NORMS OF SOLIDARITY AND REGIONALISM: THEORIZING STATE BEHAVIOR AMONG SOUTHERN AFRICAN STATES

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Despite many recognized ambivalences, “norms of solidarity” portrays a dominant picture of foreign policy practices of Southern African states. The central argument of this article is that norms of solidarity, state behavior among Southern African states, and regional integration arrangements are not only about material interests, but also social construction and turn to ideational concerns in the continent’s decolonization and emancipatory movements. Indeed material interests as Rational Choice scholars have successfully shown are relevant in understanding how states behave towards each other in the region. Nevertheless, interests and preferences are also constructed through ideational concerns. Therefore, among Southern African states, foreign policy is recognition of the relationship between ideational and material concerns in forming foreign policies, alternatively called norms of solidarity. Through time, the practice and consistency of norms of solidarity has been contested, constituted, and re-constituted. In the Southern African context, reconstitution of norms of solidarity happens through economic pressures. This article thus interrogates the relationship between economic pressures and norms of solidarity. It looks at European Union-Southern African states relations to analyze if states under dire economic situations follow the value and consistency of norms of solidarity. When economic pressures overshadow social emancipatory movements, the ideational concerns of norms of solidarity become historical triumphs without application. Nevertheless, self-identity of African statehood, or African-ness, persists beyond the confines of membership in regional integration schemes, legality and material ontology. This article does not claim to be the sole explanation of how and why states behave the way they do in Southern African integration schemes. Rather, it is an attempt to theorize norms of solidarity in relation to Southern African integration arrangements.
INTRODUCTION

State behavior among members of regional integration schemes, for instance Southern African states, is not only about material interests, but also social construction and ideational concerns in the continent’s decolonization project. The central argument of this article is that relations among Southern African states are defined by norms of solidarity, which combine ideational and material concerns. Before
explaining theoretical approaches to understanding state behavior, it is relevant to explain “norms” and “norms of solidarity.” A norm is “a standard of appropriate behavior for actors with a given identity.”¹ Norms of solidarity form and regulate solidarity as logic of appropriateness among African states in general and Southern African states in particular. Alternatively, norms of solidarity are patterns of thought that establish state behavior by formulating concepts of the function and value of African-ness.² Through a process of socialization,

¹ There exist definitional problems that can be raised with the use of the word “norm” instead of “institutions” as sociologists more generally use. For sociologists, the distinction between “norm” and “institution” is that “norm” indicates “single standards of behavior” while “institution” is a collection of interrelated norms. Martha Finnemore & Kathryn Sikkink, International Norm Dynamics and Political Change, 52 INT’L ORG. 887, 891 (1998). This definitional problem is not, however, a problem for International Relations scholars in general and “constructivists” in particular. In addition, norms can be categorized into “regulatory norms,” “constitutive norms,” and “prescriptive norms.” Id. While the first “regulatory norms” and “constitutive norms” generally have a straightforward meaning, “prescriptive norms” are not always accepted as a third category, but rather as part of either “regulatory” or “constitutive” norms. Id.

² See Leopold Sedar Senghor, President of Sen., Address at the 1963 African Summit (May 23, 1963), in Celebrating Success: Africa’s Voice Over 50 Years 1963–2013, at 85 (2013) [hereinafter Celebrating Success], Senghor defines African-ness as the basis of African Unity beyond shared experiences. In his words:

Most of us feel that what brings us close to one another and must unite us is our position as underdeveloped countries, formerly colonized. Nor is that wrong. But we are not the only countries in that position. If that could be said objectively to be whole truth, then African Unity ought one day to dissolve with the disappearance of under-development.
continental and regional norms of solidarity are internalized to establish the tenets of state behavior among African states. Norms of solidarity create identity of African-ness as a destiny of African states beyond the confines of geographic proximity. Thus, norms of solidarity based on

I am convinced that what binds us lies deeper; and my conviction is based on scientifically demonstrable facts. What binds us is beyond history: it is rooted in pre-history. It arises from geography, ethnology, and hence from culture. It existed before Christianity and Islam; it is older than all colonization. It is that community of culture which I call African-ness. I would define it as “the sum total of African civilized values: Whether it appears in its Arab-Berber aspect or its African Negro aspect, African-ness always shows the same characteristics of passion in feelings, and vigor in expression. I recognize an African carpet among those of all other continents. It is no mere chance that some mosaic in Bardo Museum resembles some Mali ‘pagnes.’”

It seems to me Senghor’s passion to tie feelings of African-ness as scientific or biologically unity among Africans is a bit limited and actually flawed. For one, it dismisses and ignores Kenyan Indians from having feelings of African-ness and thereby declares them as non-African. Second, there is no scientific claim that shows that Africans—whether black, Arab or Berber—are genetically related, apart from Senghor’s “conviction.” Therefore, in this article my understanding of African-ness is that African-ness is a reactionary identity to colonial and racial oppression.

3. Norm socialization in this context is not used to signify the understanding of Thomas Risse and Kathryn Sikkink. For Risse and Sikkink, norm socialization is a “process by which international norms are internalized and implemented domestically.” Thomas Risse & Kathryn Sikkink, The Socialization of International Human Rights Norms into Domestic Practices: Introduction, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 5 (Thomas Risse et al. eds., 1999). On the contrary, here it is used to signify how regional or continental norms of solidarity are internalized and domesticated by the African state.

4. For Nelson Mandela, South Africa was linked with other African states by “destiny.” Nelson Mandela, South Africa’s Future Foreign Policy, 72 FOREIGN AFF. 86, 89–90 (1993). He further emphasized that this “destiny” is “more than a mere geographical concept.” Id. at 90. Nelson Mandela’s chose the terminology “destiny,” instead of “future.” Although both can be synonymously used, “destiny” has more of a hidden force that controls the future, and this hidden force that exists among African states is what I refer to as “norms of solidarity” in this article.
unity and comradeship define “African-ness” as good and lack thereof as something bad.5

Norms of solidarity are incorporated in regional and sub-regional treaties. For instance, the African Union (AU) aspires to achieve “solidarity between the African countries.”6 Similarly, article 4(b) of the Southern African Development Community Treaty (SADC Treaty) prescribes that all members of SADC shall act in accordance with principles of solidarity.7 Although the AU charter and SADC Treaty encompass solidarity as objectives of both organizations, when it comes to how and when solidarity arrangements are to be invoked and/or implemented both organizations are silent.8 Which brings into question when, how, why, and by whom norms of solidarity are to be observed? Are states, even under dire circumstances, able and willing to stand in solidarity with each other? What consequences do economic pressures

5. The analysis and understanding of norms of solidarity in this article is a macro-state level analysis. I understand that solidarity arrangements can and do exist at individual and group levels. It can exist across sectors and minority groups. On the other hand, it can also exist among majority groups and political elites. For instance, Thomas Kwasi Tieku analyzes solidarity arrangement among African political elites. See, e.g., Thomas Kwasi Tieku, Solidarity Intervention: Emerging Trends in AU’s Interventions in African Crisis, Address at the Chatham House Workshop: Africa International: Agency and Interdependency in a Changing World (Oct. 9, 2009), available at http://www.open.ac.uk/socialsciences/bisa-africa/confpapers/solidarity-intervention.pdf.

6. Constitutive Act of the African Union art. 3, para. a, opened for signature July 11, 2000, 2158 U.N.T.S. 33 (entered into force May 26, 2001) (stating “[t]he objectives of the Union shall be to: achieve greater unity and solidarity between the African countries and the peoples of Africa.”). Art. 3, para. a also identifies three strands of solidarity arrangements: (1) solidarity arrangements between and among African states, (2) solidarity arrangements between and among African people, and (3) solidarity arrangements between and among African states and people. Id. Understanding these possibilities, however, the focus of this article is on solidarity arrangements among states. Hence, the reference to African Union solidarity arrangements are, for the purposes of this article, limited to solidarity among members of the African Union.

7. Treaty of the Southern African Development Community art. 4, Aug. 17, 1992, 32 I.L.M. 116, 124 (enumerating “SADC and its Member States shall act in accordance with the following principles: a) sovereign equality of all Member States; b) solidarity, peace and security; c) human rights, democracy, and the rule of law; d) equity, balance and mutual benefit; e) peaceful settlement of disputes.”).

8. See generally Constitutive Act of the African Union, supra note 6, art. 3; Treaty of the Southern African Development Community, supra note 7, art. 4.
have for norms of solidarity? Under what circumstances do African states manage to observe norms of solidarity and on what grounds? This article attempts to theorize norms of solidarity in order to define and analyze foreign policy among Southern African states and in their relations with the European Union (EU).

Part I offers a brief introduction to rationalist and constructivist approaches to state behavior. I build on the works of constructivist scholars such as Martha Finnemore, Kathryn Sikkink, Amitav Acharya, and Jeffrey T. Checkel. With an emphasis on the relationship between ideational and material concerns, I attempt to explain the limitations and need for synergy of compartmentalized rationalist and constructivist understandings of state behavior. Part II analyzes the concept of norms of solidarity in intra-regional relations of Southern African states. Preconceptions of understandings, misunderstandings of constructive engagement and quiet diplomacy as the sole foreign policy tool of norms of solidarity challenge the character and function of African-ness. I further argue that African-ness does not prohibit sanctions nor does it advocate for constructive engagement. African-ness, as an identity of Southern African states and norms of solidarity as a collage of several norms, condemns “interference in internal affairs of member states.” After mapping the practice of norms of solidarity among Southern African states, Part III discusses the relationship between economic pressures and norms of solidarity by looking at EU-southern African relations. The central argument of Part III is that Southern African states lack a common foreign policy towards the EU. In addition, fear of market access to Europe, without any ideational concerns, shadows foreign policy-making among Southern African states.

I. RATIONALITY AND NORMS INTERTWINED?

To understand state behavior among Southern African states, rationalist and constructivist understandings of state behavior are discussed here. First, in explaining state behavior, rationalists as a
liberal and social scientific enterprise, albeit limited and narrowly understood, focus on the power of reason. 10 Conventionally, acting rationally means choosing the most feasible alternative, in other words, self-interest maximizing choice. 11 For instance, Switzerland’s relationship with apartheid South Africa, although masked with the rhetoric of neutrality, was rather a preference of economic interests over ideational matters. 12 Switzerland’s ideational concerns were limited to the domestic arena while self-interest maximization defined its relationship with Apartheid South Africa. 13 In addition, global policies such as UN sanctions on Apartheid South Africa did not affect the

theories of state behavior, for instance, realism. However, there is a general conception that realists, just like rationalists, assume states to be rational actors. See generally Joe A. Oppenheimer, Rational Choice Theory, in Encyclopedia of Political Theory 1150, 1150–59 (Mark Bervir ed., 2010) (discussing the conceptual understanding of rational choice). Cf. John J. Mearsheimer, Reckless States and Realism, 23 INT’L REL. 241, 241–56 (2009) (explaining how realists and rationalists share common assumptions of the state, Mearsheimer focuses on Kenneth Waltz’s assumptions of the state. For Mearsheimer, Waltz’s rejection of states as rational, self-interest, maximizing actors makes Waltz’s conception of state behavior questionable.).

