

THE EFFECTS OF CHINA'S RISING LEGAL INFLUENCE IN AFRICA ON AFRICOM'S STRATEGIC OBJECTIVES

MAJOR JONATHAN E. FIELDS*

*The twenty-first century is the century for China to lead the world. And when you are leading the world, we [Africans] want to be close behind you. When you are going to the moon, we don't want to be left behind.*¹

I. Introduction: China's Rising Influence in Africa

China is increasing its political, economic, and legal association within the continent of Africa.² The engagement between China and Africa is not a recent development. History suggests that elephant ivory and wood from Africa was being shipped into southern China as early as

* Judge Advocate, U.S. Army. Presently assigned as Associate Professor, Administrative and Civil Law Department, Judge Advocate General's School, United States Army, Charlottesville, Virginia, LL.M., 2013, The Judge Advocate General's School, United States Army, Charlottesville, Virginia; J.D., 2009, Indiana University Maurer School of Law; B.A., 2001, Indiana University. Previous assignments include Chief of Client Services, Chief of Claims and Special Assistant U.S. Attorney, Civil Division, Southern District of Georgia, 3rd Infantry Division, Fort Stewart, Georgia, 2011–2012, Trial Counsel, 2d Brigade Combat Team (Rear Provisional), 3rd Infantry Division, Fort Stewart, Georgia, 2010; G-3 Training Officer, 2nd Infantry Division, Camp Red Cloud, Korea 2005–2006; Assistant S-3, 1-36 Infantry Battalion, 1st Brigade Combat Team, 1st Armored Division, Ray Barracks, Germany; Scout Platoon Leader, Task Force Spartan, 1st Brigade Combat Team, 1st Armored Division, Iraq 2003–2004; Rifle Platoon Leader, B Company, 1-36 Infantry Battalion, 1st Brigade Combat Team, 1st Armored Division, Ray Barracks, Germany 2002. Member of the bars of the state of Indiana, the Northern and Southern Districts of Indiana, the United States Court of Appeals for Veterans Claims, and the United States Supreme Court. This article was submitted in May 2013 in partial completion of the Master of Laws requirements of the 61st Judge Advocate Officer Graduate Course.

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¹ See SERGE MICHEL & MICHEAL BEURET, CHINA SAFARI, ON THE TRAIL OF BEIJING'S EXPANSION IN AFRICA 11 (2009) (quoting Nigerian President Olusegun Obasanjo to Chinese President Hu Jintao on April 2006, in Lagos, Nigeria).

² See DAVID E. BROWN, HIDDEN DRAGON, CROUCHING LION: HOW CHINA'S ADVANCE IN AFRICA IS UNDERESTIMATED AND AFRICA'S POTENTIAL UNDERAPPRECIATED 34 (2012).

the eleventh century.³ The interesting issue lies in the rapid acceleration by China into international and domestic legal systems within the African continent over the last twenty years.⁴

Scholars debate the effects of this association on African economic and legal systems. Some suggest that Chinese intentions are ultimately aimed at extracting the wealth of natural resources from Africa as efficiently as possible, with little concern for the prosperity or welfare of the African people.⁵ On the other hand, some scholars suggest that China's incursions into the inner regions of the continent, though driven by the desire for economic growth, are not as nefarious as they appear, nor are they adverse to the well-being of the African people.⁶ Regardless of its motives, China's rising influence affects international law and domestic African law. Much ink has been spilled over China's increased interaction with Africa, but China is not alone in its attempts to connect with the continent.

President George W. Bush created the United States Africa Command (AFRICOM) in 2007.⁷ In a posture statement by General Carter Ham⁸ on February 29, 2012, to the House Armed Services Committee, General Ham described the mission of AFRICOM⁹ as follows:

Africa Command protects and defends the national security interests of the United States by strengthening the defense capabilities of African states and regional

³ Robert I. Rotberg, *Preface* to CHINA INTO AFRICA, TRADE AID, AND INFLUENCE, at vii (Robert I. Rotberg ed., 2008).

⁴ See CHRIS ALDEN, CHINA IN AFRICA 12 (2007).

⁵ Firoze Manji, *Preface* to AFRICAN PERSPECTIVES ON CHINA IN AFRICA, at vii (Firoze Manji & Stephen Marks eds., 2007).

⁶ DEBORAH BRAUTIGAM, THE DRAGON'S GIFT, THE REAL STORY OF CHINA IN AFRICA 21 (2009). "From the evidence, China's aid does *not* seem to be particularly 'toxic'; the Chinese do not seem to make governance worse, and although it is probably believed that aid comes with "no strings attached," economic engagement usually *does* come with conditions, some of it even (indirectly) governance-related." *Id.* at 21.

⁷ David J. Francis, *Introduction* to US STRATEGY IN AFRICA: AFRICOM, TERRORISM, AND SECURITY CHALLENGES 3 (David J. Francis ed., 2010).

⁸ *United States Africa Command (AFRICOM) Commander's Biography*, AFRICOM.MIL (Nov. 21, 2012, 12:07 PM), <http://www.africom.mil/GenCarterHam.asp>. General Carter Ham, U.S. Army, assumed command of AFRICOM on March 9, 2011. *Id.*

⁹ *United States Africa Command (AFRICOM) Commander's Biography*, AFRICOM.MIL (May 29, 2014, 2:40 PM), <http://www.africom.mil/about-the-command/leadership/commander>. General David Rodriguez assumed command of AFRICOM on April 15, 2014.

organizations and, when directed, conducts military operations, in order to deter and defeat transnational threats and to provide a security environment conducive to good governance and development.¹⁰

Not unlike China's efforts at piercing the veil of the African continent, the United States' establishment of AFRICOM has been largely met with hostility and disdain by the global community.¹¹ Some see the establishment of AFRICOM as an extension of alleged U.S. colonialism,¹² while others view its creation as a riposte to China's increased presence in the region.¹³ The United States has staunchly maintained its position that AFRICOM is about promoting U.S. security interest through stability¹⁴ and good local governance¹⁵ in Africa, and not about staking a claim. In fact, the headquarters for AFRICOM is not located on the African continent; rather, it is located in Stuttgart, Germany.¹⁶

Despite intentions, what exists is a focused attempt by two global superpowers to increasingly engage with the nations of this ancient continent, which remains largely underdeveloped. Objectively, China's long and consistent history of engagement with Africa has proven successful in forging economic¹⁷ and legal relationships.¹⁸ With the

¹⁰ Statement of General Carter Ham to the US House Armed Services Committee, AFRICOM.MIL (Feb. 29, 2012), <http://www.africom.mil/fetchBinary.asp?pdfID=20120301102747> [hereinafter General Ham's Statement].

¹¹ See Francis, *supra* note 7, at 3.

¹² See *id.* at 5.

¹³ *Id.* at 6.

