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Whither Human Rights in African International Relations?

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ABSTRACT

Strict observance of state sovereignty, once a mainstay of international relations, has given way to a global concern to protect human rights wherever they are threatened. On paper, at least, Africa shares this international commitment in its establishment of monitoring bodies like the African Commission on Human and Peoples' Rights and the African Union's Peace and Security Council. But how central are human rights to the actual conduct of international relations by the continent? Are they merely a 'variable concern'?

There are no simplistic answers to this question. Africa has long been committed to supporting the rule of law, safeguarding refugees, protecting women and children, encouraging youth participation, and promoting democracy. But, as ever, national interest still plays an important role when it comes to defining how the continent relates to the world.

Democratic South Africa's opposition in the UN Security Council to the arrest of Sudanese President Omar Al-Bashir for crimes against humanity provides a case in point. This needs to be seen in the context of South Africa's peacemaking efforts in several African countries, its role as continental spokesperson and the perspective that the continent is a victim of double standards. The Al-Bashir case, together with such issues as most of the continent's rejection of sanctions against Zimbabwe, also speaks of a search for 'African solutions to African problems'.

China's emergence as an economic power and its quest for raw materials to supply its surging economy increasingly offer economic alternatives to the relationship conditionalities imposed by Western democracies on African countries.

But China's policy of non-interference in the internal affairs of its trading partners has the potential to foster corruption, fuel armed conflicts and encourage human rights violations. African governments should ensure that their emerging foreign policy solutions, whatever they are, do not compromise the commitment they have already made to the democratic West to foster human rights and good governance.

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INTRODUCTION

The ratification of international treaties and conventions and the management of states' international relations are, in principle, strictly voluntary, and a clear barrier has historically separated the domestic and international spheres of states as international actors. This division was particularly strong until the middle of the 20th century, when members of the international community were relatively free to conduct their internal affairs without any interference from other states.

Furthermore, until the First World War, the way in which these internal affairs were managed had little or no impact on states' interactions with other international actors. Although the first international human rights instruments (protecting minorities, workers and children, for example) were adopted from 1919, they had little impact on states' international relations, and it was the strict rules of state sovereignty and non-interference in other states' internal affairs that were reaffirmed by the 1945 United Nations (UN) Charter (article 2, paragraph 7) and at the continental level by the 1963 Charter of the Organisation of African Unity (OAU), later replaced by the African Union (AU) Constitutive Act.¹

The establishment of the UN to protect humanity from violent conflict provided a framework for diversified and enhanced collaborations among states, thereby limiting their individual sovereignties. This framework, which is continually developed and reinforced, has facilitated the emergence of an international human rights system that provides a set of rules that are used to define the national protection of human rights by states, as well as to assess their international credentials for peace, security and development in a multilateral environment. However, the limitations inherent in international law, sustained by states' own interests, have perpetuated uncertainty on the actual importance that human rights hold in international relations and states' foreign policy. In a constantly evolving global context, have African countries been able to initiate a continental human rights foreign policy? Have such developments contributed to enhancing rather than discrediting further the consideration given to respect for human rights in international relations? Having analysed interstate relations in the context of an international human rights system in the first section, this paper will identify the limits of human rights in the actual conduct of states' bilateral and multilateral relations in the second section, before interrogating the consideration given to human rights in the development of AU common positions in the final section.

INTERNATIONAL RELATIONS IN A MULTILATERAL CONTEXT: THE DEVELOPMENT OF AN INTERNATIONAL HUMAN RIGHTS SYSTEM AND STATES' FOREIGN POLICY

By establishing the UN, the post-Second World War community of nations pledged to reaffirm its faith in human rights, gender equality and social progress, and to ensure that justice and respect for states' obligations under human rights treaties are maintained. On the basis of such fundamental principles, and from the 1948 Universal Declaration on Human Rights, the international protection of human rights has witnessed a continuous development of legal instruments covering a broad range of individuals, including women,

children, refugees, migrant workers and persons with disabilities; as well as specific issues such as racial discrimination, torture, the administration of justice and the death penalty, genocide, and humanitarian law. Beside these developments at the international or universal level, human rights systems have also been established at the regional level, including in Africa.