10. Jon Elster noted:

[R]ational choice theory appeals to three distinct elements in the choice situation. The first element is the feasible set, i.e., the set of all courses of action which (are rationally believed to) satisfy various logical, physical, and economic constraints. The second is (a set of rational beliefs about) the causal structure of the situation, which determines what course of action will lead to what outcomes. The third is a subjective ranking of the feasible alternatives, usually derived from a ranking of the outcomes to which they (are expected to) lead. To act rationally, then, simply means to choose the highest-ranked element in the feasible set. Miles Kahler, Rationality in International Relations, 52 INT’L ORG. 919, 923 (1998) (quoting Jon Elster).

11. See Oppenheimer, supra note 9.

12. See Kahler, supra note 10.

materialistic consideration of Switzerland. Materialist ontology of rationalist understanding is one of the reasons Switzerland’s foreign policy towards Apartheid South Africa was both feasible and logical behavior. Therefore, Switzerland maintained a self-interested maximizing policy—even if it meant collaborating with Apartheid South Africa.

Second, rational understanding, by adopting binary behavioral models—rational and irrational—lacks the capacity to explain the ideational realm, especially when rationale is associated with a self-interested maximizing goal. The Reagan administration, for instance, based on purely materialistic observations, supported the Apartheid Regime in South Africa. President Reagan summarized the basis of American support for Apartheid South Africa as “a country that stood by us in every war we have ever fought, a country that strategically is essential to the free world in its production of minerals.” Contrary to President Reagan’s economic interests, the U.S. Congress acted on ideational anti-apartheid policies and imposed sanctions on apartheid South Africa. The role of domestic norms of equality, and its correlation to the civil rights movement in the U.S., not only changed U.S. policies towards apartheid South Africa, but is also a clear example of circumstances beyond the duality of rational and irrational

16. Id. See also Scott Bronstein, Do Metal Sales Subsidize Apartheid, N.Y. TIMES (Feb. 23, 1986), http://www.nytimes.com/1986/02/23/business/do-metal-sales-subsidize-apartheid.html (discussing how South Africa, next to the Soviet Union, is the second biggest producer of platinum and how politically and economically members of the Platinum Guild believed it is less costly for the U.S. to import platinum from South Africa even it meant supporting Apartheid in the latter).
narratives. This is not to stipulate that rational understanding does not consider ideational factors. Rather, when ideational concerns are entertained, it is fashioned in strictly materialistic scrutiny. The U.S. Civil Rights Act of 1964, passed under the Commerce Clause, prohibited segregation and the discrimination of African Americans. Instead of arguing for equality on principles of dignity, the focus on the Commerce Clause by Congress is a clear example of how ideational concerns, analyzed under materialistic lenses, could consequentially dehumanize concerns of equality. Justice Robert H. Jackson eloquently summarized the dehumanizing effect of equality under the Commerce Clause as, “the migrations of a human being . . . do not fit easily into my notions as to what is commerce . . . [t]o hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights.” In brief, ideational concerns could fall beyond the duality of rational and irrational narratives. The aim here is not to dethrone reason as a model for


21. Id.
understanding state behavior among Southern African states, but rather to show that state behavior is not always based on reason.

Constructivists, in contrast, consider emotional and moral factors to achieve political goals.\textsuperscript{22} Constructivism is human consciousness at its international level.\textsuperscript{23} Identities and interests of actors are therefore socially constructed and rest with other ideational factors.\textsuperscript{24} Similar to the flaws of pure rationalism, constructivism also displays a degree of naiveté in ignoring material interests as defining factors in changing or forming logics of appropriateness.\textsuperscript{25} In the African context, anti-apartheid foreign policy was driven by ideational concerns of the inhuman treatment of South African people.\textsuperscript{26} For constructivists, therefore, ideational concerns of African anti-apartheid movements led to continental anti-apartheid policies. Such constructivist framing of foreign policy-making among African states, however, could create arguments for moral superiority of African states. In addition, constructivist engagement fails to capture calculated-materialist foreign policy-making among Southern African states. Malawi, for instance, established and maintained formal relations with apartheid South Africa based on rationalized materialistic calculations and contrary to the continental policy of isolation.\textsuperscript{27}

\textsuperscript{22} Ruggie, \textit{supra} note 19, at 856 (discussing how constructivism rests on an irreducibly inter-subjective dimension of human action).

\textsuperscript{23} \textit{Id.}

\textsuperscript{24} \textit{Id.} (discussing how identities and interests are social constructs).


\textsuperscript{26} See Zdenek Červenka, \textit{The Unfinished Quest for Unity} 23, 41, 110–22 (1977) (discussing the position and reaction of members of the African Union towards Apartheid South Africa and Malawi’s relationship with the latter and how, after learning that Malawi established and maintained relations with Apartheid South Africa, some members of African Union called for its expulsion from the union). \textit{See also} Organization of African Unity, \textit{Resolution on South Africa}, C.M. Res. 1019 (XLIII), CM/RES/1019(XLIII) (Mar. 1986) (African Union member states condemning Apartheid in South Africa).

Understanding limitations of rationalist and constructivist approaches to state behavior, several rationalist and constructivist scholars concur that norms and rationality are intertwined. The difficulty of measuring ideational phenomenon led to the correlation between “utility maximization” and “material terms,” which consequently led to material ontology in proponents of rationality. For proponents of constructivism, on the other hand, the propensity to counter norms and rationality fails to capture “strategic social construction” where normative behavioral changes are driven by rationality. Hence, to draw a binary division between rationality and norms is to ignore that “rational choice theory can easily accommodate nonmaterial or nonselfish [sic] interests.” In conclusion, in this article, the discussions on norms of solidarity are cognizant of the relationship between material interests and the power of ideas in defining and formulating state behavior.

A. Are Norms of Solidarity Specific to Southern African States?

Whether it is to claim superiority, exceptionality, or uniqueness, it is quiet common to hear claims of regional or national specificity of norms. At times a result of ignorance, not knowing whether the norm exists in other parts of the world, advocates of regional or national norm specificity repeatedly claim the uniqueness of their region or nation. Such claims lead one to inquire whether there is a relationship between norms and geographic specificity. Are there norms that are particular, for example, to Africa, Asia, or Europe? If so, what makes a norm or group

28. See generally Jeffrey T. Checkel, International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide, 3 EUR. J. INT’L REL. 473 (1997) (Checkel, in this article, bridges the theoretical and methodical gap on the discourse of norms as constitutive and constraining of state behavior). See generally Finnemore & Sikkink, supra note 1; Kahler, supra note 10; and Ruggie, supra note 19 (also noting that norms and rationality are intertwined).

29. Finnemore & Sikkink, supra note 1, at 889 (discussing how norms and rationality intersect).

30. See id.

of norms African, Asian or European? And how does one identify regional specificity?

In the human rights field, advocates of Asian-values defense, for instance, Lee Kuan Yew, argue that Asian norms emphasize order and discipline over freedom and liberty. For Yew and his supporters, norms that advocate for freedom and liberty are western ideals that do not conform to Asian values. Yew’s reasoning is methodologically flawed and a monolithic interpretation of Confucian thought; the reasoning advances oppressive behavior under the guise of resisting European Hegemony. Above all, it summarized “us” to mean ordered and

32. Lee Kuan Yew was the former Prime Minister of Singapore. The Asian values debate by challenging Human Rights discourse argues that Human Rights was western and not in conformity with Asian culture. See generally Fareed Zakaria, Culture is a Destiny: A Conversation with Lee Kuan Yew, 73 FOREIGN AFF. 109, 111, 114 (1994) (discussing his views Asian values and its relationship to freedom and liberty). See also Ian Taylor, Sino-African Relations and the Problem of Human Rights, 107 AFR. AFF. 63, 66 (2007). Notice how Ian Taylor’s discussion of Human Rights took a dual dichotomy of how socio-economic rights are discussed as Chinese, and Civil and Political Rights as Western conceptions of Human Rights. Taylor noted, “China’s current discourse on human rights is grounded in a communitarian focus on social solidarity and obligations towards others, coupled with an aspiration to advance societal concord.” Id. at 65.

33. See generally Zackaria, supra note 32.

34. For Sen, the methodological claim with the Asian values defense research is that it tends to draw the conclusion of what the past was from what the present is today. Therefore, it emphasizes the idea of Europe as the moral compass of the world and European enlightenment at the center of norm entrepreneurship and diffusion of what is good in this world. Sen eloquently argued:

Authoritarian lines of reasoning often receive indirect backing from modes of thought in the West itself. There is clearly a tendency in the United States and Europe to assume, if only implicitly, the primacy of political freedom and democracy as a fundamental and ancient feature of Western culture—one not to be easily found in Asia. A contrast is drawn between authoritarianism allegedly implicit in, say, Confucianism and the respect for individual liberty and autonomy allegedly deeply rooted in Western liberal culture. Western promoters of personal and political liberty in the non-Western world often see this as bringing Western values to Asia and Africa. . . . Values spread by the European Enlightenment and other relatively recent
disciplined Asians and “them” to mean disordered and undisciplined others.

The idea of geographic norm specificity was also used to justify superiority of one group over another. For instance, by creating discourse of “us” (civilized Europeans) and “them” (savage Africans), historical records show how norm geographic specificity was used to justify colonial ambitions.35 Similarly, and with a more contemporary setting, Ian Manners’s work on Europe as a normative power reinforces the idea of Europe’s normative superiority and its role as a global moral compass.36 Manners’s contention of Europe’s normative power situates Europe as the global compass of what is good.37 Here again, irrespective of its Eurocentric logic, Manners’s conception of European normative power creates discourse of norm superiority without analyzing the existence, or lack thereof, of said norm in non-European societies.

In the African context, Tore Nyhamar argues rather boldly that there are four norms in Africa.38 These are: (1) African solutions for African developments cannot be considered part of the long-term Western heritage, experienced in the West over millennia.


37. Ian Manner’s argument for Normative Power EU has been subject to critique by several scholars as Eurocentric among others. See Thomas Diez, Constructing the Self and Changing Others: Reconsidering ‘Normative Power Europe, 33 MILLENNIUM J. INT’L STUD. 613 (2005) (critiquing the idea of Europe as a normative power, Diez in this piece calls for more reflexivity). Similarly, Storey and Durac by using the example of Europe-Morocco relationship show that the idea of Europe as a normative power is flawed. See Andy Storey & Vincent Durac, ‘Normative or Realist’ versus ‘Normative and Realist,’ (Apr. 23, 2009) (paper for presentation at EUSA Eleventh Biennial International Conference, Los Angeles), available at http://aei.pitt.edu/33141/1/storey._andy.pdf (last updated Mar. 16, 2013).

problems; (2) African states have three primary goals, which are hierarchically ranked as independence, development and unity; (3) conquest of African states is outlawed; and (4) independence of all African states. Nyhamar’s question of which norms exist in Africa implies a list—which, in this case is incomplete—and limits the understanding of norms as standards of appropriateness in governing state behavior among and between African states. Such codification from Nyhamar limits his work on norms and international relations in Africa. His decision to make a list, which excluded norms of equality, could lead one to argue that norms of equality are un-African and, by that measure, are of European origin. Nyhamar’s list, irrespective of its limitations, and also as a result of its limitations, creates discourses of “us” vs. “them.”