¹⁴ *Id.* at 4. "To be clear, AFRICOM's core objectives and mission statement are at the heart of critical challenges faced by post-Cold War Africa around the issues of peace, stability, security, development and governance."

¹⁵ See *id.* at 16.

¹⁶ *Id.* at 7. AFRICOM is co-located with United States European Command (EUCOM) in Stuttgart, Germany.

¹⁷ See also Patrick J. Kennan, *Curse or Cure—China, Africa, and the Effects of Unconditional Wealth*, 27 BERKELEY J. INT'L L. 84, 85 (2009). Professor Kennan's article provides much insight into China's historic and increasing role in African economies. Excellent perspective is also provided on China's economic relationships with Angola, Sudan, Zambia, and Zimbabwe. This article expands upon Professor Keenan's work on labor and governance in Zambia and Zimbabwe by discussing various Sino-African legal issues in the domestic and international forums and comparing them to AFRICOM's strategic objectives of regional security and good governance in Africa.

¹⁸ Hong Yonghong, *Trade, Investment and Legal Cooperation Between China and Africa*, in CHINESE AND AFRICAN PERSPECTIVES ON CHINA IN AFRICA 88 (Axel Harneit-Sievers et al. eds., 2010).

relatively recent establishment of AFRICOM, the United States appears to be racing to catch up. Sun Tzu famously wrote that “[g]enerally, he who occupies the field of battle first and awaits the enemy is at ease; he who comes later to the scene and rushes into the fight is weary.”¹⁹

China’s growing influence in Africa and its resulting effects on international law and domestic African legal systems is ultimately detrimental to AFRICOM’s strategic objectives of promoting regional security and good governance on the continent. This article undergirds this assertion by first analyzing the effect of Chinese influence on international law in Africa by examining China’s emerging role as a protectorate to African nations in which it has a vested economic interest, through its exercise of abstentions on the United Nations Security Council (UNSC).²⁰ Specifically, this article examines China’s approach to the Darfur crisis in Sudan, along with China’s abstention to UNSC Resolution 1973,²¹ which directed a no-fly zone in Libya. Next, Chinese effects on domestic African legal systems are explored by examining China’s increased engagement with African legal institutions through the Forums on China and Africa Cooperation (FOCAC), along with their influence on labor law and national governance in Zambia and Zimbabwe. Finally, the article contends that the aforementioned Chinese legal influences work against AFRICOM’s strategic objectives of regional stability and good governance in Africa. Through this article, judge advocates practicing international and operational law in Asia and Africa will gain a better understanding of the legal effects of China’s increasing role in Africa, and thus will more effectively advise commanders and conduct planning in these areas of operation.

II. Effects of China’s Influence on International Law in Africa

*I would go so far as to say that China has ‘invented’ non-participation [on the UNSC].*²²

¹⁹ SUN TZU, THE ART OF WAR 96 (Samuel B. Griffith trans., Oxford University Press 2d ed. 1971) (1963).

²⁰ U.N. Charter art. 23, para. 1.

²¹ S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

²² SAMUEL S. KIM, CHINA, THE UNITED NATIONS, AND WORLD ORDER 290 (1979) (citing a UN envoy, “[n]ow it [the use of abstentions] is becoming a common practice not only in the [Security] Council but also in the [General] Assembly. Clearly, this is a major Chinese contribution to the voting procedures of the UN organs.”).

The United Nations (UN) Charter does not give explicit authority for UNSC members to abstain from voting on resolutions, other than in Article 27, which allows for abstention only due to a conflict of interest.²³ In fact, commentary on the formation of the UN Charter suggests that the permanent members²⁴ of the UNSC would otherwise be required to affirmatively vote on all resolutions, unless they were a direct party to a conflict at issue.²⁵ The consistent and historical use of abstentions by China has developed into its own form of *stare decisis* in international law as applied to UNSC resolutions.²⁶ China has become the master of using abstentions, rather than vetoes, on the UNSC, especially on resolutions pertaining to the use of force.²⁷ Nowhere is this practice more evident in the realm of international law than in China's abstentions to UNSC resolutions as they apply to the nations of Africa.

China does not want to use its veto power in this case for fear of rocking the boat. China's sole philosophy is self-interest, and it knows it can abstain, *counting on the fact that the resolution will still pass* and that whomever [sic] emerges from the power vacuum or seizes power in foreign countries will want strong relations with China.²⁸

The remainder of this section examines the use of abstentions by China on the UNSC in conflicts arising in Sudan and Libya. It suggests that China's consistent use of abstentions is hindering the timely use of force by the UNSC in African nations where China has a vested

²³ U.N. Charter art. 27, para. 3 (“[A] party to a dispute shall abstain from voting.”).

²⁴ *Id.* art. 23, para 1. China, France, Russia, the United Kingdom, and the United States are the accepted permanent members of the UNSC. *See id.*

²⁵ *See* DAVID L. BOSCO, FIVE TO RULE THEM ALL, THE UN SECURITY COUNCIL AND THE MAKING OF THE MODERN WORLD 47 (2009).

²⁶ Yitzhak Schichor, *China's Voting Behavior in the UN Security Council*, THE JAMESTOWN FOUNDATION (May 9, 2007, 11: 03 AM), http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=3976/ (“Abstaining as a Strategy: Beijing's justifications for its occasional abstentions that raised eyebrows at the beginning have been remarkably consistent. They include draft resolutions perceived by Beijing as interfering in the domestic affairs of countries or undermining their sovereignty.”).

²⁷ *Id.* (“Put differently, the Chinese advocated enforcement measures under Chapter VII of the UN Charter only when applied to colonial and apartheid questions. In those cases, Beijing was willing to call for arms embargoes and economic sanctions. Nonetheless, the Chinese have consistently opposed the use of force.”).

²⁸ Alex Kravitz, *Five Abstentions: International Reluctance in Actually Desperate Situations*, BERKELEY POL. REV. (Mar. 18, 2011, 10:12 PM), <http://bpr.berkeley.edu/2011/03/five-abstentions-international-reluctance-in-actually-desperate-situations/> (emphasis added).

economic interest, and that this effect on international law is to the detriment of African citizens.

A. Sudan

*Then there's Sudan's Omar Hassan Ahmed al-Bashir. The international community accused him of genocide, but Beijing greeted him with open arms.*²⁹

Darfur is a region in western Sudan, an African nation lying along the Red Sea in northeast Africa.³⁰ Eighty separate ethnic groups compose the demographics of Darfur.³¹ This diverse population of ethnicity generally falls within two larger groups; they are either nomadic Arabs or agricultural Africans.³² Drought during the 1970s led to conflict between the Arabs and Africans in the Darfur region over sources of water.