OAU member states adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969. The main regional human rights instrument, the African Charter on Human and Peoples' Rights, was adopted in 1981 and has been ratified by all 53 member states. The charter was complemented by two protocols on the establishment of an African Court on Human and Peoples' Rights (1998) and on the Rights of Women in Africa (2003). African governments have also committed themselves to protecting children across the continent; encouraging youth participation; and promoting democracy, elections and good governance through legal agreements. These instruments and treaties, justified by the need to adopt norms specific to Africa and its traditions, values and realities, provide a set of rules that can be used as a yardstick to gauge the human rights situation in the different state parties.² In fact, besides human rights standards, most international human rights treaties have put in place a variety of mechanisms and procedures that monitor and assess the implementation of their agreed obligations by state parties.

UN Charter-based mechanisms such as the Human Rights Council and its Universal Periodic Review; special procedures mandated for specific countries or thematic areas; conventional bodies such as the Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of all forms of Discrimination Against Women; and, at the regional level, the African Commission and the African Court on Human and Peoples' Rights have therefore been set up to consider the implementation of international human rights norms at the national level.

Established in 1987, the African Commission on Human and Peoples' Rights is composed of 11 members elected by the AU Executive Council for a six-year renewable term to serve in their personal capacity. The commission is mandated to promote the rights recognised under the charter, and to ensure their protection across the continent. Like similar monitoring bodies, the African Commission on Human and Peoples' Rights is competent to examine periodic state parties' reports on the measures they have taken in implementing the rights contained in the charter; it may consider inter-state or individual complaints alleging the violation of these rights; and it may resort to any appropriate investigative method. In practice, human rights situations in countries including Chad, Mauritania, Nigeria, Sudan and Zimbabwe have been considered by the commission under its various procedures. Initially weak and hardly given any consideration, the body has over the years gained in visibility, independence and credibility. However, as is the case with most human rights mechanisms, the effectiveness of the African Commission is impeded by the limited enforcement of its decisions and recommendations, as well as the absence of any formal follow-up mechanism.³

Nevertheless, by implementing their reporting and review procedures, complaints mechanisms and investigation mandates, monitoring bodies like the African Commission on Human and Peoples' Rights endeavour to ensure that national human rights records comply with minimum shared values reflected in basic human rights and fundamental freedoms proclaimed by universal and regional treaties. Therefore, the treatment or maltreatment by any government of its own citizens and the population under its

authority or jurisdiction are no longer purely its own concern. By agreeing to be bound by international human rights law, state parties to human rights treaties and conventions willingly surrender some of their sovereignty to the scrutiny of the international community, whether these treaties and conventions give priority to civil and political rights, or to economic and social rights.

Supported by a vibrant network of international and national non-governmental organisations, the scrutiny of national human rights situations has often drawn attention to human rights violations, which has resulted in the introduction of sanctions, as was the case in countries like Zimbabwe, Chad and Sudan. This is made possible by the collaboration that exists among various structures of the UN system, as well as the recognised strong link among human rights, peace and security. For example, situations of human rights violations considered of international concern and observed at the level of any human rights organ can be brought to the attention of other relevant institutions or mechanisms such as the UN secretary-general, the General Assembly, or the Security Council at the universal level, with the latter being expressly mandated with establishing and maintaining international peace and security. This was illustrated by UN Security Council Resolution 1593, adopted in 2005, which referred the situation of Darfur, Sudan, to the prosecutor of the International Criminal Court (ICC) and led to the indictment and arrest warrant issued in 2009 against Sudanese President Omar Al-Bashir.

At the AU level, the Peace and Security Council (PSC) has also been established to promote peace, security and stability in Africa by anticipating and preventing conflicts; promoting and implementing peace-building and post-conflict reconstruction activities; and protecting human rights and fundamental freedoms and encouraging democratic practices, good governance, and the rule of law.⁴ Holding frequent meetings since its inauguration in May 2004, the 15-member PSC monitors conflict and potential conflict situations across the continent. The PSC regularly condemns violence and has expressed concern about crisis situations across the continent in countries that include the Darfur region in Sudan, Mauritania, Guinea-Bissau and Somalia. For instance, the PSC recently condemned the aggression perpetrated against Somalia's Transitional Federal Government and civilian population, and called for international sanctions against external actors and Eritrea in particular, which has been reported to be providing support to armed groups that contribute to undermining peace and reconciliation efforts in Somalia, as well as threatening regional stability.⁵