For Yew, Manners, or Nyhamar, such specification of which norms exist in particular geographic specificity, without examining its existence or lack thereof in other parts of the world, brings a discourse of “us” and “them” and thereby forms self-identity. It is far from the aim of this article to claim that norms of solidarity are solely African. On the contrary, the discussions on norms of solidarity in this article do not deny the existence or lack of norms of solidarity in other parts of the world. It is beyond the confines of this article to do such exploration. Therefore, this article, without claiming African exceptionalism, attempts to analyze the impact of norms in general, and norms of solidarity in particular, in framing foreign relations of Southern African states.

and refers to I. William Zartman. Id. However, it seems to me that Nyhamar misread Zartman’s analysis of Africa’s system and wrongfully attributes the codification of four African norms to Zartman. Zartman did not limit or codify African norms. See I. William Zartman, Africa as a Subordinate State System in International Relations, 21 INT’L ORG. 545, 558–61 (1967). In his work, without limiting or excluding the existence of other norms, Zartman described the workings of African subdivide system. Id.

40. See Klotz, supra note 18 (discussing norms of equality in South Africa).
B. Norm Recognition: Observance & Breach—Approval & Disapproval?

There are conceptual and empirical problems in norm recognition. Norms of solidarity are not always legislated in regional integration agreements. If and when they are promulgated, for instance among Common Market for Eastern and Southern Africa Treaty (COMESA) member states, solidarity is legislated as sets of governing principles. Yet, in positivist legal tradition, principles are not always justiciable and take the role of mere guidance of behavior. How does one thus recognize the existence of a particular norm or group of norms if its existence is not always explicitly adopted in a treaty? Furthermore, when norms are promulgated as principles without legal force, how does one recognize its observance or breach if it is not justiciable before courts? In this article, state behavior is used as a tool to recognize and understand how and why states behave in regard to certain normative


The Member States, in pursuit of the aims and objectives stated in Article 3 of this Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3rd June, 1991, agree to adhere to the following principles . . . solidarity and collective self-reliance among the Member States.

42. See Joseph Raz, Legal Principles and the Limits of Law, 81 YALE L.J. 823, 823 (1972) (discussing positivist assumptions that laws differ from principles and how such thinking draws limits of law and legality); see also Eric Christiansen, Adjudicating Non-Justiciable Rights: Socio-Economic Rights and the South African Constitutional Court, 38 COLUM. HUM. RTS. L. REV. 321 (2007) (discussing justiciable and non-justiciable laws. In addition, see how Christiansen discusses the African National Congress’s Charter. Christiansen notes how incorporating the principles in the final constitution needed some form of formal process, in order for the principles to have legal enforceability.).

In this article, despite notable difference between principles and norms, preference is given to the use of ‘norms;’ since both set standards of appropriate behavior despite their legislation status. Stephen D. Krasner, Structural Causes and Regime Consequences: Regimes as Intervening Variables, 36 INT’L ORG. 185, 186 (1982) For Krasner, “norms” and “principles” are distinct. Id. “Principles are beliefs of fact, causation, and rectitude,” while “‘norms’ are standards of behavior defined in terms of rights and obligations.” Id.
commitments.\textsuperscript{43} This article, in order to identify normative commitments of Southern African states, looks specifically at norm observance or breach and the reactions specific actions generate in Southern African communities.\textsuperscript{44}

Generally speaking, norm observance could generate praise or may lack public recognition, while norm breach could generate public condemnation. The former, norm observance, taken as the expected behavior of an actor, might be difficult to recognize if there was no public recognition. On the contrary, since norm breach generally generates disapproval it is easily recognizable. The next crucial question is whose approval or disapproval matters to render an act or failure to act as norm observance or breach? In today’s globalized world, a set of norms could be shared at the sub-regional, continental, and global level. Therefore, a particular behavior could receive varied reactions at the sub-regional, continental, and global levels. Looking at norm observance and breach, or approval and disapproval of a particular behavior, could be the flip side of asking whose norms matter. Analysis on hierarchy of norms is, however, concerned with the relationship between global and domestic norms.\textsuperscript{45} On the contrary, the focus in this section is not on norm superiority. Rather, in this article, approval and disapproval of norms are used as exploratory tools to identify the existence, or lack of existence, of a particular norm or group of norms.

\textsuperscript{43} State behavior in this article includes past actions, present actions, official and unofficial statements among others. One could argue that norm recognition through state behavior recognizes norms of the past and not necessarily of the future. Understanding such critique, however, the focus on state behavior is not limited to actions of the past, but also of the present. \textit{See} Annika Björkdahl, \textit{Norms in International Relations: Some Conceptual and Methodological Reflections}, 15 \textit{CAMBRIDGE REV. INT’L AFF.} 9, 13 (2002) (discussing the empirical and conceptual challenges in norm recognition).

\textsuperscript{44} One might argue that using state practice—norm observance and norm breach—among Southern African states is in a way alleviating norms of solidarity to the status of customary international law. \textit{See} Statute of the International Court of Justice, art. 38(1)(b), June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993.

During the Arab Spring of Libya, one could notice varied and at times striking reactions among African states and global actors. Members of the African Union proposed a negotiated transition in Libya in contra to Western powers, which preferred armed intervention. The central norms that members of African unity aspired to preserve include prohibition of foreign interference in domestic affairs of member states. Global actors rejected the proposed solutions of the African Union and resulted in the rejection of a negotiated solution for Libya. Although several questions could be raised on the relationship of the African Union with other international actors, the question that is relevant to this article is whose approval and disapproval matters in rendering a behavior either norm observing or norm breaking? In short, the disapproval of the African proposal for Libyan issues by global actors brings into question whose disapproval renders an act norm breach. Clearly, there existed a clash of normative proposals and priorities between African states and global actors. In analyzing norms of solidarity, its observance or breach, the exploratory task of this article is limited to the community of African states and their historical and contemporary solidarity arrangements. The next subsection, therefore, inquires within the community of Southern African states, whose approval or disapproval matters.


1. Norm Recognition or Normative Shift among Southern African States

Southern African states, by establishing the SADC Tribunal, set norms of justice as appropriate behavior among members of the community. The member states agreed that the breach of norms of justice needed to be rectified and penalized; hence, they created the Tribunal. 49 However, the Tribunal’s de facto suspension and subsequent decision to limit its jurisdiction have certainly impacted access to justice of Southern African citizenry. 50 But do the actions of Southern African states and their decision to dissolve the Tribunal amount to a norm breach? If state behavior—which in this case is Southern African states—establishes the existence and/or breach of norms, does the dissolution of the Tribunal amount to a shift in normative stance rather than a norm breach?

Dissolution of the Tribunal was praised and criticized. Southern African states—the community that set the Tribunal as a tool for the enforcement of justice—approved the de facto dissolution of the Tribunal. 51 Correspondingly, Julius Malema, party leader of the South African Economic Freedom Fighters, implicitly praised the Zimbabwean government and the dissolution of the Tribunal as a positive move towards redistributive justice. 52 On the contrary, Ariranga G. Pillay,

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52. Although not directly praising the dissolution of the SADC Tribunal, Julius Malema, by praising actions of the Zimbabwean government in relation to minority landowners, indirectly dealt with the SADC Tribunal’s decision. See, e.g., Malema Praises Mugabe, YAHOO! NEWS (Jan. 10, 2014), http://www.yahoo.com/malema-praises-mugabe-062950369.html. Implicitly, it seems to me that Malema supports dissolution of the Tribunal because if the Tribunal’s decision against Zimbabwe was enforced,
former president of the Tribunal, noted dissolution of the Tribunal as a missed opportunity “for the advancement of principles of human rights, democracy and the rule of law in the SADC region.” Similarly, the SADC Lawyers’ Association condemned dissolution of the Tribunal as a setback in regional integration efforts and a “disregard for the rule of law.”

Taking it a step further, the Pan African Lawyers Union and the Southern Africa Litigation Center questioned the legality of the dissolution of the Tribunal in front of the African Human Rights Court (AHRC). Similarly, Luke Tembani and Benjamin Freeth petitioned the African Commission for Human and Peoples’ Rights (the Commission) to declare the suspension of the Tribunal as a violation of the SADC Treaty. In both cases, the claimant’s petitions and prayers were either dismissed or denied. Indeed, neither the decision of the AHRC, nor the Commission, mean that both entities either approve or disapprove of the

Zimbabwe’s land policy would be nullified, which for Malema would mean Zimbabwe’s land policy will fail to address issues of redistributive justice.


54. Kondwa Sakala-Chibiya, Official Communiqué of the Fourteenth Annual General Meeting and Conference of the SADC Lawyers’ Ass’n (Aug. 15, 2013), http://lawyersofafrica.org/wp-content/uploads/2013/08/Official-Communique-of-the-14th-SADCLA-AGM-Conference.pdf?utm_source=Original+Mailing+List&utm_campaign=0c38c932a8-14th+SADCLA+AGM+Communique&utm_medium=email&utm_term=0_7ac5a3e611-0c38c932a8-27188645 (“The suspension of the SADC Tribunal presents lacunae for the consolidation of regional integration efforts and facilitates the impugned disregard for the Rule of Law in the region, which should be minimized by SADC legal professionals through active and creative engagement of supranational courts and fora.”).


56. Freeth and Tembani also petitioned the court to rule that dissolution of the Tribunal was also a violation of the African Charter and general principles of international law. See generally Luke Tembani & Benjamin Freeth v. Angola & Thirteen Others, Afr. Comm’n H. & Peoples R., Communication No. 409/12, 54th Ordinary Session (2013).

57. See id.
dissolution of the SADC Tribunal. Rather, both the AHRC and the Commission gave legal analysis of the issues at hand from a purely legalistic approach.\textsuperscript{58} This brings into question the relationship between courts and norm observance/breach. Alternatively, the question is: because the dissolution of the Tribunal was not found to be a violation of, for instance, the African Charter, does it warrant one to conclude there was no norm breach? What is the relationship between law and norms?

As indicated at the outset, a norm is defined as “a standard of appropriate behavior for actors with a given identity.”\textsuperscript{59} Likewise, law sets standards of appropriate behavior for actors with a given identity. Norms, both legal norms and other norms, cohabitate in the same space and govern the same community of actors—in this case, Southern African states.\textsuperscript{60} The broader question of this article aspires to understand the influence of norms—including legal norms—in governing state behavior. In this context, it does not matter whether or not the norm is promulgated as law. It is not the legislation of the norm that matters, but its acceptance by Southern African states as a basis for interaction. The focus on norm observance/breach in this article is not only observance/breach of the SADC Treaty and its protocols, but also norms which were not promulgated by Southern African actors.

II. NORMS OF SOLIDARITY

“Norms of solidarity” is a general label for a variety of related normative approaches to state behavior among Southern African states. Norms of solidarity comprises a variety of beliefs that manifest themselves as behavioral norms which create regulatory or constitutive standards of appropriateness. Although the SADC treaty and other formal

\textsuperscript{58} Id. The AHRC concluded that it does not have jurisdiction to analyze the case as on the ground that a similar issue was being entertained before the Commission. \textit{Id.} On the other hand, the Commission ruled on the merits of the case and concluded first and foremost that its lack of jurisdiction to interpret and apply SADC Treaty. \textit{Id.}

\textsuperscript{59} Finnemore & Sikkink, \textit{supra} note 1.

\textsuperscript{60} See generally Martha Finnemore, \textit{Are Legal Norms Distinctive?}, 32 NYU J. INT’L L. & POL. 699 (1999).
treaty obligations among Southern African states create standards of appropriateness, norms of solidarity are agnostic to legality and to membership of an integration scheme. Therefore, norms of solidarity treat the SADC treaty as either endogenous or exogenous depending on the problem under consideration. In short, norms of solidarity are reflected in mutual solidarity arrangements that expand beyond the confines of law, legality, and regionalism.