The flashpoint in the conflict arose when Islamic sharia law was imposed over the entirety of Sudan by the central government in Khartoum, even over the non-Muslim Africans in Darfur.³³ In protest, the non-Muslim Africans formed an armed resistance called the Sudan People's Liberation Movement (SPLM), while the Muslim Arabs formed the Janjaweed militia.³⁴ What ultimately followed has been labeled by many as the genocide of Africans in Darfur at the hands of the Janjaweed.³⁵ Early in the crisis, international pressure began to mount on the UNSC to intervene. China would use its seat on the UNSC to thwart efforts at intervention under international law by the United Nations.

²⁹ MICHEL & BEURET *supra* note 1, at 18. Beijing is the capital of China.

³⁰ See He Wenping, *The Darfur Issue: A New Test for China's Africa Policy*, in THE RISE OF CHINA AND INDIA IN AFRICA 156 (Fantu Cheru & Cyril Obi eds., 2010).

³¹ *Id.*

³² *Id.* The nomadic Arabs are located generally in northern Darfur, near the Sudanese border with Libya, while the agricultural Africans occupy central and south Darfur near the Sudanese border with Chad. *Id.*

³³ *Id.* Khartoum is the capitol of Sudan.

³⁴ *Id.* See also ALDEN, *supra* note 4, at 61–63.

³⁵ Wenping, *supra* note 30, at 156.

China's foreign policy is best described as "promoting China's economic development while maintaining political and social stability."³⁶ In a post-Cold War world characterized by regional conflict and globalization, this is a fine line for the Chinese to walk. Compare China's permanent position on the UNSC, which can authorize the use of force under international law, with its domestic "Five Principles of Peaceful Coexistence," which direct non-interference in foreign internal affairs,³⁷ and the dichotomy is evident.

In the midst of this incongruous foreign policy, China has aggressively pursued natural resources in Africa since the mid 1990s.³⁸ Before the Sudanese rich oil reserves were tapped, the Chinese initiated economic relations with Sudan through massive arms sales.³⁹ In the years leading up to the crisis in Darfur, China gulped eighty percent of Sudan's crude oil exports, while Chinese goods accounted for twenty percent of Sudan's economic imports.⁴⁰ As pressure mounted on the UNSC for action in Darfur, China found itself balancing three separate agendas: (1) the protection of its economic interests in Sudan; (2) its internal policy of non-interference with sovereign nations, and (3) its responsibility to enforce the peace as a permanent member of the UNSC.

Early in the crisis, the UNSC passed five significant resolutions addressing the situation in Darfur; China abstained from each vote.⁴¹ China reached beyond mere abstention and used its position on the UNSC to weaken the resolutions that were passed.⁴² Specifically, China vowed to veto any language threatening economic sanctions under Article 41,⁴³ likely fearing adverse economic effects on its own oil importations from Sudan.⁴⁴ In 2006, China abstained from UNSC Resolution 1706, which called for a deployment of UN peacekeepers to

³⁶ IAN TAYLOR, CHINA'S NEW ROLE IN AFRICA 3 (2009).

³⁷ *Id.* at 14.

³⁸ ALDEN, *supra* note 4, at 3.

³⁹ Sharath Srinivasan, *A Marriage Less Convenient: China, Sudan and Darfur*, in CROUCHING TIGER, HIDDEN DRAGON? AFRICA IN CHINA 60 (Kweku Ampiah & Sanusha Naidu eds., 2008).

⁴⁰ *Id.*

⁴¹ Schichor, *supra* note 26 (listing UNSC Resolutions 1556, 1564, 1591, 1593 and 1672).

⁴² ANTHONY LAKE ET AL., MORE THAN HUMANITARIANISM: A STRATEGIC APPROACH TOWARD AFRICA 44 (2006).

⁴³ U.N. Charter art. 41. "These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication." *Id.*

⁴⁴ Srinivasan, *supra* note 39, at 67.

Darfur.⁴⁵ Sudan defiantly rejected the resolution (which passed notwithstanding China's abstention) and maintained that it would treat the presence of any UN peacekeeping mission as an invasion under the UN Charter.⁴⁶ The lack of unanimity by the permanent members of the UNSC (especially China) was viewed by many as the reason for Sudan's defiance to an otherwise legal and binding UNSC resolution.⁴⁷ China also abstained from UNSC Resolution 1593,⁴⁸ which referred the Darfur atrocity to the International Criminal Court for violations of human rights.⁴⁹

Interestingly, China finally acquiesced to a peacekeeping mission in Darfur, but only after international threats of boycotting the 2008 Summer Olympics in Beijing, a boycott that would have had devastating effects on China's profit potential.⁵⁰ Tragically, the World Health Organization estimates that 70,000 Africans died during the crisis in Darfur.⁵¹

The prompt execution of international law was inhibited by China's use of the abstention on the UNSC, albeit not with the use of an actual veto as contemplated by Article 27 of the UN Charter.⁵² This creates an alarming condition for Africans who might benefit from future UNSC resolutions.⁵³ China's regular abstentions as a permanent member of the

⁴⁵ *Id.* at 70.

⁴⁶ *Id.*

⁴⁷ *Id.* "Khartoum's increasingly recalcitrant position and disregard for the international consensus that UN peacekeeping was required in Darfur led to fingers being pointed at the countries that had abstained from voting on Resolution 1706, above all China." *Id.*

⁴⁸ S.C. Res. 1593, U.N. Doc. S/RES/1593 (Mar. 31, 2005). The United States also abstained.

⁴⁹ See Srinivasan, *supra* note 39, at 68.

⁵⁰ See MICHEL & BEURET *supra* note 1, at 156-57.

⁵¹ Wenping, *supra* note 30, at 156.

⁵² U.N. Charter art. 27, para. 3.

⁵³ *But see* S.C. Res. 2132, U.N. Doc. S/RES/2132 (Dec. 24, 2013). China voted for UNSC Resolutions 2132 as applied to stability in South Sudan. South Sudan's economy is based almost entirely (98%) on its oil reserves, and the pipeline for export run through Sudan. The majority of Sudan's oil exports go to China. The affirmative vote by China for this resolution can be distinguished from other abstentions as that unrest in South Sudan would have adverse effects on oil production. China takes 67% of South Sudan's oil exports; Yuwen Wu, *China's Oil Fears over South Sudan Fighting*, BBC NEWS AFRICA (Jan. 8, 2014, 11:02AM), <http://www.bbc.com/news/world-africa-25654155>; S.C. Res. 2149, U.N. Doc. S/RES/2149 (Apr. 10, 2014). China also voted for UNSC Resolution 2149 which focused on increased stability in the Central African Republic (CAR). Not surprisingly, China is CAR's second largest export partner, receiving 27.9% of CAR's commodity exports which include diamonds and timber; CIA WORLD

UNSC appear to water down any resolution passed in the eyes of the receiving party. Unfortunately, China's abstention in Sudan is only one example of a practice that spreads across the African continent.