Since such situations are inevitably linked to human rights abuses, close co-operation is encouraged between the PSC and regional human rights mechanisms such as the African Commission on Human and Peoples' Rights. For instance, the commission is explicitly invited to bring to the attention of the PSC any information relevant to the latter's objectives and mandate. Thus, human rights concerns raised by the national situation of any state party to the African Charter on Human and Peoples' Rights can, at least in principle, be shared with the continental peace and security structure. Although yet to be materialised and made systematic, effective collaboration between the PSC and the African Commission on Human and Peoples' Rights will contribute to continental peace and security efforts, since the two bodies often raise concerns about the same situations.

Furthermore, to promote good governance and democratic principles, AU member states have identified and agreed to condemn unconstitutional changes of government.⁶ These include cases of military coups and mercenary interventions to replace a democratically

elected government; the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections; or any legal or constitutional amendment or revision attempting to impinge on the principles of democratic change of government. Such situations, which are clear violations of individuals' rights — such as the right of citizens to participate in the political affairs of their countries and the right to vote — can be brought to the attention of the AU political structures with a view to the possible imposition of sanctions. In the recent past, the AU suspended Togo,⁷ Comoros, Mauritania and Guinea due to unconstitutional changes of government.⁸ Madagascar, where the democratically elected president, Marc Ravalomanana, was overthrown by a wave of popular discontent led in March 2009 by his main political opponent, Andry Rajoelina, is the latest example of a new wave of coups d'état in Africa. These persistent unconstitutional regime changes inevitably call into question the level of respect for and acceptance of regional principles of democracy and good governance in several parts of the continent. However, with the development of an international legal framework of human rights and democratic principles, states are increasingly compelled to ensure the protection of individuals under their jurisdiction, and to guarantee that democracy and the rule of law are exercised and maintained in order to avoid being singled out by international monitoring bodies and mechanisms as human rights violators.

Besides their affirmation and monitoring under international and regional organisations, human rights and democratic principles are further used as conditions for trade and development assistance by multilateral structures and institutions such as the European Union (EU) and the World Bank.

The conditional aid policy of the EU illustrates the fact that traditional considerations defining states' foreign policy, such as national economic and geopolitical interests, can be addressed by including human rights in countries' international agendas. Considering that poverty reduction — and the consequences of poverty such as political unrest and violence, as well as uncontrolled mass migration to Europe — can only be achieved in a democratic structure, the EU has, since the beginning of the 1990s, gradually imposed human rights as an essential element of its relations with other countries and regions. Therefore, under the 2000 Cotonou Agreement, which organises trade and aid provisions between the EU and 79 developing countries in Africa and the Caribbean and Pacific (ACP) region,⁹ and determines the ACP–EU relationship at least until 2020, Europe has established respect for human rights as a condition for trade concessions and aid programmes. This condition is linked to the provision of positive incentives to countries that comply with human rights, as well as the possibility of sanctions such as the suspension of concessions or the reduction or curtailment of aid for countries that abuse human rights. In fact, sanctions for human rights violations were recently imposed on several countries, including Serbia, Myanmar and Zimbabwe.¹⁰ Despite promoting principles and practices of good governance, democracy and human rights, the European negative conditionality policy was initially distrusted by ACP countries, which saw in it an increased interventionist approach by the EU and an intrusion on their national sovereignties.¹¹ Thus, the need to develop more mutually beneficial and respectful relationships with developing countries has been highlighted. Specifically, the issue was raised whether human rights, good governance and democratic values put forward by the EU are in effect shared values, or whether alternative perceptions exist that should be given equal consideration.¹²