Norms of solidarity among Southern African states are better understood as a part whose characteristics are determined by a larger continental project of African-ness. Continental feelings of African-ness define the internal structure and dynamism of norms of solidarity among Southern African states. This is not to claim that continental feelings of African-ness originated in one part of Africa and not the other. Rather, a shared experience of colonialism and racial domination is what led to the social construction of African-ness among all African states. Hence, to limit the era of Southern African norms of solidarity to the formalization of sub-regional anti-apartheid resistance—through SADC—is to ignore the continental context of norms of solidarity.

61. Unlike in colonial era conceptualization of Pan-Africanism, norms of solidarity in its post-colonial perspective is not mere replication; it is narrow and state level analysis. In its first phase (Garvey’s and Du Bois’s struggle for Pan-African unity) norms of solidarity transforms the social relations of African-ness without as yet altering the global order and state behavior at the international level. In the second phase (post-independence era of African states), formerly independent African states as the framers of African order behave and influence global order. The discussion of norms of solidarity in this article is, however, limited to the second phase of post-independence Africa.

62. Tieku, supra note 5. See also Ali Mazrui, Pan-Africanism: From Poetry to Power, 23 J. OPINION 35, 35 (1995) (discussing solidarity among Africans to be the result of racial and colonial oppressions).

63. For norms of solidarity among Southern African states, if one was to limit the norm emergence era to the time when SADC was formalized—which was in 1980s—it looks like feelings of African-ness emerged in 1980s among Southern African states. Alternatively, it could also justify a possible argument—which argues that norms of solidarity actually started in other parts of the African continent and through the process of norm diffusion and localization—as theorized by Amitav Acharya—norms of solidarity were transplanted in Southern African states. See, e.g., Acharya, supra 45. In conclusion, by looking at Southern African norms of solidarity in its broader continental context it allows one to avoid debates and issues associated with identity of norm entrepreneurs in the construction and life cycle of norms of solidarity. Id.
Norms of solidarity, although a part in continental emancipatory project, is also a whole in its own right. Several norms (for instance racial equality, self-determination, equality of states, and equal access to a just and participatory global order, among others) interplay in building the underlying logic and path of norms of solidarity.\textsuperscript{64} Larger continental norms of solidarity determine norms of self-determination and “norms of equality.”\textsuperscript{65} Theoretically, “norms of racial equality” are in harmony with norms of solidarity, since the later was the platform that helped materialize norms of equality in the African continent.\textsuperscript{66} Notably, African norms of solidarity, which provide an account of the natural destiny of being African, have a potentially narrow geographical application, unlike norms of equality, which have universal application.\textsuperscript{67}

Norms of solidarity have potentially reached a degenerative state. The genesis of feeling of African-ness is related to the process of decolonization and racial equality in the continent.\textsuperscript{68} With the end of apartheid rule, the subsequent dissolution of the Organization of African Unity (OAU) Liberation Committee, and the beginning of independence for all African states from western colonization, feelings of African-ness have declined. This degeneration has two significant sources. First, the organic norms of solidarity were diluted and eventually put in a degenerative state through inorganic policies of global financial and

\textsuperscript{64} Borrowing from Audie Klotz, “a norm of racial equality defines discrimination based upon racial categories (as evident in racist language, personal actions, and/or social policies) as bad and individual equality (lack of discrimination) as good.” Klotz, supra note 18, at 451. For a definition of norms of “equal access to justice” see Deborah L. Rhode, Access to Justice, 69 FORDHAM L. REV. 1785, 1786 (2001) (“Equal justice’ is usually taken to mean ‘equal access to justice,’ which in turn is taken to mean access to law.”).

\textsuperscript{65} Mazrui, supra note 62, at 35 (discussing how solidarity was central to the struggles for self-determination and equality).

\textsuperscript{66} Id.

\textsuperscript{67} This could be interpreted as saying norms of solidarity are solely African. I have not explored the existence or lack of norms of solidarity in other parts of the world. Hence, I am not claiming African exceptionalism. In addition, the use of African-nature in this section, similar to the pan-Africanist movements, should be understood as the biological destiny of being black, a darker race, or non-Caucasian.

\textsuperscript{68} See generally Mazrui, supra note 62, at 35.
trade institutions, which favored marketization rather than African-ness. 69 Second, degeneration is the result of contradiction between regional and global norms. Laurie Nathan, for instance, reasons that conceptual degeneration of norms of solidarity led to the elevation of regional norms of solidarity over global norms of equality. 70 These degenerations of norms of solidarity could be intra-regional or intra-state. 71 The aim and approach of this article, however, is not to assess the state of degeneration or renaissance of African-ness, but rather to explain the role “African-ness” has had in shaping state behavior among Southern African states and Southern African regional integration arrangements.

A. Norms of Solidarity: Ambivalences of African-ness

In order to understand norms of solidarity one needs to recognize its nuances. First, norms of solidarity portray post-colonial African states as virtuous states, which share a common rhythm of African-ness. This characterization paints a popular picture of African-ness as altruistic, where concerns of other African states are overwhelmingly present. For instance, Nyerere noted how “the whole of Africa speaks with one sincere voice.” 72 In the spirit of African-ness, Nelson Mandela promised

69. African states are more passive and less active in their trade negotiations. Sheila Page noted that a third of African bureaucrats surveyed believe that domestic economic policies of their respective countries are formulated by global financial and trade institutions with little or no say from African governments. See Sheila Page, Developing Countries: in GATT/WTO Negotiations 42–43 (Overseas Dev. Inst., 2002). Hence, with little or no say from the African states it could be rationalized that degeneration of African-ness is the result of marketization.

70. See generally Laurie Nathan, Solidarity Triumphs Over Democracy – The Dissolution of the SADC Tribunal, 57 DEV. DIALOGUE, 123, 123–38 (2011) (arguing that dissolution of SADC Tribunal amounts to norms of solidarity triumph over democratic and legal principles of the SADC).

71. For an example of degeneration of norms of solidarity, see David Hirschmann, The Black Consciousness Movement in South Africa, 28 J. MODERN AFR. STUD. 1, 1–22 (1990) (discussing the black consciousness movement in South Africa and how that has changed and weakened through time).

72. Julius K. Nyerere, President of the Republic of Tanganyika, Address at the 1963 African Summit (May 23, 1963), in CELEBRATING SUCCESS, supra note 2, at 100. For Nyerere, ‘one voice’ seems to represent solidarity against colonial and racial domination. Id.
that post-apartheid South Africa would restrain self-interested considerations for the benefit of its neighbors.\textsuperscript{73} In \textit{contra}, relations among African states are fraught with tensions and application of norms of solidarity has been inconsistent. Even during the liberation struggle, support and solidarity for the continents decolonization project was subject to contradictory and clashing interests of the OAU member states.\textsuperscript{74} For instance, although the OAU’s Liberation Committee channeled moral and material support to half of the states that achieved independence since its establishment, its early retirement failed to put an end to the question of Western Sahara.\textsuperscript{75}

\textsuperscript{73} Mandela, \textit{supra} note 4, at 91 (noting post-apartheid South African foreign policy will “resist any pressure or temptation to pursue its own interests at the expense of the sub-continent.”). Indeed, under apartheid rule South Africa had conflicting relations with its regional neighbors. Khabele Matlosa argues that South Africa’s behavior with its neighbors was benign, noting South Africa’s decision to renegotiate the Southern African Customs Union to create a more just compensation system for states like Lesotho and Swaziland. Khabele Matlosa, \textit{Vulnerability and Viability of Small States in Southern Africa in a Post-Apartheid Era: Is South Africa Still “Big Brother?”}, 11 PULA J. AFR. STUD. 117, 117–31 (1997). Moreover, Matlosa also infers that South Africa’s intervention to resolve domestic problems of Lesotho and Swaziland was based on South Africa’s self-serving interests. \textit{Id.} In short, for Matlosa, South Africa’s relationship with its neighbors is composed of self-serving policies in the political arena and redistributive justice policies in its regional economic interactions with Lesotho and Swaziland. \textit{Id.} To the contrary, Adam Habib argues that considerations for economic interests of other African states are romantic ideals of the African National Congress, which will have a detrimental impact on South African economy. Adam Habib, Address at the Center for Policy Studies and Open Source Foundation of South Africa, Hegemon or Pivot?: Debating South Africa’s Role in Africa 2–3 (Aug. 2003). Habib argues that South Africa should take a hegemonic role in the region. \textit{Id.}

\textsuperscript{74} See generally Amare Tekle, \textit{A Tale of Three Cities: The OAU and the Dialectics of Decolonization in Africa}, 35 AFR. TODAY 49, 49–60 (1988) (discussing the role of OAU and its member states in the decolonization movement of Africa).

\textsuperscript{75} The OAU Liberation Committee was formed in the first assembly of heads of states of Africa in May 1963. \textit{Id.} at 49. Since its establishment and up to its dissolution in 1994, it helped eleven out of twenty two states gain their independence. OAU, \textit{Dissolution of the OAU Liberation Committee}, Res. 228, pmbl., AHG/RES/228 (June 1994). In dissolving the Liberation Committee, the OAU reasoned, “the mandate given to the Liberation Committee in 1963 has been satisfactorily accomplished.” \textit{Id.} at para. 2. The issues of the Saharawi Arab Democratic Republic and Morocco’s invasion of the Western Saharan territory had not been resolved, yet the Liberation Committee was dissolved. Tekle, \textit{supra} note 74, at 49.
Similarly, when it comes to multilateral negotiations, African solidarity is challenged. For instance, as a result of lack of resources, several African states do not have representatives in multilateral negotiations, and it is common for states such as South Africa and Egypt to represent Africa in World Trade Organization (WTO) forums and negotiations. However, when South Africa represents Lesotho in multilateral negotiations, it makes one wonder whether South Africa is concerned with the latter’s welfare given that inflation in Lesotho is driven by prices in South Africa. Likewise, when Ethiopia’s late Prime Minister, Meles Zenawi, represented Africa in the Copenhagen negotiations, he was criticized for using the negotiating platform for Ethiopia’s diplomatic considerations to the detriment of the continent he represented. Similarly, Abdelkader Amara, Morocco’s Minister of Industry, Trade and New Technologies, claimed Morocco will “defend the interests of the continent.” For Minister Amara, Morocco’s status as a non-member of the African Union is irrelevant to its motive to defend the interests of the continent. This is not to argue that states outside of

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76. See generally Page, supra note 69.
77. Id. at 43 (discussing how representation by big states such as South Africa is provoking other African states to participate as well).
79. Jean-Christophe Hoste, Where Was United Africa in Climate Change Negotiations?, Afr. Pol’y Brief 4 (Egmont Royal Inst. for Int’l Relations Feb. 2010). The late Ethiopian Prime Minister Meles Zenawi led the African delegation in Copenhagen negotiations. Id. Several parties, including Sudan’s chief negotiator Lumumba Di-Aping, accused Mr. Zenawi of betraying the African continent. Id. Some even suggested that Mr. Zenawi decided to use the opportunity to advance Ethiopia’s self-interest. Id.
Africa lack positive intentions towards the continent, but rather, it illustrates that altruistic state behavior is possible.