B. Libya

*We are coming tonight, and there will be no mercy.*⁵⁴

These dire words were spoken by Libyan leader Muammar Gaddafi to rebel forces in Libya. In response to the resulting violence, the UNSC passed Resolution 1973, which implemented a no-fly zone in Libya in an attempt to halt the airstrikes by the Gaddafi regime on Libyan civilian-rebels.⁵⁵ China, once again, abstained from this resolution.⁵⁶

As in Sudan, China has vested economic interests in Libya,⁵⁷ a nation located in northern Africa, along the Mediterranean Sea. In 2011, after forty-one years under Gaddafi's rule, Libyan rebels formed an armed resistance to oust the controversial leader.⁵⁸ After a bloody conflict arose between government forces loyal to Gaddafi and the rebels, international pressure mounted on the UNSC to act decisively to end the violence.⁵⁹ China not only abstained from UNSC Resolution 1973, it also undermined the resolution's legitimacy by openly criticizing its passage in the international media.⁶⁰ Once again, China's economic

FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ct.html> (last visited June 2, 2014).

⁵⁴ Ishaan Tharoor, *Gaddafi Warns Benghazi Rebels: We Are Coming, And There'll Be No Mercy*, TIME (Mar. 17, 2011), <http://world.time.com/2011/03/17/gaddafi-warns-benghazi-rebel-city-we-are-coming-and-there'll-be-no-mercy/>.

⁵⁵ S.C. Res. 1973, *supra* note 21.

⁵⁶ *UN Vote Approves Libya No-Fly Zone; China, Russia Abstain*, INT'L BUS. TIMES, Mar. 17, 2011, <http://www.ibtimes.com/un-vote-approves-libya-no-fly-zone-china-russia-abstain-276107>.

⁵⁷ Keith B. Richburg, *China, after Abstaining in U.N. Vote, Criticizes Airstrikes on Gaddafi Forces*, WASH. POST, Mar. 21, 2011, http://www.washingtonpost.com/world/china-after-abstaining-in-un-vote-criticizes-airstrikes-on-gaddafi-forces/2011/03/21/ABwL4M7_story.html. "Energy-hungry China imports about half of its oil from the Middle East and North Africa, with about three percent of that coming from Libya. Before the current unrest began, there were some 36,000 Chinese citizens in Libya working on about fifty projects. *Id.*

⁵⁸ Tharoor, *supra* note 54.

⁵⁹ *See id.*

⁶⁰ Richburg, *supra* note 57. "The military attacks on Libya are, following on from the Afghan and Iraq wars, the third time that some countries have launched armed action

motives ran afoul of its responsibilities on the UNSC to promote international law and order.

A pattern has emerged in international law through China's consistent application of abstentions on UNSC resolutions pertaining to Africa. Unfortunately, China's rising influence in Africa transcends effects on international law; it is affecting domestic African legal systems as well.

III. Effects of China's Influence in Africa on African Domestic Legal Systems

A long history of legal cooperation exists between China and the nations of Africa.⁶¹ The FOCAC have created a new synergy around which China is increasing its influence in Africa. This section first broadly explains the intent behind the FOCACs, then describes the development of FOCACs, focusing solely on legal cooperation and engagement between China and the countries of Africa. Next, the legal pressure exerted by China into the domestic laws of African nations will be examined by discussing labor law and the influence on local governance in the developing nations of Zambia and Zimbabwe. China is increasing its influence in domestic legal systems in Africa, but not in a manner that is constructive for Africans.

A. Forums on China-Africa Cooperation

China catapulted a plan to increase engagement with Africa into action by planning and holding the first FOCAC⁶² in Beijing in 2000.⁶³ To date, there have been five triennial FOCACs⁶⁴ that entail a series of conferences with key political leaders, businessmen, and lawyers from

against sovereign countries," said a commentary in the Communist Party's main newspaper." *Id.*

⁶¹ Yonghong, *supra* note 17, at 85. The legal ties between China and Africa began as early as 1874 in Ghana.

⁶² ALDEN, *supra* note 4, at 2. Forum of China and Africa Cooperation (FOCACs) are also colloquially referred to as China-Africa Summits. *Id.*

⁶³ BROWN, *supra* note 2, at 34.

⁶⁴ *Id.* "The second, third, fourth, and fifth triennial FOCACs were held in 2003, 2006, 2009, and 2012 respectively, in Addis Ababa (Ethiopia), Beijing, Sharm El Sheikh (Egypt), and again in Beijing." *Id.*

China and African nations. The FOCACs are stylized by the Chinese government, and interpreted by some scholars as attempts to structure meaningful and mutual support between China and the nations of Africa.⁶⁵ Others believe that China is using its economic prowess to create unbalanced trade agreements in Africa that flood African economies with cheap goods, thereby increasing unemployment for local Africans, while bolstering profits for Chinese companies.⁶⁶

The FOCACs have generated a number of sub-conferences, targeted at ways for China to organize and focus efforts at increasing its economic, political, and legal influence in Africa. Using the larger FOCACs as a method of establishing dialogue, the Chinese are pushing economic agendas forward through encouraging legal cooperation between China and many African states through FOCAC-Legal Forums.

FOCAC-Legal Forums

The FOCAC-Legal Forums are specifically designed to increase Chinese and African legal cooperation.⁶⁷ To date, there have been two FOCAC-Legal Forums. The first was held in Cairo, Egypt, in December 2009.⁶⁸ The forum brought together over eighty lawyers, judges and government officials from China and twenty African countries.⁶⁹ The first FOCAC-Legal Forum focused on four themes: (1) the role of law in China-Africa engagement; (2) the introduction of legal systems; (3) the effects of legal systems on Chinese-African economic relations; and (4) methods for economic dispute resolutions between China and African countries.⁷⁰ These seemingly benign areas of legal focus are indicative of China's attempt at shaping the legal battlefield in Africa toward domestic legal systems that are ultimately more advantageous to China's

⁶⁵ BRAUTIGAM, *supra* note 6, at 241. The author believes Chinese projects stemming from the FOCACs "married aid to China's global business ambitions." *Id.*

⁶⁶ See Lloyd Sachikonye, *Crouching Tiger, Hidden Agenda? Zimbabwe—China Relations*, in *CROUCHING TIGER, HIDDEN DRAGON? AFRICA IN CHINA*, *supra* note 38, at 124–37.

⁶⁷ *The First "Forum on China-Africa Cooperation- Legal Forum*, FORUM ON CHINA-AFRICA COOPERATION (Dec. 4, 2012, 6:04 PM), <http://www.focac.org/eng/dsjbjzjhy/hxxd/t648400.htm> [hereinafter *First FOCAC*].

⁶⁸ *Id.*

⁶⁹ *The Invitation Letter of the Second "Forum on China-Africa Cooperation- Legal Forum*, FORUM ON CHINA-AFRICA COOPERATION (Dec. 4, 2012, 6:11 PM) <http://www.focac.org/eng/dsjbjzjhy/hxxd/t695254.htm>.