In addition to the EU, the World Bank is beginning to concede that respect for human rights is critical to its poverty reduction and development strategies. Initially restricting aid conditionality to economic governance, international financial institutions such as the World Bank have, under pressure and increased scrutiny from civil society organisations, started to consider economic governance as necessarily linked to its political counterpart, including the exercise of civil and political rights. For instance, the Chad–Cameroon pipeline project, one of the largest onshore investments in Africa, had, since its inception in 1996, generated much controversy around its human rights and environmental impact. The World Bank nonetheless supported the \$3.5 billion project, provided that the Chadian government allocated funds to health, education and rural development. However, following a change of the law governing the allocation of oil revenue in 2006, it became evident that the government had failed to respect its commitment. Despite an initial loan suspension and a consecutive agreement signed later in 2006, the project implementation saw further misuse of oil revenues by the Chadian government, which led to perpetuating the country’s instability and fuelling the crisis in the neighbouring Darfur province of Sudan. In September 2008 the World Bank, which had financed the construction of the pipeline despite concerns and protests voiced by human rights activists, finally announced its withdrawal from the project.¹³

While the recent decision of the World Bank is an illustration of the emerging impact that human rights, democracy and good governance have on states’ interactions, including with international financial institutions, the World Bank’s withdrawal, after 12 years of regional and international outcry, also underlines the limitation of such a link and the weak consideration that human rights are still given in the conduct of states’ international relations.

THE LIMITS OF HUMAN RIGHTS AS A KEY ELEMENT OF STATES’ FOREIGN POLICY

Despite the development of an international human rights framework and its regional ramifications that contribute to assessing states’ credentials for international relations, the human rights discourse remains in need of stronger recognition as a central element of states’ foreign policy. This applies to both states’ multilateral and bilateral relations.

The Cold War, which over 40 years contributed to shaping international relations around liberal and communist blocs, was characterised by the primacy of each camp’s strategic and security interests. Thus, human rights concerns appeared only secondary, and such relative consideration extended to African nations that occasionally took advantage of the world’s division. This was illustrated, among other cases, by the French ties with Central African Republic (CAR) dictator Jean-Bedel Bokassa between 1966 and 1979; and by the support given by the US to the 32-year-long dictatorial regime of Mobutu Sese Seko, former president of Zaïre (now the Democratic Republic of Congo — DRC) from 1965 to 1997, as a key ally in fighting communism in the Central African region. Furthermore, the divide between Western liberal states and communist states manifested itself in the importance attributed to civil and political rights, on the one hand, and economic and social rights, on the other, thus stifling the development of a unified human rights discourse by the UN. This division materialised in the adoption of two separate

human rights covenants in 1966, each dealing with one of the categories of rights. It also emphasised the continuing debate over the universalism versus relativism of human rights, which has often resulted in sidelining specific rights such as those related to gender equality; or in repressing individual freedoms based on identified priorities, including national unity and development, especially in post-colonial African countries.¹⁴

In a post-Cold War world, human rights are considered as a Western-imposed ideology by an increasing numbers of detractors, be it for religious fundamentalism or nuclear armament purposes. Human rights concerns are also challenged by the attitude of powerful nations such as the US — notably under the administration of former President George W Bush — which have often disregarded international human rights law and its monitoring mechanisms. Besides weakening human rights treaties by limiting its consent and linking it to reservations, the US has defined and implemented its own human rights standards that have sometimes contradicted international human rights and humanitarian law. This was illustrated by the second Iraq war, ostensibly launched in 2003 to advance democracy, reduce the threat of weapons of mass destruction and win the ‘war on terror’, but which failed to win UN support and was based on what many consider to have been mainly national economic interests. US affirmation of its domestic sovereignty, apart from the established international human rights framework, is reinforced with regard to the jurisdiction of the ICC and the multiplication of bilateral immunity agreements, which prevent signatory countries from delivering both US and non-US nationals, including ‘current or former Government officials, employees (including contractors), or military personnel or nationals of one party’, to the ICC.¹⁵

As is the case in the multilateral context, national interests still play an important role in the definition of states’ foreign policy in bilateral relations. The ‘organised hypocrisy’ of Western liberal democracies has been highlighted with regard to trade agreements and economic transactions conducted with governments fingered for abusing human rights.¹⁶ Despite self-imposed pledges to pursue a value-based foreign policy preventing them from exporting weapons to governments known to disrespect human rights and democratic principles, Western democracies have sometimes found themselves contradicting these principles by giving priority to their own economic national interests. In 2005 UK arms sales to countries that included Eritrea, Ethiopia, Sudan or Malawi, the latter being one of the least-developed nations in the world, were raising media concerns.¹⁷ In 2007 it was reported that French arms sales to African countries had more than doubled in 2006, with Nigeria and Chad joining the list of countries buying French weapons.¹⁸ Despite officials’ declarations affirming that France does not sell arms to governments that would use them against their own population, there is no guarantee that French weapons have not been used by the Chadian national army during clashes with local rebel movements, or have not spilled over into the conflict-torn Darfur region of Sudan.