Second, solidarity arrangements could be motivated by self-interested considerations rather than ideational concerns. Explaining substantive solidarity arrangements, Milton Obote eloquently summarized that “[o]n no single issue has Africa ever been so solidly united as on the question of apartheid and colonialism.” But why were already independent African states united to fight racial and colonial domination? Could it be motivated by “the enemy of my enemy is my friend” politics? Understanding the normative and principled ideas that drove decolonization and anti-apartheid movements in the continent, it is theoretically possible for African states to stand in solidarity against colonial powers out of self-interested considerations. Kwame Nkrumah reasoned that in the post-colonial stage, an independent state does not and cannot exist except in the midst of other independent African states. Clearly, living with a friendly neighbor has significant impact on the allocation of resources and development planning. For these reasons, achieving independence in all African states reduces fear of re-colonization and thereby allows newly independent states to achieve other aspirations. In addition, one could argue that some states received material benefits as result of their normative stance. For instance, despite their principled anti-apartheid attitude, one could argue that because Southern African states amassed tons of foreign aid, the Southern African integration arrangements were the result of a materialistic policy disguised as an ideational anti-apartheid stance.

82. Milton Obote, Prime Minister of Uganda, Address at the 1963 African Summit (May 23, 1963), in CELEBRATING SUCCESS, supra note 2, at 108.

83. Kwame Nkrumah, President of Ghana, Closing Remarks at the 1963 African Summit (May 23, 1963), in CELEBRATING SUCCESS, supra note 2, at 126–27 (“As I have said over and over again, the independence of our separate States is meaningless, unless the whole of Africa becomes free and united.”).


85. Martin Adelmann, Fundraising or Common Foreign Policy? 30 Years of SADC Consultative Conference, in MONITORING REGIONAL INTEGRATION IN SOUTHERN AFRICA YEARBOOK 4 (Anton Bösl et al. eds., 2008) (showing that the anti-apartheid
Third, aspects of norms of solidarity have long been subject to criticism by scholars who noted that norms of solidarity have legitimized authoritarian states. As a result of norms of solidarity, some African states enjoy membership in regional and sub-regional integration schemes, although the schemes may lack legitimacy within their domestic constituencies. For instance, without legitimacy from its actual citizenry, the Zimbabwean government enjoys regional support and membership in SADC.

Despite ambivalences, however, norms of solidarity play a central role in defining the foreign policy of African states in general, and Southern African states in particular. Specifically, in the anti-apartheid movement of Southern African states, the role, function, and value of norms of solidarity led to contemporary post-apartheid South Africa. Nevertheless, the question remains whether norms of solidarity hold value in post-apartheid era. In the post-apartheid era, how do norms of solidarity work among Southern African states? How do South Africa’s historical wrongs affect its current status in the region? How are norms of solidarity practiced? What foreign policy tools do Southern African states use in their solidarity arrangements? The next sections attempt to

movement of SADC states received over a billion US dollars between the years of 1980–1987).

86. See generally Tieku, supra note 5. For a critique of how continental pan-African integration alienated the African people and failed to establish Pan-African solidarity, see also Tim Murithi, African Approaches to Building Peace and Social Solidarity, 6 AFR. J. CONFLICT RESOL. 9, 29 (2006).

87. Elias Mambo, Irony of SADC’s Mugabe Endorsement, ZIM. INDEP. (Aug. 23, 2013),http://www.theindependent.co.zw/2013/08/23/irony-of-sadcs-mugabe-endorsement/ (discussing the relationship between legitimacy and regional integration membership with particular focus on Zimbabwe and SADC). Similarly, despite popular protests in Kenya—“don’t be vague, let’s go to [t]he Hague” - the AU’s decision on the relationship between Africa with the International Criminal Court (ICC) called for suspension of Uhuru Kenyatta’s trial at the ICC. Gabrielle Lynch & Miša Zgonec-Rožej, The ICC Intervention in Kenya, 1 AFR./INT’L LAW 4-5 (2013); see also AU. EXT. ASS. DECL. 1-4 (Oct. 2013) (especially note how the justifications provided by the AU do not mention or put into consideration the popular protests in Kenya that called for ICC trials).

answer some of these questions in order to proffer why, when, and by whom norms of solidarity are practiced.

B. Is African-ness Penance for Apartheid?

The end of Apartheid is celebrated as a rebirth of African-ness in South Africa’s foreign policy. South Africa’s apartheid foreign policy was best summarized by John Barratt as “one of trying to ensure the security, status and legitimacy of the state within the international system against the background domestically of preserving a white-controlled state.” Additionally, apartheid South Africa resorted to “coercive hegemony” and power politics to influence behavioral shifts in majority black controlled Southern African region. Therefore, the pre-post-apartheid era on foreign policy making of South Africa focused on making minor shifts in diplomatic relations of South Africa with the rest of Africa. Contrarily, in the post-apartheid period the need for re-immersion of South Africa into a pool of African states brought not only transference in racial equality policies of South Africa, but also a shift in its relationship with states and people of the African continent. This transformation was led by Nelson Mandela and his outline of South Africa’s post-apartheid foreign policy pillars, which included: (1) human rights, (2) democracy, (3) justice and respect for international law, (4)

90. For instance, see Roger Pfister, South Africa’s Recent Foreign Policy Towards Africa: Issues & Literature, 29 CTR. FOR INT’L STUD 1. (2000) (noting that during the apartheid era, South Africa, based on self-interested policies, focused on destabilizing other Southern African states; its foreign policy towards other African states was based on “coercive hegemony”).
91. See generally Evans, supra note 72 (discussing the role of the pre-post-apartheid era on foreign policy making in South Africa). The then Director General of South Africa’s Department of Foreign Affairs affirmed South Africa’s commitment for “new diplomacy,” but not necessarily for “new foreign policy.” Id. Evans argues that this choice of phrase of “new diplomacy” over “new foreign policy” shows the limited shift one would see in post-apartheid South Africa. Id.
92. Pfister, supra note 90, at 12, 14.
peace and non-violence, (5) African-ness, and (6) regional and international economic cooperation.  

In the economic policy sphere, the post-apartheid South African government focused on building consensus and asserting its African-ness through different foreign policy initiatives. For instance, South African politician Thabo Mbeki’s African renaissance movement espouses South Africa’s support of Pan-Africanism. Similarly, despite historical intentions of incorporating Botswana, Lesotho, and Swaziland into the Republic of South Africa, post-apartheid South Africa chose to renegotiate the terms of Southern African Customs Union (SACU) to create better profit sharing mechanism in favor of Botswana, Lesotho, and Swaziland. The hierarchy, relationship, and application of South Africa’s pillars of foreign policy, however, is dubious and problematic. Hence, in the next two sub-sections, the question of whether African-ness—alternatively, observance of norms of solidarity—is penance for South Africa’s historical wrongs, will be analyzed by looking at two specific foreign policy incidents.

93. Mandela, supra note 4, at 87.

94. See generally Gerrit Olivier, *Is Thabo Mbeki Africa’s Savior?*, 79 ROYAL INST. INT’L AFF. 815, 815 (2003) (discussing how Mbeki articulates his ideas for Africa as a continuation of Pan-Africanist movement and calls himself neo-pan-Africanist; whereas “the original pan-Africanists sought the ‘political kingdom’ for Africa, Mbeki casts himself as a neo-pan-Africanist, seeking the ‘economic kingdom’ for the ailing continent”).

95. See Peter Robson, *Economic Integration in Southern Africa*, 5 J. MOD. AFR. STUD. 469, 469 (1967) (discussing how, historically, South Africa and Britain assumed that Botswana, Lesotho and Swaziland would ultimately be absorbed by the Republic of South Africa); see also Mandela, supra note 4, at 92–93.

96. See generally James Barber, *The New South Africa’s Foreign Policy: Principle & Practice*, 81 INT’L AFF. 1079 (2005). James Barber demonstrates the inconsistencies between South Africa’s foreign policy principles and practice: he describes that in its post-apartheid era, South Africa’s concerns were the pursuit of human rights and democracy, among other principles. Id. However, while South Africa’s role in peacekeeping missions in the continent are consistent with the post-apartheid principles of promotion of human rights, democracy and the like, there is a clear shift in its foreign policy with regard to Zimbabwe’s land policy. Id.
During Nelson Mandela’s presidency, the execution of Ken Saro-Wiwa (Nigerian environmental activist), was one of the major post-apartheid foreign policy contentions of African-ness for South Africa. At the beginning of the Saro-Wiwa crisis, South Africa’s policy towards Nigeria was based on ‘constructive engagement,’ which Mandela summarized as, “[m]y own approach is to be in direct contact with them... I do not think, from my own point of view, I can call for sanctions at this stage. If persuasion does not succeed, it will be time to consider other options.” South Africa’s constructive engagement failed to halt Saro-Wiwa execution. This led critics to draw similarities between South Africa’s policy of constructive engagement and Margaret Thatcher’s policies towards apartheid South Africa, where, during apartheid era, the term ‘constructive engagement’ became synonymous with lip service. Unlike Thatcher’s policy towards apartheid, South Africa’s policy towards Nigeria took a major turn after the execution of Kenule Beeson Saro-Wiwa, Final Statement from Nigeria, 5 STANDARDS INT’L J. MULTICULT. STUD. (1996) available at http://www.colorado.edu/journals/standards/V5N2/ESSAYS/wiwa.html. Saro-Wiwa was arrested for his peaceful protests against multinational oil companies, such as Shell, which played a devastating role in damaging the ecology of the lands of the Ogoni people in Nigeria. Ed Pilkington, Shell Pays Out $15.5m Over Saro-Wiwa Killing, GUARDIAN (June 8, 2009), http://www.theguardian.com/world/2009/jun/08/nigeria-usa. As a result of his activism he was condemned to death and executed on Nov. 10, 1995. Saro-Wiwa, supra.


Saro-Wiwa, when it advocated for sanctions against Nigeria. Nonetheless, South Africa’s foreign policy towards Nigeria was subject to criticism; activists criticized ‘constructive engagement’ for its timidity while at the same time African states criticized South Africa’s call for sanctions as defiant of African Solidarity. Several members of the African Union saw Nigeria as a continental leader and “accused Mandela of breaking African unity.” Even amidst Nigeria’s reactions to Mandela’s condemnation of Saro-Wiwa, incidents were mixed: for instance, Ken Saro-Wiwa Jr., spokesman for Nigerian President Goodluck Jonathan, noted how South Africa’s foreign policy towards Nigeria was rather timid. On the other hand, some Nigerians were not only dismayed by South Africa’s position towards Nigeria, but even went further to identify South Africa as “a white state with a black head.”

South Africa’s experience with the Saro-Wiwa incident raises several descriptive accounts of norms of solidarity. First, South Africa as a “born-again” African state needs to constantly pledge its allegiance and observance of norms of solidarity. South Africa’s African-ness is, in general, subject to more contestation. States that have lent a hand in the

101. Barber, supra note 96, at 1084 (discussing that, although all Nigeria received was suspension of its membership in the Common Wealth, Mandela called for more, including economic sanctions and diplomatic isolation as a result of Nigeria’s defiance of international human rights norms).

102. Id. (discussing Liberia’s criticism of how South Africa reacted against Nigeria).

103. Id. (discussing how other African states did not view Nigeria as a human rights abuser, but rather as a continental leader, supporter of liberation movements, and major contributor to OAU).