⁷⁰ *First FOCAC*, *supra* note 67.

economic interests.

The Second FOCAC-Legal Forum was held in Beijing in September 2010.⁷¹ Carrying a theme translated as “grasp the opportunities, strengthen the legal cooperation, and push forward the overall development of the Chinese-Africa new-type [sic] strategic partnership,”⁷² the conference pushed the envelope on Sino-African legal cooperation. The scope of this conference also appears to exceed that of the first, suggesting a trend toward increasing legal cooperation between African states and China. Topics of this forum included: (1) the effects of China-African cooperation on emerging international law; (2) the rule of law in China and African countries; (3) laws affecting China-Africa economic collaboration; and (4) judicial cooperation in criminal cases about foreign employment and labor.⁷³

Some Africans have embraced the energized effort at legal partnership with China and encouraged future cooperation.⁷⁴ Regardless of the praise received by the Chinese by some Africans, it is clear that others are viewing Chinese engagement with domestic legal systems with increasing disdain and skepticism, as seen in Zambia and Zimbabwe.

B. Zambia

*Zambia is becoming a province, make that a district of China.*⁷⁵

Zambia is a land-locked nation in south-central Africa. Sino-Zambian engagement began in the 1960s as Chinese-backed liberation groups struggled for control of the nation from Great Britain.⁷⁶ After the liberation groups gained control of Zambia, China backed a project to

⁷¹ *The Second FOCAC-Legal Forum Concluding Report*, FORUM ON CHINA-AFRICA COOPERATION (Dec. 5, 2012, 3:11 PM), <http://www.focac.org/eng/zxxx/t765099.htm>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* Mr. Djaffar Mohamed Ahmed Mansoib, minister of Justice of Comoros, “confirmed the positive role of China played in aiding to Africa, and suggested that [in] the process of searching for peace, safety and development, Africa should regard the legal cooperation [with China] as a core action.”

⁷⁵ MICHEL & BEURET *supra* note 1, at 233 (emphasis added). Quote by Zambian Presidential opposition leader, Michael Sata.

⁷⁶ Muna Ndulo, *Chinese Investments in Africa: A Case Study of Zambia*, in CROUCHING TIGER, HIDDEN DRAGON? AFRICA IN CHINA, *supra* note 38, at 139.

build the Tam-Zam railway to the African nation of Tanzania, located along the Indian Ocean.⁷⁷ The railway would facilitate trade and commerce for a nation that was struggling economically and had no access to the sea to foster trade.⁷⁸ Since the 1970s, China has worked to solidify its partnership with Zambia. That relationship flourished in the 1990s when China began investing in the mining industry in Chambishi.⁷⁹ Chambishi is located in the heart of Zambia's Copper Belt, a region characterized by rich deposits of copper ore.⁸⁰ But as Chinese investments in the Chambishi region grew, so did the grievances from Zambian workers who faced increasingly dangerous labor conditions from Chinese companies that failed to adhere to Zambian labor laws.

1. *Zambian Labor Law and Chinese Industry*

One Human Rights Watch report from 2011 quotes an African worker as saying, "Sometimes when you find yourself in a dangerous position, they tell you to go ahead with the work. They [Chinese management] just consider production, not safety. If someone dies, he can be replaced tomorrow. And if you report the problem, you lose your job."⁸¹ Zambian labor laws are objectively admirable; the problem lies in compliance by Chinese industry and enforcement by a government increasingly deferential to Beijing's bidding.⁸² The Minimum Wages and Conditions of Employment Act⁸³ along with the Mines and Mineral Act⁸⁴ are Zambian laws that provide baseline protection for the health and welfare of mine workers. Chinese companies have not consistently followed these laws, and the Zambian government has not enforced their compliance. In April 2005, a Chinese-operated plant in the Chambishi

⁷⁷ See MICHEL & BEURET *supra* note 1, at 234.

⁷⁸ *Id.*

⁷⁹ Kennan, *supra* note 17, at 84.

⁸⁰ Martyn J. Davies, *Special Economic Zones: China's Developmental Model Comes to Africa*, in CHINA INTO AFRICA, TRADE AID, AND INFLUENCE 143, 144 (Robert I. Rotberg ed., 2008).

⁸¹ *Zambia: Workers Detail Abuse in Chine-Owned Mines*, HUM. RTS. WATCH (Nov. 3, 2011), <http://www.hrw.org/fr/node/102667>.

⁸² See MICHEL & BEURET *supra* note 1, at 11. "The Zambian government, like its police force, has given its full support to the Chinese and their business interests, even as its people's hostility increases." *Id.*

⁸³ Minimum Wages and Conditions of Employment Act, Cap. 276, 15 LAWS OF REP. OF ZAMBIA (2012).

⁸⁴ Mines and Mineral Act, Cap. 213, 31 LAWS OF REP. OF ZAMBIA (1995).

region exploded and killed fifty-two Zambian laborers.⁸⁵ Two months later, a Chinese manager shot five workers who were protesting their wages.⁸⁶ These events exposed the unsafe labor practices in Zambia at the hands of Chinese employers and would unite rising discontent by Zambian laborers.

China's thirst for resources is affecting Zambian law through its non-enforcement by Zambian government officials desiring to placate Chinese business interests. Human rights scholars note that "the treatment of workers of one Chinese-run copper mining operation in Zambia, where unsafe and inhumane working conditions have been reported, is better framed as the non-application of domestic labor laws."⁸⁷

As anti-Chinese sentiment grew in Zambia in response to labor conditions in 2005, so did the message of Michael Sata, the opponent to incumbent Zambian President Levy Mwanawasa. With millions of dollars invested in Zambia, would the Chinese remain quietly on the sidelines and continue their self-professed *laissez faire*⁸⁸ approach to governance for the 2006 election?

2. Bolstering Levy Mwanawasa

In the wake of the deaths at Chambishi, Michael Sata⁸⁹ ran against incumbent President Levy Mwanawasa on an anti-Chinese platform and a "failure of the Mwanawasa government to uphold either Zambian law or the interests of the people."⁹⁰ President Levy Mwanawasa ran on a pro-Chinese platform, ultimately chastising Zambians for being critical

⁸⁵ MICHEL & BEURET, *supra* note 1, at 236–37. The Bgrimm Explosives Plant only paid \$9,750 to the family of each dead worker. *Id.* at 237.

⁸⁶ ALDEN, *supra* note 4, at 74.

⁸⁷ Stephen Brown & Chandra Sriram, *China's Role in Human Rights Abuses in Africa: Clarifying Issues of Culpability*, in CHINA INTO AFRICA, TRADE AID, AND INFLUENCE 252 (Robert I. Rotberg ed., 2008).