Mercantilist considerations aside, other factors hindering human rights concerns in the definition of states’ foreign policy are attached to historical ties such as colonisation or support. In Chad, where the French government does not want to lose its military position, while recognising the strategic importance of its former colony in relation to current trouble spots on the continent,¹⁹ France’s efforts to mitigate Chad’s longstanding internal and regional political and security crises can be read in the two countries economic and political, but also historical and security ties. In addition, despite a democratic wave initiated in 1990 by former French President François Mitterrand and linking France’s

aid to democratic initiatives in the country's former African colonies,²⁰ the fact remains that historical-colonial ties often clash with the human rights and democracy discourse. In countries including Gabon, the DRC and Cameroon, this contradiction has allowed autocratic regimes to survive for decades with the support of the former colonial power.

More generally on the continent, reference made to the former OAU as a 'dictators' club' illustrated the lack of democracy, disregard of the rule of law and common human rights abuses that plagued many African countries, despite their joining the international community from 1960 onwards. Thus, regional policies and inter-state relations were characterised by double standards used to condemn colonialism and apartheid, while supporting leaders such as Uganda's Idi Amin and Ethiopia's Mengistu Haile Mariam, who took power by force and committed massive human rights violations against their populations. In South Africa, historical support provided by regimes such as Cuba, Iran or Libya during the liberation struggle has also been considered to justify Pretoria's reluctance to support and implement sanctions against these regimes for their human rights abuses.²¹

The end of the Cold War carried opportunities to devise more autonomous foreign policies.²² In Africa, this has led AU member states to develop an 'African Agenda' based on regional interests, and building on the leverage provided by the continental middle powers. However, the question remains how effectively such an emerging continental policy is contributing to upholding international and regional human rights standards.

THE DEVELOPMENT OF AFRICAN COMMON POSITIONS: TOWARDS A CONTINENTAL HUMAN RIGHTS FOREIGN POLICY?

As most African countries are on the receiving end of international development aid, only few can individually boast the articulation and implementation of an independent foreign policy in a multilateral context, especially when such foreign policy addresses human rights and democratic considerations.

Democratic South Africa is a relatively young actor on the diplomatic scene. Nevertheless, it is a continental power and one of few African interlocutors that can engage developed nations on issues of regional and global concern. At the same time, as its initial efforts to impose itself on the regional scene were received with mitigated enthusiasm by other African countries (for example, former President Nelson Mandela's condemnation of the execution of Ken Saro-Wiwa and eight other Ogoni activists in Nigeria in 1995), South Africa has resorted to a 'quiet diplomacy' favouring multilateral approaches to resolving African crises.²³

South Africa supports and actively engages in subregional and continental co-operation and integration efforts. Former President Thabo Mbeki was among the architects of the New Partnership for Africa's Development, and the country has been involved in peacemaking and peacekeeping efforts in Burundi, the CAR, Côte d'Ivoire, Darfur and the DRC. By privilege of its position as a bridge between developing and developed nations, South Africa often serves as Africa's representative at the international level and often speaks, voluntarily or in terms of what appeared as regional solidarity in the case of Sudanese President Omar Al-Bashir, on behalf of the continent's collective leadership and institutions. All these factors are to be taken into account when reading South Africa's

position during its two-year term as UN Security Council member from January 2007, which saw it vote against the imposition of sanctions on Zimbabwe and take the lead in the continent's efforts to suspend international prosecutions against Al-Bashir for international crimes in Darfur.²⁴

Although most African countries lack both the diplomatic and economic muscle to conduct an individual foreign policy in a multilateral system, their collective voice, represented by the continental structures and regional 'hegemons' such as South Africa and Nigeria, calls for a re-examination of Africa's perception and treatment by Western liberal democracies.

