “FOCAC 2018: Rebranding China in Africa” (05.09.2018) *The Diplomat*, available at: <https://thediplomat.com/2018/09/focac-2018-rebranding-china-in-africa/>

Tsabora, James “Public Procurement in Zimbabwe: Law, Policy and Practice” (2014) *African Public Procurement Law Journal* p. 1

United Nations Conference on Trade and Development (UNCTAD), “Economic Development in Africa Report 2010, South-South Cooperation: Africa and the New Forms of Development Partnership”, (2010)

United Nations Conference on Trade and Development (UNCTAD), “World Investment Report 2019” (2019)

Wang, Hongying; Hu, XueYing “China’s “Going-Out” Strategy and Corporate Social Responsibility: Preliminary Evidence of a “Boomerang Effect”” 26 (2017) *Journal of Contemporary China* p. 820

Wang Long, Bateman Joshua “China’s Medical Aid in Africa” (14.03.2018) *The Diplomat* available at: <https://thediplomat.com/2018/03/chinas-medical-aid-in-africa/>.

Wei Jiang “A Chinese Solution“ 99 (2018) *The Africa Report* p. 14

Weiß, Wolfgang „Artikel 207 AEUV“ in in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim “*Das Recht der Europäischen Union – Band I-III EUV/AEUV*“ (2019)

Xiang, Rong “Regulation of Foreign Aid: China” (06.09.2015) *Library of Congress*, available at: <http://www.loc.gov/law/help/foreign-aid/china.php#Framework>

Yang, Liu; Doh, Cyprian Nugah “China and Botswana: legal and cultural differences in labour laws” (2013) *African East-Asian Affairs* p. 50

Young-Anawaty, Amy “Human Rights and the ACP-EEC Lomé II Convention: Business as usual at the EEC” 13 (1980) *New York University Journal of International Law and Politics* p. 63

Yejo, Kim “Africa – The People’s Republic’s exclusive playground?” 71 (2012) *African East Asian Affairs* p. 25

Yu Jack “China’s Outbound Investment Regulation Update” (06.11.2017) *Fasken*, available at: <https://www.fasken.com/en/knowledge/2018/01/china-releases-new-rules-regulating-outbound-investment/#authors>

Zeng, Aiping; Zhan, Shu “Origin, Achievements, and Prospects of the Forum on China-Africa Cooperation” (2018) *International Studies* p. 88

Liu, Zhen “China ‘will continue to oppose Taiwan independence’ after Tsai Ing-wen’s election victory” (20.01.2020) *South China Morning Post* available at: <https://www.scmp.com/news/china/politics/article/3046757/china-will-continue-oppose-taiwan-independence-after-tsai-ing>

Zhou, Laura “Ethiopia in talks with China to ease ‘serious debt pressure’ tied to New Silk Road rail link, envoy says” (24.03.2019) *South China Morning Post*, available at: <https://www.scmp.com/news/china/diplomacy/article/3002957/ethiopia-talks-china-ease-serious-debt-pressure-tied-new-silk>

Zweigert, Konrad; Kötz, Hein “An Introduction to Comparative Law” 3.ed (1998)