⁸⁸ ALDEN, *supra* note 4, at 14. The Chinese Five Principles of Peaceful Coexistence direct non-interference in foreign internal affairs, yet it appears that China is working to affect legal and political systems within Zambia and Zimbabwe.

⁸⁹ See Michael Sata: Zambia's 'King Cobra' Finally Strikes, BBC NEWS AFRICA (Sept. 23, 2011, 8:24AM), <http://www.bbc.co.uk/news/world-africa-15034694>. Michael Sata eventually won election to the Zambian Presidency in 2011 on his fourth attempt. *Id.*

⁹⁰ ALDEN, *supra* note 4, at 74.

of the Chinese, given their immense investments in Zambia.⁹¹ China, in defiance of its self-purported position on non-engagement with local governance,⁹² threatened to withhold further development aid until the outcome of the election.⁹³ Allegations of interference by the Chinese government in the election are prevalent.⁹⁴ The Chinese-backed incumbent Levy Mwanawasa won the 2006 Zambian presidential election with only forty-three percent of the vote,⁹⁵ even though polls suggested that opposition leader Michael Sata was leading the race.⁹⁶ Unfortunately, Chinese interference with labor law and local governance is not an isolated incident in Africa, as seen in Zambia's neighbor to the south, Zimbabwe.

C. Zimbabwe

*We have turned east where the sun rises, and given our backs to the west, where the sun sets.*⁹⁷

Zimbabwe, like Zambia, is a landlocked nation in southern Africa with a turbulent political history. Formerly known as Rhodesia, the Chinese began backing the liberation efforts of the Zimbabwe African National Union Patriotic Front (ZANU-PF) in the 1960s.⁹⁸ After a

⁹¹ BRAUTIGAM, *supra* note 6, at 6. "Zambian President Levy Mwanawasa countered: 'the Chinese government has brought a lot of development to this country and these are the people you are demonstrating against?'" *Id.*

⁹² TAYLOR, *supra* note 36, at 14. Discussing China's Five Principles of Peaceful Coexistence, which includes noninterference in internal affairs. *Id.*

⁹³ Kennan, *supra* note 17, at 104.

⁹⁴ Howard French, *In Africa, an Election Reveals Skepticism of Chinese Involvement*, THE ATLANTIC (Sept. 29, 2011, 7: 00 AM), <http://www.theatlantic.com/international/archive/2011/09/in-africa-an-election-reveals-skepticism-of-chinese-involvement/245832/>.

⁹⁵ *The Impact of the Chinese Presence in Africa*, AFRICA PRACTICE (Apr. 26, 2007), http://www.davidandassociates.co.uk/davidandblog/newwork/China_in_Africa_5.pdf.

⁹⁶ *Id.* at 19.

⁹⁷ John B. Karumbidza, *Win-Win Economic Cooperation: Can China Save Zimbabwe's Economy?*, in AFRICAN PERSPECTIVES ON CHINA IN AFRICA 87 (Firoze Manji & Stephen Marks eds., 2007). President Robert Mugabe's remark in May 2005, on the 25th anniversary of Zimbabwean independence. He suggests that Zimbabwe plans to primarily engage with China, rather than the United States on all future matters of state. *Id.*

⁹⁸ Sachikonye, *supra* note 66, at 124–26. Two liberation groups emerged during this period in Zimbabwe. The ZANU-PF and the Zimbabwe African People's Union (ZAPU). The Soviet Union backed the ZAPU. The ZANU-PF emerged as the dominant

protracted war that persisted throughout the 1970s against the mostly white Rhodesian government, the ZANU-PF emerged victorious and became the dominant political party in Zimbabwe in 1980.⁹⁹ Robert Mugabe was ultimately elected as president.¹⁰⁰ Under Mugabe's iron rule, Zimbabwe has spiraled into a nation characterized by authoritarianism and isolation,¹⁰¹ while China has emerged as Zimbabwe's second-largest economic partner.¹⁰² This section explores the non-adherence of Zimbabwean labor law by Chinese industry, and details China's support of Robert Mugabe to ultimately maintain an economic status quo to buttress China's economic interests in Zimbabwe.

1. Zimbabwean Labor Law and Chinese Industry

China has emerged as Zimbabwe's second-largest trading partner, but there is unease among Africans about the mutual benefits of this economic relationship.¹⁰³ The thrust of Chinese economic interest in Zimbabwe centers on natural resources, and their efficient removal from the country.¹⁰⁴ China is the world's largest producer and consumer of steel; and Chinese mining in Zimbabwe is thriving.¹⁰⁵ Local infrastructure development by Chinese companies also abounds in Zimbabwe.¹⁰⁶ At first glance, this robust economic investment by the Chinese into a landlocked, developing nation in south-central Africa would appear to be a good thing for the Zimbabwean economy, and ultimately benefit the Zimbabwean laborer. However, African leaders and many scholars are concerned about the influx of cheaper Chinese goods that have forced local businesses to close, and the abuse of laborers at the hands of Chinese employers is on the rise.¹⁰⁷

political party in 1980, although the ZAPU was invited to participate in the new government as a minority party. *Id.*

⁹⁹ Brown & Sriram, *supra* note 87, at 260.

¹⁰⁰ *Id.*

¹⁰¹ Sachikonye, *supra* note 66, at 126.

¹⁰² *Id.* at 127.

¹⁰³ *Id.*

¹⁰⁴ *Id.* "Chinese investments have largely been concentrated in extractive sectors, such as mining, infrastructure and utilities." *Id.*

¹⁰⁵ *Id.* at 128.

¹⁰⁶ *Id.* at 129–30. The Chinese have resourced railway, communications, and utilities in Zimbabwe.

¹⁰⁷ Karumbidza, *supra* note 97, at 101.

The Zimbabwe Labour Relations Act¹⁰⁸ provides baseline protections for Zimbabwean laborers. In addition to ensuring safety in the workplace, the Labour Relations Act also allows for trade unions to form to promote workers' rights.¹⁰⁹ Unfortunately, Mugabe's regime seems more concerned about fostering economic development and harmony with its deep-pocketed Chinese ally than protecting its citizens from unfair labor practice.¹¹⁰

An illustrative example of this idea is found in the construction of Zimbabwe's National Defense College. This college was built by Chinese firms at a cost of \$98 million.¹¹¹ The debt is to be repaid by allowing the Chinese to extract diamonds from the Marange diamond fields over the next thirteen years.¹¹² Zimbabwean laborers employed by the Chinese for this construction and other projects across Zimbabwe are habitually underpaid, over-worked, denied proper safety equipment, and summarily fired upon completion of the project.¹¹³ Nevertheless, "Chinese companies seem to have a kind of diplomatic protection from the government that allows them to violate any labour law."¹¹⁴ The Labour Court in Zimbabwe is overwhelmed with complaints by laborers against foreign companies.¹¹⁵ The Chinese have not only defied local labor law, they have worked to foster its non-enforcement through bolstering the regime of its most vocal supporter, Robert Mugabe, the President of Zimbabwe.