In the economic and trade sector, the rapid development of commercial links with China, which is not only in search of new markets to export its low-cost consumers goods, but also in need of massive levels of energy and raw materials, provides several African countries with an alternative to strict conditionality systems imposed by international financial institutions and Western democracies. Taking advantage of China's official approach to foreign relations based on non-interference, the relativism of human rights and the freedom of each country to define its timetable for implementing these rights, countries such as Angola, the DRC, Equatorial Guinea and Sudan are the biggest oil suppliers to China, while benefitting from loans and aid packages that include funds for building railroads, schools, roads, hospitals, bridges and offices by Chinese companies. Furthermore, China's arms sales to countries such as Sudan, Equatorial Guinea, Ethiopia, Eritrea, Burundi or Zimbabwe are seen to have helped the country gain important African allies in the UN for the furtherance of its political goals, including diverting attention from its own human rights record.²⁵ China's engagement with African countries, essentially at the bilateral level, thus appears largely imbalanced. It also has the potential to further corruption across the continent, sustain militarism, fuel armed conflicts and encourage violations of the human rights when situations arise that are perceived to threaten undemocratic regimes.

Therefore, for African countries to sustainably benefit from China's intervention on the continent, the AU should develop a coherent and unified Chinese policy. Such a policy, which would regulate China's relations with the continent, must consider trade and economic practices (including job losses, reported bribery and non-recruitment of local workers), as well as human rights concerns that are often raised by the country's engagement in Africa. The proposed continental policy would build on China's 2006 African Policy. Issues covered by this policy (including the modalities of respecting the 'one China principle', which led to a massive outcry after Tibet's religious leader, the Dalai Lama, was refused an entry visa to South Africa in March 2009) should be discussed, and mutually advantageous policies agreed upon by both parties. In addition, the AU should emphasise the need to maintain the necessary efforts for good governance, respect for human rights and the rule of law promoted by rich democratic nations and international financial institutions, which appear to be undermined by China's policy of aid without conditions.

Regarding crisis management and conflict resolution, African countries also seem to be favouring home-grown conflict resolution efforts based on dialogue, negotiations and mediation, as exemplified in the institutionalisation of the AU Panel of the Wise²⁶ and the West African Council of Elders;²⁷ while at the same time building the political and military structures for Africa's peace and security. The continuous support of Mbeki's

mediation in Zimbabwe by both the Southern African Development Community and the AU — to the obvious disappointment of Western democracies — is a further illustration of this. Furthermore, it is important to note that most African cases investigated by the ICC were of self-referral by the governments of the DRC, CAR and Uganda for international crimes committed in their territories. These referrals, in addition to the 2006 decision by AU heads of state mandating Senegal to conduct the trial of former Chadian President Hissen Habre before its national courts for crimes committed during his term of office between 1980 and 1992,²⁸ illustrate the commitment of African leaders to principles of accountability and international justice.

The arrest warrant issued by the ICC prosecutor against Sudanese President Al-Bashir places an obligation on all countries, including 30 African states that have ratified the Rome Statute, to co-operate with the court and execute the warrant. Therefore, the opposition of most African governments to the warrant, which was expressed by South Africa during its term at the UN Security Council²⁹ and later voiced by Jean Ping of Gabon as chairman of the AU Commission, must be considered in the light of regional concerns of double standards applied to the African continent, which many perceive as a 'guinea pig' particularly targeted by the international jurisdiction, as well as the questionable timing for prosecuting a key actor of the various peace processes in Sudan.

In response to the ICC prosecutor's arrest warrant, the AU High-Level Panel on Darfur, presided over by Mbeki, was inaugurated in March 2009 with the mandate to examine the situation in Darfur and prepare recommendations on how best the issues of accountability and the fight against impunity, as well as peace, healing and reconciliation, could be effectively and comprehensively addressed. The panel was expected to complete its mandate within four months and submit its final report to the chairperson of the AU Commission and the PSC. Having held a series of meetings with various stakeholders, from President Al-Bashir to civil society groups, including those in Darfur, the panel is now expected to submit its report at the end of September 2009.³⁰ Further regional initiatives to counter Al-Bashir's indictment are being pursued, with legal advice requested from the AU Commission and the African Commission and Court on Human and Peoples' Rights on how to extend the jurisdiction of the ICC to include the international crimes already under the court's jurisdiction, as well as through a ministerial meeting of African states' parties to the Rome Statute, held in Addis Ababa, Ethiopia, in June 2009. Based on the recommendations adopted at the meeting, African leaders decided at the AU Summit held the following month in Sirte, Libya, not to co-operate with the ICC regarding the arrest and surrender of the Sudanese president.³¹ However, beside initial criticisms from some countries, including Botswana and Chad, which observed that the issue had not been properly debated and AU member states had been forced to take the decision under Libyan pressure,³² the regional front against the ICC indictment of the Sudanese president faces a major desertion with South Africa's recent decision to reverse its position on the arrest warrant. Following the June 2009 AU decision, although reiterating the country's disagreement with the issuing of the warrant and its support for the AU decision, the South African government has reaffirmed its commitment to its international obligations and indicated that the Sudanese president would be arrested should he travel to South Africa.³³