104. Heidi Vogt, Mandela Leaves Divided Legacy in Africa, WALL ST. J. (Dec. 6, 2013), http://online.wsj.com/news/articles/SB10001424052702303497804579241800418069602 (speaking of Mandela, Ken Saro-Wiwa Jr. said, “[w]e felt he’d failed us”); see also Ken Wiwa, We Nigerians are Celebrating Mandela as the Kind of Hero We’ve Never Had: There is No Doubt We Envy South Africa for Mandela’s Iconic Profile and Global Status, GUARDIAN (Dec. 7, 2013), http://www.theguardian.com/commentisfree/2013/dec/08/ken-wiwa-on-nigeria-response-to-mandela (discussing how Mandela was a paradox for human rights activists).

105. Barber, supra note 96, at 1084 (discussing Nigeria’s reaction to South Africa’s condemnation of Nigeria).
anti-apartheid struggle or decolonization projects of Africa maintain their African-ness despite their actions. For instance, calling for an audit of Zimbabwe’s election, Botswana broke what Simon Allison calls the “unwritten rule of African diplomacy.”

106 In the same way, Botswana has condemned several other African states and their leaders, including Libya’s Muammar Gadaffi and Sudan’s Omar Al-Bashir.107 Unlike South Africa, however, Botswana’s African-ness was not subject to examination.

A second possible explanation for the contestation of South Africa’s “born-again” African-ness, is not the result of South Africa’s historical wrongs, but rather the foreign policy tools - persuasion, constructive engagement, sanctions—it employed. But what are foreign policy tools of African-ness? How do ‘norms of solidarity’ effect behavioral changes among African states? Does African-ness condemn sanctions? Indeed, South Africa’s initial policy of “constructive engagement,” during the Saro-Wiwa incident, did not result in contestation of South Africa’s African-ness. Criticisms against South Africa arose after South Africa called for economic and political sanctions against Nigeria.108

So, does this mean that African-ness condemns sanctions? Certainly, South Africa is not the only country to call for sanctions against another African state. For instance, several African states, backed by the


107. Botswana condemns the African Union on Sudan’s al Bashir, FACE OF MALAWI (June 16, 2012), http://www.faceofmalawi.com/2012/06/botswana-condemns-the-african-union-on-sudans-al-bashir/ (Botswana, standing in solidarity with Malawi, condemned the decision of the African Union to move the meeting site from Malawi to Ethiopia, since the former denied entry to Sudanese president Omar Al-Bashir. “Botswana condemns this action as it is inconsistent with the very fundamental principles of democracy, human rights and good governance espoused by the AU, and which Malawi upholds,” reads the statement.”); see also Wene Owino, Botswana Seeks Gaddafi Departure, Welcomes Gbagbo Capture, AFR. REV. (Apr. 13, 2011), http://www.africareview.com/News/-/979180/1143582/-/hp9sqjz/-/index.html (discussing how Botswana condemned Gaddafi’s violence against peaceful protesters).

108. See generally Barber, supra note 96.
Intergovernmental Authority for Development (IGAD) and African Union (AU) called for sanctions against Eritrea for its support of Al-Shabab in Somalia. The African-ness of the states that called for sanctions on Eritrea was not questioned. Therefore, African-ness does not restrict foreign policy tools and norms of solidarity accepts both persuasion and sanctions as a means of effecting change.

The third possible explanation for contestation of South Africa’s African-ness is that African-ness prohibits interference in internal affairs of AU member states. The idea of a brotherhood of African states solidifies norms of non-interference, along with norms of racial equality and independence of states, as constituting norms of African solidarity. Norms of solidarity provide for ‘non-interference in internal affairs’ as the latter meets the wants and accords of African-ness. The debate is whether South Africa’s reaction to the Saro-Wiwa incident and Eritrea’s support for terrorist groups amounts to interference in internal affairs of Nigeria and Somalia, respectively. It seems that, for the African community, Eritrea and South Africa both breached norms of non-interference, leading African states to react within the realms of norms of solidarity. Alternatively, the use of sanctions as a foreign policy tool


110. A.U. Charter art. 4, para. g (“The Union shall function in accordance with the following principles . . . non-interference by any Member State in the internal affairs of another.”); see generally Paul D. Williams, From Non-Intervention to Non-Difference: The Origins and Development of the African Union’s Security Culture, 106 AFR. AFF. 253 (2007) (generally discussing norms of non-interference in internal affairs of member states among African Union). See also A. Bolaji Akinyemi, The Organization of African Unity and the Concept of Non-interference in Internal Affairs of Member States, 46 BRIT. Y. B. INT’L L. 393, 394 (1972-73) (quoting Justice T. O. Elias’s conception of non-interference as “the desire to be left alone, to be allowed to choose one’s particular political, economic and social systems and to order the life of one’s community in one’s own way”).

111. See, e.g., Charter of the Organization of African Unity, Sept. 13, 1963, 479 U.N.T.S. 39 (“Inspired by a common determination to promote understanding among our peoples and cooperation among our states in response to the aspirations of our peoples for brother-hood and solidarity, in a larger unity transcending ethnic and national differences.”).

112. Constitutive Act of the African Union, supra note 6, art. 3 para. a.
appear to be permissible under norms of solidarity. In conclusion, South Africa’s African-ness was questioned because it broke norms of non-interference in internal affairs as constitutive norms of solidarity among African states.

2. Mbeki and Zuma: African-ness & South Africa’s Relations with Zimbabwe

In the post Saro-Wiwa period, South Africa’s foreign policy choices towards other African states were based on ‘norms of non-interference’ as integral to norms of solidarity. Chris Alden and Millis Soko offer an alternative explanation, arguing that South Africa’s policies following the Saro-Wiwa crisis are the result of South Africa’s penance for its historical wrongs. Yet Alden and Soko failed to explain why other Southern African states, in accordance with South Africa, followed ‘quiet diplomacy’ against Zimbabwe. For example, while Zambia galvanized anti-apartheid stance in Africa, its contemporary policies towards Zimbabwe’s land policy are not dramatically different from South Africa’s.

Others, for instance Ceila W. Dugger and Barry Bearak, reason that South Africa’s foreign policy towards Zimbabwe, especially during Mbeki’s presidency, was the result of Mbeki’s personal relationship with Mugabe, rather than South Africa’s sacrament for its historical mistakes. For Dugger and Bearak, “constructive engagement”


stemmed from personal kinships and relationships of Southern African leaders, rather than from norms of solidarity or African-ness.\textsuperscript{117}

Despite the personal relationships that exist between Mbeki and Mugabe, Mbeki’s uncompromising reaction to western critics of Zimbabwe’s election is a question of African integrity, where Africans have the ultimate power and responsibility to define their future. Mbeki argued, “[w]e have a common responsibility as Africans to determine our destiny and are quite ready to stand up against anybody else who thinks that, ‘never mind what the thousand African observers say about elections in Zimbabwe, we sitting in Washington and London are wiser than they are.’”\textsuperscript{118} Moreover, Mbeki contended that Zimbabwe’s land policy is an internal matter, which does not warrant South Africa’s interference.\textsuperscript{119} In addition, post-Mbeki, South Africa has not only showed support for Zimbabwe, but also called for sanctions against the latter to be lifted.\textsuperscript{120} For instance, Lindiwe Zulu, South African President Jacob Zuma’s foreign policy advisor, noted, “It’s not just Zimbabwe
that’s saying the sanctions are not working. The entire continent is saying that.”

In short, foreign policy formation in South Africa is based on norms of solidarity. The actions and behavior of South Africa following the Saro-Wiwa incident show the value of norms of solidarity and its tenants, such as ‘non-interference in internal affairs,’ in shaping the ethos and formation of foreign relations in Africa. South Africa’s policy towards Nigeria during the Saro-Wiwa incident and the major shift in its policy towards Zimbabwe are not penance for its historical wrongs. Rather, they are the result of acceptance of norms of solidarity and ‘norms of non-interference.’ In addition, if South Africa’s behavior is an attempt to rectify its historical wrongs, one might wonder why allies of apartheid regime are free from paying penance for past wrongs? To be more specific, why was Malawi, which sympathized with apartheid South Africa, not required to prove its African-ness. In addition, why are South Africa-Zimbabwe relations similar to Zambia-Zimbabwe relations? Zambia, which was not only anti-apartheid, but also hosted and funded anti-apartheid movements, followed a similar, if not identical, policy as South Africa in its relations with Zimbabwe. Therefore, what those examples show is that African-ness, or norms of solidarity, strongly prohibit interference in the internal affairs of other African states.

121. Id.
122. See generally Eugenio Njoloma, A Study of Intra-African Relations: An Analysis of the Factors informing the Foreign Policy of Malawi towards Zimbabwe (Nov. 2010) (unpublished M.A. thesis, Rhodes University). During the apartheid era Malawi defined its foreign relations in alignment with South Africa. Id. at 10. Deviating from the accepted norm of African states towards apartheid South Africa, which was deep-rooted condemnation, Malawi called for cooperation with white ruled South Africa. Id. at 10, 21. This led to a lot of bickering between the then President Banda of Malawi and his African counterparts. Id. at 22. Nevertheless, Malawi did not have to go through re-emersion or re-baptism in African-ness as South Africa did. Id. at 26. In its post-apartheid foreign policy Malawi’s penance was, for instance, honoring President Mugabe by renaming a major road after him, which reflects Malawi’s turn to solidarity as the unspoken rule of African foreign policy Id. at 60.
123. Lift Zim Sanctions – Chikwanda, supra note 115.
C. Norms of Solidarity and Regional Integration Arrangements

The discussions on norms of solidarity above mainly deal with the practice of individual member states rather than Southern African states as a group. This leaves lingering questions such as, how are norms of solidarity practiced at regional level? Are norms of solidarity, as organic practices of individual member states, entrenched in regional integration practices? Given the fact that Southern African states belong to three regional integration arrangements—SADC, COMESA and EAC—one might wonder how and where solidarity arrangements lie. For instance, since Tanzania is member of both SADC and EAC, Tanzania has multiple solidarity arrangements with both EAC and SADC member states.\footnote{SADC Member States, SADC http://www.sadc.int/member-states/ (last visited Apr. 7, 2016), and EAC Member States, EAC http://www.eac.int/about/overview (last visited Apr. 7, 2016) (showing that Tanzania has membership both in SADC and EAC).} In this context, Tanzania has solidarity arrangements with both Kenya and South Africa. So the question is whether this would translate into a solidarity arrangement between Kenya and South Africa, even though neither Kenya nor South Africa belong to SADC and EAC respectively.\footnote{SADC Member States, supra note 124 (showing that Kenya is not a signatory to SADC); EAC Member States, supra note 124 (showing that South Africa is not a member of EAC).} To be specific, because Kenya belongs to the same regional arrangements as Tanzania, EAC, can one conclude that there is a solidarity arrangement between Kenya and member states of all regional integration arrangements that Tanzania is a member of?\footnote{EAC member states, supra note 124.} Alternatively, what are the relationships between member states and the community regarding the application of norms of solidarity?

The historical background of regionalism in the African continent is rooted in emancipatory aspirations of its member states, which led to continental feelings of African-ness. Although regional integration involves solidarity arrangements among African states, one should note that the practice and existence of solidarity arrangements among African states exists beyond the confines of regionalism and membership in integration schemes. Fundamental to the relationship between norms of
solidarity and regional integration arrangements in Africa is, therefore, the emancipatory project of the continent.\textsuperscript{127} As solidification of decolonization and anti-racial movements, therefore, norms of solidarity for Southern African states are agnostic to membership in regional or sub-regional grouping.