¹⁰⁸ Zimbabwe Labour Relations Act (Acts No. 16 of 1985 as amended through Act No. 20 of 1994) (Chap. 28:01) (Zimb.).

¹⁰⁹ *Id.*

¹¹⁰ See Karumbidza, *supra* note 97, at 92. The author describes Mugabe as viewing "democracy and development as mutually exclusive." *Id.*

¹¹¹ *Chinese Companies Free to Exploit Workers in Zimbabwe*, EQUAL TIMES (Sept. 22, 2012), <http://www.equaltimes.org/in-depth/chinese-companies-free-to-exploit-workers-in-zimbabwe-2> [hereinafter *Chinese Exploit Workers*].

¹¹² *Id.* Interestingly, the Chinese have not paid any tax to the Zimbabwean treasury for its production in Marange, an area in Zambia characterized for its diamond resources. *See id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Lincoln Towindo. *Zimbabwean Workers, Foreign Employers in Labour Wars*, SUNDAY MAIL (Apr. 7, 2012, 4:29 PM), http://www.sundaymail.co.zw/index.php?option=com_content&view=article&id=28007.

2. *Bolstering Robert Mugabe*

The Chinese have backed the ZANU-PF, Robert Mugabe's political party, for decades.¹¹⁶ Again, one can see empirical evidence that suggests China has jettisoned its purported position of non-interference with foreign state affairs in exchange for economic gain, and furthered the political status quo in Zimbabwe through supporting Mugabe's regime.¹¹⁷ "Without China, there is almost no way that Zimbabwe's president [Robert Mugabe] could have remained in power."¹¹⁸ In addition, Mugabe's pragmatic approach to economics sits well with the Chinese model of placing national fiscal concerns above all others.¹¹⁹

China's support of Mugabe has not collectively benefited the citizens of Zimbabwe.¹²⁰ In fact, such support runs afoul of promoting normative models of good local governance. A troubling example of a quid pro quo relationship has developed between Mugabe and the Chinese. In exchange for political support, Mugabe has used anti-Western rhetoric to give the Chinese an ever-growing share hold in the Zimbabwean economy.¹²¹ Such share holds include national railways and airlines, electrical supply, and communications.¹²²

Thus, China's rising influence in Africa is affecting international law and domestic African legal systems. The final section of this article compares these legal effects with AFRICOM's strategic objectives of regional security and good local governance, and concludes that China's legal influence in Africa is ultimately antagonistic for AFRICOM.

IV. Legal Effects of Chinese Influence in Africa on AFRICOM's Strategic Objectives

[T]he events of 9/11, combined with 20/20 hindsight, made clear that

¹¹⁶ IAN TAYLOR, CHINA AND AFRICA, ENGAGEMENT AND COMPROMISE 106–07 (2006).

¹¹⁷ Karumbidza, *supra* note 97, at 99. "The current arrangements simply allow Mugabe to keep the illusion of victory over the West and enable his cronies in the army, police, government and business to partner with the Chinese in further exploitation of the masses." *Id.*

¹¹⁸ Kennan, *supra* note 17, at 104.

¹¹⁹ TAYLOR, *supra* note 116, at 118.

¹²⁰ Karumbidza, *supra* note 97, at 95.

¹²¹ *Id.*

¹²² *Id.*

*Africa was integral, not peripheral, to global security in general, and U.S. security interests in particular, in the post 9/11 world.*¹²³

In addition to U.S. security interests, Africa might be emerging as a new battleground as the United States conducts its “pivot to the Pacific” to counter rising superpowers like China.¹²⁴ The U.S. National Security Strategies and budgets of the Bush¹²⁵ and Obama¹²⁶ presidencies have placed emphasis on the need for increased engagement with Africa.

A. AFRICOM's Strategic Objectives

The strategic objectives of AFRICOM in Africa include promoting U.S. national security interests through regional security in Africa by fostering an environment conducive to good governance and development.¹²⁷ AFRICOM's utility in furthering these objectives has already borne fruit. In 2010, AFRICOM's Office of Legal Counsel successfully orchestrated its first of two African Military Legal Conferences,¹²⁸ focusing on increased collaboration and training with U.S. judge advocates, their respective African military-legal counterparts, and international legal experts.¹²⁹ These conferences concentrated on promoting the rule of law, military justice, and maritime law.¹³⁰

In 2011, *Operation Odyssey Dawn*, the U.S. involvement in the enforcement of the no-fly zone in Libya following UNSC Resolution

¹²³ Theresa Whelan, *Africa: A New Strategic Perspective*, in US STRATEGY IN AFRICA: AFRICOM, TERRORISM, AND SECURITY CHALLENGES 36 (David J. Francis ed. 2010).

¹²⁴ See Rosa Brooks, *The Pivot to Africa; Circumcision, Mosquito Killing, and Other Strange Doings of AFRICOM*, FOREIGN POL'Y (Aug. 16, 2012), http://www.foreignpolicy.com/articles/2012/08/16/the_pivot_to_africa?page=0,3.

¹²⁵ *Id.*

¹²⁶ Daniel Volman, *AFRICOM: What Is It for and What Will it Do?*, in US STRATEGY IN AFRICA: AFRICOM, TERRORISM, AND SECURITY CHALLENGES 59 (David J. Francis ed., 2010).

¹²⁷ General Ham's Statement, *supra* note 10.

¹²⁸ Nicole Dalrymple, *AFRICOM Hosts First Africa Military Legal Conference, Nearly Fifteen African Nations Participate*, AFRICOM.MIL (May 19, 2010), <http://www.afri.com.mil/NEWSROOM/Article/7408/africom-hosts-first-africa-military-legal-conferen>.

¹²⁹ Danielle Skinner, *African Legal Experts from 20 Nations Collaborate on Maritime Law Initiatives*, AFRICOM.MIL (May 3, 2011), <http://www.africom.mil/NEWSROOM/Article/8275/african-legal-experts-from-20-nations-collaborate->.

¹³⁰ *Id.* Maritime law has become an increasingly important legal issue as piracy plagues the waters off the Horn of Africa.

1973, was effectively coordinated by AFRICOM.¹³¹ This was the first large-scale military operation for AFRICOM.¹³² Operations like these support AFRICOM's objective of ensuring regional stability in Africa. But in the midst of these efforts to foster the rule of law and promote regional security, China's ever-growing influence in Africa has worked against AFRICOM's strategic objectives.