Nonetheless, by multiplying regional initiatives to consider the situation in Darfur while reaffirming African states' commitment to accountability and the fight against

impunity, the AU displays its ambition to find African solutions to African problems. As Jean Ping puts it: 'Africans need to "put (their) house into order" by trying their own criminals'.³⁴ However, besides the relative success attributed to the African solutions to African problems principle,³⁵ there can be justifiable concerns about whether these collective efforts do not come too late to serve as an emergency solution designed to thwart international prosecution initiated against Al-Bashir. Moreover, is the international community, with its emerging criminal system, ready to give the appropriate consideration to these regional efforts?

The answer to these questions will likely depend on whether or not Africans are able to organise themselves and uniformly defend shared values, including adherence to the rule of law and respect for human rights, as well as pursue regional common interests.³⁶ During the Sirte AU Summit, Libyan leader Muammar Gaddafi's recurring vision of an African Union Government towards a United States of Africa was once again tempered by 'gradualists', including South Africa, Nigeria, Kenya and Zambia, who argued against an immediate and deeper continental political union.³⁷ Nevertheless, African leaders decided on the transformation of the AU Commission into the AU Authority.³⁸ On the road to regional integration, it is therefore with the proposed AU Authority that will rest the responsibility to implement Africa's responses to challenges facing the continent and, concerning external relations, to promote African views and 'build consensus among Union members on emerging subjects as may be required by the evolving world situation'.³⁹

CONCLUSION

Parallel to the development of an international human rights system, African countries have adopted a set of standards and set up institutions that proclaim the continent's attachment to the rule of law and respect for human rights and fundamental freedoms. Although such norms and mechanisms contribute to ethically shaping states' relations at both the bilateral and multilateral levels, one cannot but notice that human rights remain only a variable concern in the reality of the conduct of international relations. This explains the inconsistency of human rights considerations in African states' political, economic, and peace and security international engagements, despite the emergence of continental human rights positions. However, as the continent strives to achieve sustainable development built on peace, solidarity and social justice, African governments share the responsibility to ensure that an emerging continental foreign policy complies with human rights and democratic values that African states have subscribed to, both at the universal and regional levels. Specifically, alternative and African-specific solutions to trade, peace and security concerns, as well those of justice and accountability, should be harmonised at the continental level through the pursuit of economic and political integration. Such continental policies should be backed by regional hegemony in order to strengthen international acceptability and support. Moreover, they should not compromise agreed human rights standards.

ENDNOTES

- 1 AU (African Union), Constitutive Act of the African Union, adopted in July 2000 in Lomé, Togo, <http://www.africa-union.org/About_AU/AbConstitutive_Act.htm#Article4>.
- 2 As of June 2009, 45 countries have ratified both the Convention on the Specific Aspects of the Refugee Problems in Africa and the African Charter on the Rights and Welfare of the Child; 27 countries are parties to the Protocol on the Rights of Women in Africa; and 25 countries have so far ratified the protocol establishing the African Court on Human and Peoples' Rights, which is to be replaced by an African Court of Justice and Human Rights, and whose protocol was adopted in July 2008 and has so far been ratified only by Libya.
- 3 See Mindzie MA, 'The African Commission on Human and Peoples' Rights', in Akokpari J & DS Zimble (eds), *Africa's Human Rights Architecture*. Cape Town: Centre for Conflict Resolution, 2008, p. 204.
- 4 The AU protocol relating to the establishment of the PSC was adopted in July 2002 and entered into force in December 2003, <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol_peace%20and%20security.pdf>.
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