III. NORMS OF SOLIDARITY AND ECONOMIC RELATIONS

Although norms of solidarity are intensely ideational concerns, particularly in the anti-apartheid and de-colonization struggles of the region, material concerns and particularly economic pressures are pressing issues in governing EU-Southern African relations. The EU has been criticized several times for disintegrating regional integration efforts of Southern African states.\textsuperscript{128} Looking at disintegration simplistically as members of Southern African community relinquishing their membership in SADC and joining COMESA is a practically and theoretically flawed measure of disintegration. First, with the ongoing negotiations for a tri-partite integration among SADC, COMESA and EAC, withdrawal from SADC does not have a long-term effect for regional and continental integration efforts.\textsuperscript{129} Second, sub-regional integration as a means to continental integration does not prescribe where and with which sub-regional grouping a state should belong for continental aspiration of integration to manifest.\textsuperscript{130} Third, theoretically


\textsuperscript{128.} See generally Stephen R. Hurt, \textit{The EU-SADC Economic Partnership Agreement Negotiations: ‘Locking-In’ the Neoliberal Development Model in Southern Africa?}, 33 THIRD WORLD Q. 495 (2012) (arguing that the EU poses a threat to the coherence of regional integration policies of SADC).


\textsuperscript{130.} See \textit{id.} at art. 11 (discussing the relationship between aspiration of the Tripartite Summit and African Economic Community). See also Treaty Establishing the African Economic Community art. 4(1)(d), June 3, 1991, 30 I.L.M. 1241 (“The
the conceptual understanding of regional integration is a continental emancipatory project that has origins and spirit beyond the confines of membership in integration schemes. In this context, among Southern African states, regional integration was nothing but a solidification of norms of solidarity for continental decolonization and racial equality movements.

This part attempts to understand how norms of solidarity fare under economic pressures. The welfare mentality of trade liberalization in European foreign policy is used as a test, which allows one to understand the function, and role of norms of solidarity in defining foreign relations of Southern African states towards the former. The central argument of this section is that economic pressures that threaten revenue, and market access for Southern African states leads to the degeneration of norms of solidarity. For Southern African states in EPA negotiations, issues of access to European markets have overshadowed concerns of Southern African states. This fear, and the end of white racial and colonial domination, resulted in lack of emphasis for common ideational concerns among Southern African states.

It is relevant to put some disclaimers before advancing further in substantive discussions of EU-Southern African states. From the 1960s until now, the narrative of EU-Africa trade relations, where the wealthy, developed Europe, and the poor, developing states of Africa entered into trade agreements, to the detriment of the latter, dominated scholarship.131 There exists structural economic inequality between the EU and African

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131. This discourse was part of the global discourse on North-South divide, where the North has framed multilateral, regional or bilateral trade deals to further its interests at the detriment of interests of developing South. See THE CHALLENGE TO THE SOUTH: THE REPORT OF THE SOUTH COMMISSION 216 (1990) (“[T]he negotiations that have taken place, notably the Uruguay Round on trade, have been called by the North, with an agenda devised to further its global interests. They have been imposed by the North on the South.”).
states, which if evaluated and compared to the current status of inequality gap, is higher than the gap that existed in the 1960s.\textsuperscript{132} However, the parameters of the North-South engagement in EU-Africa relations have changed slightly. To start with, the idea of a developed North in the context of the EU, particularly with its expansion from its original core-members, has created its own internal South.\textsuperscript{133} Second, the idea of the South in the context of Southern-African states has changed and produced its own internal North.\textsuperscript{134} Understanding these limitations of North-South discourse, the focus in this section is not to reintroduce North-South dialogue in the context of EU-Southern African states relations, but rather to test the relationship between economic relations and norms of solidarity.

To understand the relationship between economic relations and norms of solidarity, it seems relevant to explore current trends of trade flows between both trading partners and its impact on the global fair trade movement. New International Economic Order (NIEO) as a negotiation process represents the aspirations and goals of Southern African states in

\begin{quotation}
\textsuperscript{132} Max Fisher, \textit{The Hidden Cost of Inequality: Migrants Who Die on the Journey from Poor to Rich Countries}, WASH. POST (Oct. 7, 2013), https://www.washingtonpost.com/news/worldviews/wp/2013/10/07/the-hidden-cost-of-inequality-migrants-who-die-on-the-journey-from-poor-to-rich-countries/ (“And of course these income gaps, historically, have risen tremendously, despite the fact that in the last 15 or 20 years, China and India have grown at very high rates. Still, the number of countries in Africa where income today is lower than in the 1960s [when they won independence] is large, I think about 15 countries. So, clearly, the gap between Africa and Europe has increased.” (quoting Branco Milanovic)).

\textsuperscript{133} See, e.g., Damjan Kukovec, \textit{A Critique of the Rhetoric of Common Interest in the European Union Legal Discourse}, (Apr. 13, 2012) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2178332 (using center-periphery discourse in this piece, Kukovec argues that although all are members of EU, states like Germany and France are examples of the center within the union and states like Portugal, Greece and Hungary make examples of states in the periphery of EU).

\textsuperscript{134} Here, a good example would be the economic disparity between, for instance, South Africa and Lesotho. Where if one was to use North-South, alternatively Center-Periphery discourse to understand economic relations among Southern African states. In other words, one would consider South Africa to be the north of Southern African states while states like Lesotho represent the south or the region.
\end{quotation}
unequal global economic order. By creating a more equitable global economic order, the NIEO eases economic pressures through the creation of flexible mechanisms to accommodate policy spaces of developing states. Historical relationships of third-world states with unequal global economic order, which failed to transform modes of production and global value chain relationships, led to third-world consensus for reform of global trade relations. Reform of global economic order, a call for fair trade rules from third-world states, is exemplified in several examples, some of which include a call for flexibility in implementation of trade rules, and preferential treatment for goods originating from third-world states. The most recent round of negotiations for fair trade, Doha Development Round, with initiation of third-world states to negotiate more concessions and preferences in their favor, was a continuation of NIEO. The current negotiations for EU-Southern Africa trade relations however, have the effect of eliminating preferential treatment for Southern-African products in EU markets. Therefore, one can argue that EPAs, if and when signed, have the power of sustaining

135. In this context, reference to NIEO is as a negotiation process. Robert W. Cox, Ideologies and the New International Economic Order: Reflections on Some Recent Literature, 33 INT’L ORG. 257, 258 (1979) (“[T]he NIEO is a negotiation process, broadly speaking, between countries of North and South but taking place through a variety of institutions and forums in which are represented wider or narrower ranges of functional and geographical interests. This negotiation process is concerned with the possibilities of agreement concerning both revised international policies and reformed or new institutions (including the power relationships governing these institutions).”). Cox noted that there are four levels of understanding of the NIEO and five opinion clusters. Id. at 259–65.

136. See generally Bernard Hoekman, Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment, 8 J. INT’L ECON. L. 405 (2005) (discussing the role of special and differential treatment in allowing developing states to cope with the impact of WTO sponsored globalization).

137. This line of argument, a critique of the global trading system that has failed to transform modes of production and global value chain relationships, is similar to the historical materialist school of thought as analyzed by Robert Cox. For Cox, the school of historical materialist, which includes such scholars as Samir Amin, is an ideology of the NIEO movement. Cox, supra note 135, at 266.

138. As a result of third world states insistence for a more development oriented global economic order, global trade liberalization negotiations are at a stalemate at the moment. See Hoekman, supra note 136, at 419–21.
unequal global order and eroding the reforms and landmarks of NIEO, however limited NIEO’s reforms might have been.\textsuperscript{139}

To prevent erosion of NIEO, in contemporary trade negotiations between the EU and Southern African states, solidarity arrangements among the latter could play a positive role for sustaining and advancing concerns of fair trade. From a negotiation perspective, unlike the current fragmented approach, united Southern African states would benefit on regional and global fair economic order movements.\textsuperscript{140} Nkrumah eloquently noted, how “[a] single representation, resting on the strength of a whole continent, would be more positive in its influence than all the separate representations of the African states put together.”\textsuperscript{141} Nkrumah’s call for single representation for Africa is based on norms of solidarity, 

\textsuperscript{139} For a similar argument but at a broader global economic order issue, see James Thuo Gathii, \textit{International Law and Eurocentricity}, 9 EUR. J. INT’L L. 184, 203–05 (1998) (reviewing Surya Prakash Sinha, \textit{Legal Polycentricity and International Law} (1996); Siba N’Zatioula Grovogui, \textit{Sovereigns, Quasi-Sovereigns and Africans: Race and Self-Determination in International Law} (1996) (discussing how third world aspirations for NIEO might have already died)). This statement implies that trade liberalization or eradication of NIEO is detrimental for development projects of developing countries. This view is held for multiple reasons. For instance, the global liberalization project has successfully limited developed states imposing liberalization on third world states while they themselves practice pick and choose protectionism. Hence, NIEO to a certain degree, by providing flexibility of global economic order regulations, left a birthing space for development policies among developing states.

\textsuperscript{140} See generally Gabriel Cepaluni, Manoel Galdino & Amâncio Jorge de Oliveira, \textit{The Bigger, the Better: Coalitions in the GATT/WTO}, 6 BRAZ. POL. SCI. REV. 28 (2012) (arguing that since the WTO works through consensus, negotiating in numbers has a positive contribution in shifting or leveling unequal negotiating platform in international economic order). But see generally Peter Drahos, \textit{When the Weak Bargain with the Strong: Negotiations in the World Trade Organization}, 8 INT’L NEGOTIATION 79 (2003) (arguing that the source of bargaining power in multilateral negotiations is eschewed towards the developed North and noting that the idea of strength in numbers does not always level the negotiation platform).

\textsuperscript{141} Kwame Nkrumah, \textit{Africa Must Unite}, 195 (1963) (For Nkrumah one of the positive outcomes of African Unity is the possibility of speaking with one voice instead of each African state having to fend for itself.). See also generally James Thuo Gathii, \textit{The High Stakes of WTO Reform}, 6 MICH. L. REV. 1361 (2006) (reviewing Fatouma Jawara & Aileen Kwa, \textit{Behind the Scenesc at the WTO: The Real World of Trade Negotiations/ The Lessons of Cancun} (2004) (discussing how developing countries through unity could be effective in their WTO trade negotiations)).
where concerns of all African states are presented in the particular negotiating platform with the combined voting power of all African states. For instance, Nkrumah explains how the role of concerted pressure of African states elevated Africa’s anti-colonization movement to the global platform.142 However, Africa’s contemporary lack of common foreign policy resulted in fragmented negotiation syndrome, where African states negotiate individually and outside their regional groupings.143 In the Southern African context, negotiations with the EU fall in four camps: under COMESA, EAC, CEMAC and SADC.144 In addition to the fragmented sub-regional grouping in EPA negotiations, each Southern African state continues to guard its ability to conduct an independent foreign policy towards the EU.145 This produces the

142. See Nkrumah, supra note 141, at 196–97. Nkrumah gives several examples of how the power of ideas of African states changed the atmosphere and moral stance of the UN in the anti-apartheid and decolonization project. Id. He summarized African role in spreading the power of ideas as the reason why the position of the great powers and UN has shifted towards colonialism. Id. He concluded, “[n]othing like this busy concern with the African surge for freedom could ever have happened without the concerted pressure of the newly independent states within the world organization of nations.” Id.