B. China's Influence on International Law Versus African Regional Security

*Perhaps most disturbing to U.S. political objectives is China's willingness to use its seat on the UN Security Council to protect some of Africa's most egregious regimes from international sanction, in particular Sudan and Zimbabwe.*¹³³

Looking to the future, it is likely that AFRICOM's enforcement of regional security in Africa will be endorsed by UNSC resolutions authorizing the use of force under the UN Charter. Such an authorization occurred in 2011 through UNSC Resolution 1973 for the no-fly zone in Libya. Consequently, continued attempts by China to thwart UNSC resolutions in Africa, as discussed above, are antagonistic to AFRICOM's strategic objectives of regional security.

China's consistent use of abstentions on the UNSC, especially on matters pertaining to African nations with significant Chinese economic investment, ultimately works against AFRICOM's strategic objective of regional security in two ways. First, the lack of unanimity by the permanent members of the UNSC can be viewed by those at the spearhead of UNSC resolutions as watered-down and impotent,¹³⁴ which reduces the legitimacy of these otherwise binding international legal actions. Second, China's informal efforts¹³⁵ on the UNSC to weaken resolutions applying to African nations described above delay economic and military action that could work to stop violence and save lives in

¹³¹ Brooks, *supra* note 124.

¹³² *Id.*

¹³³ LAKE ET AL., *supra* note 42, at 41.

¹³⁴ See Srinivasan, *supra* note 39, at 67 ("Wielding its veto card, Beijing had succeeded in ensuring that the threat of oil trading sanctions against Khartoum was significantly weakened.").

¹³⁵ LAKE ET AL., *supra* note 42, at 44. China vowed to veto any efforts under Article 41 against Darfur in Sudan fearing adverse effects on oil production in the region.

Africa.¹³⁶

C. China's Influence on African Domestic Law Versus Good Governance

Promoting good local governance in Africa is a “core objective”¹³⁷ for AFRICOM. Sino-influence in the arenas of domestic legal affairs, including the non-compliance of domestic African labor law and the support of political leadership in African nations for the sole purpose of maintaining and promoting economic relationships, is not conducive to good local governance, or the rule of law in Africa.

As a global superpower with the world's second-largest economy,¹³⁸ China must be cognizant of the secondary and tertiary effects of its support of political candidates on the local population. Such decisions should transcend Chinese economic interests.¹³⁹ This becomes increasingly important as China has established the developing world as a priority in its foreign policy,¹⁴⁰ where legal systems based on the rule of law are not fully developed and elections can have far-reaching effects on the welfare of local Africans, along with the development and enforcement of laws to protect them. As AFRICOM's objectives continue to focus on good local governance in African nations to promote democracy and security, China's actions appear to directly countermand the goals of AFRICOM by valuing economic factors above the interests of African citizens. The result appears to be corrupt

¹³⁶ See JAMES E. BAKER, IN THE COMMON DEFENSE, NATIONAL SECURITY LAW FOR PERILOUS TIMES 63–69 (2007). In the area of national security law, the informal processes, rather than the formal processes, more often affect outcomes and legislation. *See id.*

¹³⁷ Francis, *supra* note 7, at 4.

¹³⁸ DAMBISA MOYO, WINNER TAKE ALL: CHINA'S RACE FOR RESOURCES AND WHAT IT MEANS FOR THE WORLD 17–18 (2012).

¹³⁹ Perhaps all nations of the UNSC should be obligated to set aside interests that are focused solely on internal economic growth and consider the impact of their decisions on local governance, regional security, and the larger promotion of global adherence to the rule of law when voting. U.N. Charter article 27, paragraph 3 states that “[A] party to a dispute shall abstain from voting.” UN Charter art. 27, para. 3. This provision envisions armed conflict, rather than abstention as a politically move to protect internal economic interests. As a member of the UNSC, China must lead in an altruistic manner that prioritizes the development of good local governance, regional security, and adherence to the rule of law over its own economic growth and development. The United States should not be excluded from this obligation.

¹⁴⁰ TAYLOR, *supra* note 36, at 14.

governments not focused on the welfare of its citizens, but rather on financial aid and economic deals from China that often run counter to enforcing the rule of law or human rights.¹⁴¹

V. Conclusion

*Offensive Strategy. Next best is to disrupt his [the enemy's] alliances . . . and cause them to be severed and dissolved . . . if he has no alliances . . . his position is weak.*¹⁴²

China's rising legal influence in Africa, through international law in the UNSC and on African domestic legal systems, ultimately works against AFRICOM's strategic objectives of regional security and good local governance. China accomplishes this by minimizing and undermining U.S. influence with African states that increasingly engage with China on economic and legal issues. As Africa emerges as a front in the war on terrorism¹⁴³ and a potential future battleground for allies and resources between the United States and China, the early emergence of Sino-African cooperation in international law and in African domestic legal systems does not promote U.S. security interests in AFRICOM.

Although AFRICOM's Office of Legal Counsel is developing excellent relationships with legal experts in Africa,¹⁴⁴ the U.S. Department of State should conduct a more focused, FOCAC-type approach to domestic legal engagement with African nations. Such legal engagement would work to further good governance, regional security, and the rule of law while ultimately building alliances and providing developing countries in Africa with an alternative to China. Judge advocates should consider the broader international and domestic legal effects of China's role in Africa when advising commanders and planning operations in the AFRICOM area of responsibility.

¹⁴¹ See generally BRAUTIGAM, *supra* note 6, at 135.

¹⁴² SUN TZU, *supra* note 19, at 78.

¹⁴³ Adam Entous & Siobhan Gorman, *U.S. to Expand Role in Africa, Military Pact with Niger for Intelligence Base Brings America Closer to Conflict*, WALL ST. J., Jan. 29, 2013, at A1. The United States reached an agreement with Niger to support the French war against al Qaeda in Mali. *Id.*

¹⁴⁴ Skinner, *supra* note 129.

As the U.S. Department of Defense conducts its “pivot to the Pacific,”¹⁴⁵ only time will tell if China’s early and growing efforts at protecting its interests in Africa through its position on the UNSC and by influencing domestic legal systems will prove to be a decisive move in an intercontinental chess game involving strategic alliances and resource development. To counter Sun Tzu’s quote in the introduction of this article, arriving late to a fight may put the United States at a disadvantage to China in African engagement, but it is not dispositive of ultimate defeat. As such, the United States must prioritize and amplify its efforts at legal engagement and cooperation with African states, not only for promoting regional security and good local governance in Africa, but also for furthering the national security interests of the United States.

¹⁴⁵ Max Boot, *America’s ‘Pacific Pivot’ Craze*, LOS ANGELES TIMES, Jul. 2, 2012, <http://articles.latimes.com/2012/jul/02/opinion/la-oe-boot-defense-pacific-pivot-20120702>. If the pivot of U.S. forces to the Pacific is in response to a perceived threat from states like China, then working to establish and cement allies within the continent of Africa would have the benefit of promoting regional security and good local governance in Africa, while providing African states an alternative economic trade partner to China.