143. Fragmented negotiation syndrome is allowed under the SADC Treaty. Treaty of the Southern African Development Community, supra note 7, art. 24 para. 1 (“Subject to the provisions of Article 6(1), Member States and SADC shall maintain good working relations and other forms of cooperation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC and the provisions of this Treaty.”).


145. This is particularly visible, in the case of Zimbabwe, with a possible mission of appeasing the West in general and the EU in particular although under sanctions from the EU, initialed interim EPA in September 2009. See Zimbabwe, EU sign interim EPA treaty, Forum on China-Africa Cooperation (Sept. 4, 2009), http://www.focac.org/eng/fzsz/qyhz/t607835.htm. Zimbabwe’s initialization of EPA could also be the result of Zimbabwe’s fear of losing access to EU markets as much as it is for sanctions to be lifted. Id. Like Zimbabwe, Botswana, Lesotho, Swaziland and Mozambique (BLSM), for similar reasons as Zimbabwe and obviously without a need to “appease” the EU, were among the early signatories to interim EPAs. Id. Nevertheless, despite the fear and need
lingering puzzles of the role and value of norms of solidarity in contemporary Africa in general, and Southern African states in particular.146

A. Reality of EU-Southern African States Trade Relations

Evaluating contemporary trade between the EU and Southern African states gives four major perceptions of the impact and types of relationships that exists between both trading partners. First, Southern African states’ trade deficit or surplus is not based on whether the particular Southern African state is a beneficiary of the EU’s preferential treatment for developing states. Since some states benefit from the EU’s Everything But Arms (EBA) and Generalized System of Preferences (GSPs) initiatives, one could argue that they have better opportunities in accessing European markets.147 Several scholars, however, showed that the impact of preferential treatment for developing states in improving market access of those states is contestable.148 For instance, among to appease, what is common to all those five states (Zimbabwe, Botswana, Lesotho, Swaziland and Mozambique) is that in their respective EPAs all of them have not agreed on certain contentious issues such as: export taxes and extending most favored nation (MFN) treatment to the EU. Id.

146. The puzzle is not so much the result of negotiations in different regional and sub-regional integration agreements. On the contrary, as explained earlier, norms of solidarity are not dependent on membership to a particular integration scheme. The puzzle here is whether African states will be able to maintain their solidarity commitments compartmentalized to one sub-regional grouping or not. The question is should they keep their solidarity arrangements compartmentalized?

147. The EBA initiative of the EU is an arrangement for least developed states, which provides duty free and quota free access for all products except for arms. See Everything But Arms (EPA) – who benefits?, EUR. COMM’N. (Apr. 30, 2013), available at http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf. GSP initiatives allow developing states’ exporters lower or no duty in order to facilitate their access to EU markets.

148. See Paul Brenton, Integrating the Least Developed Countries into the World Trading System: The Current Impact of European Union Preferences under “Everything But Arms” 20–21 (World Bank Policy Res., Working Paper No. 3018, 2003) (noting that although the impact of EBAs is state specific and with considerable variation, one could argue that its overall impact is relatively minor. This is partly because the EU has one of the highest liberalized tariff regimes and restrictive rules of origin laws). See also
Southern African states, Botswana, Lesotho, and Swaziland benefit from the EU’s GSP initiative and all have surplus against the EU.\textsuperscript{149} Similarly, Angola, DRC, Lesotho, Madagascar, Malawi, Mozambique, Tanzania, and Zambia are beneficiaries of EBA initiatives.\textsuperscript{150} As shown in Table 1, out of these eight beneficiaries of EBAs in the region, only Tanzania and Zambia have trade deficit with the EU. Unfortunately, the existence of trade surplus by, for instance Angola against the EU, does not mean that EBAs have had a positive trade creation effect for Angola. On the contrary, as shown in Table 2, Angola’s trade surplus is the result of increasing demand for oil from Europe. Moreover, since all beneficiaries of EBAs do not have trade surplus against the EU, one can conclude that for Southern African states, preferential treatment does not necessarily convert to trade surplus against the EU.


<table>
<thead>
<tr>
<th>Country</th>
<th>Total Trade</th>
<th>EU Imports</th>
<th>EU Exports</th>
<th>EU Trade Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>40023</td>
<td>15537</td>
<td>24486</td>
<td>8948</td>
</tr>
<tr>
<td>Angola</td>
<td>15518</td>
<td>9311</td>
<td>6207</td>
<td>-3104</td>
</tr>
<tr>
<td>Botswana</td>
<td>4406</td>
<td>3442</td>
<td>964</td>
<td>-2478</td>
</tr>
<tr>
<td>DRC</td>
<td>2197</td>
<td>1135</td>
<td>1062</td>
<td>-72</td>
</tr>
<tr>
<td>Mozambique</td>
<td>2166</td>
<td>1332</td>
<td>834</td>
<td>-499</td>
</tr>
<tr>
<td>Mauritius</td>
<td>1944</td>
<td>1086</td>
<td>858</td>
<td>-229</td>
</tr>
<tr>
<td>Namibia</td>
<td>1695</td>
<td>942</td>
<td>753</td>
<td>-188</td>
</tr>
<tr>
<td>Tanzania</td>
<td>1457</td>
<td>525</td>
<td>932</td>
<td>408</td>
</tr>
<tr>
<td>Madagascar</td>
<td>1273</td>
<td>738</td>
<td>535</td>
<td>-196</td>
</tr>
<tr>
<td>Zambia</td>
<td>1023</td>
<td>453</td>
<td>570</td>
<td>117</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>627</td>
<td>387</td>
<td>240</td>
<td>-147</td>
</tr>
<tr>
<td>Seychelles</td>
<td>610</td>
<td>294</td>
<td>316</td>
<td>22</td>
</tr>
<tr>
<td>Malawi</td>
<td>394</td>
<td>223</td>
<td>171</td>
<td>-53</td>
</tr>
<tr>
<td>Swaziland</td>
<td>253</td>
<td>230</td>
<td>23</td>
<td>-208</td>
</tr>
<tr>
<td>Lesotho</td>
<td>202</td>
<td>187</td>
<td>15</td>
<td>-172</td>
</tr>
</tbody>
</table>

Table 1: EU’s trade balance with Southern African states in million Euros.\(^{151}\)

Second, existent trade deficit could be the result of a liberalized trade relationship between South Africa and the EU.\(^{152}\) As shown in Table 1,

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151. This table is constructed from data compiled by the European Commission that deals with Client and Supplier Countries of the EU28 in Merchandise Trade in Goods with African Countries (2013). A deficit of 15 bn euro in EU28 trade in goods with Africa in 2013, EUROSTAT NEWS RELEASE (Mar.28, 2014) available at http://ec.europa.eu/eurostat/web/products-press-releases/-/6-28032014-AP. Note that the EU’s trade balance with Botswana was not available on the date. Id. Therefore, for the purposes of this study, the EU’s trade balance with Botswana has been calculated by deducting EU’s exports from imports.
South Africa, the biggest economy among Southern African states, has the highest trade deficit with the EU. All Southern African Customs Union (SACU) states, with the exception of South Africa, have trade surplus in their trade with the EU. SACU member states as a group, in their total trade with the EU, have 5,902 million euros trade deficit. Several explanations are worth mentioning here. To start with, as a result of the free trade agreement between South Africa and the EU, the latter’s produce receive liberalized access to the South African market. Access to the South African market for European produce, indirectly extends beyond the confines of South Africa’s territory to all SACU member states. This is because South Africa is a member of the SACU, as a


153. For a history of SACU see generally P. M. Landell-Mills, The 1969 Southern African Customs Union Agreement, 9 J. MOD. AFR. STUD. 263 (1971) (discussing the colonial legacies of SACU agreement and its profit sharing modalities through time). SACU is comprised of South Africa, Swaziland, Namibia, Lesotho, and Botswana. Id. It is the oldest customs Union in the world. Id.

154. Catherine Grant, Southern Africa and the European Union: The TDCA and SADC EPA 3–4 (TRALAC, Trade Brief No. 1, 2006) (discussing how South Africa is actually in the losing side as a result of the TDCA). As a result of trade liberalization of TDCA the EU and South Africa are required to eliminate tariffs on 95% and 86% of currently trade goods. Id. at 3. The impacts of such liberalization are “EU tariff changes affect only 25% of current trade goods and their weighted average tariff is only 2.7%. South African tariff changes affect 40% of currently traded goods in a context of a weighted average tariff of 10%.” Id.

result of which, there is free movement of goods between South Africa on the one hand, and Botswana, Lesotho, Namibia, and Swaziland on the other.156

<table>
<thead>
<tr>
<th>Country</th>
<th>FOOD &amp; RAW MATERIALS</th>
<th>FUELS</th>
<th>CHEMICALS</th>
<th>MACHINERY</th>
<th>TEXTILE &amp; CLOTHING</th>
<th>OTHERS</th>
</tr>
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<tr>
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<td>Imp</td>
<td>Exp</td>
<td>Imp</td>
<td>Exp</td>
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<td>8885</td>
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<tr>
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<td>0</td>
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<td>DRC</td>
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<td>270</td>
<td>889</td>
<td>13</td>
<td>2</td>
<td>186</td>
</tr>
<tr>
<td>Lesotho</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
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<td>86</td>
<td>92</td>
<td>5</td>
<td>18</td>
<td>92</td>
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<tr>
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<td>6</td>
<td>0</td>
<td>77</td>
</tr>
<tr>
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<td>617</td>
<td>216</td>
<td>31</td>
<td>6</td>
<td>15</td>
<td>94</td>
</tr>
<tr>
<td>Mozambique</td>
<td>232</td>
<td>107</td>
<td>1066</td>
<td>12</td>
<td>0</td>
<td>90</td>
</tr>
<tr>
<td>Namibia</td>
<td>370</td>
<td>32</td>
<td>356</td>
<td>233</td>
<td>104</td>
<td>24</td>
</tr>
<tr>
<td>Seychelles</td>
<td>288</td>
<td>131</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>8</td>
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<td>South-Africa</td>
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<td>1524</td>
<td>4370</td>
<td>1049</td>
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<td>3586</td>
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<td>Swaziland</td>
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<td>1</td>
<td>12</td>
<td>6</td>
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<td>Tanzania</td>
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<td>90</td>
<td>89</td>
<td>70</td>
<td>0</td>
<td>172</td>
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<td>228</td>
<td>1</td>
<td>0</td>
<td>68</td>
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<td>Zimbabwe</td>
<td>221</td>
<td>15</td>
<td>20</td>
<td>2</td>
<td>0</td>
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</tbody>
</table>

Table 2: EU’s Merchandise Trade with S. African states by product breakdown in million euros.157

156. SACU Treaty, supra note 155.
Third, by looking at contemporary merchandise trade between Southern African states and the EU, one could conclude that it replicates classical narratives of North and South trade.158 Table 2 elaborates and categorizes merchandise trade between the EU and Southern African states. The breakdown of merchandise trade between the EU and Southern African states shows two trends. First, generally speaking, the EU has a trade deficit in fuel, food, and raw materials trade. In fuel trade, all Southern African states except Malawi, Seychelles, and Swaziland have trade surplus against the EU. For instance, Angola—the biggest fuel exporter from the Southern African states—has surplus approximately amounting to 95% with the EU.159 Likewise, the EU in food and raw materials trade has deficit against all Southern African states with the exception of Angola and DRC. Second, generally speaking when it comes to processed goods and sophisticated production of machinery and chemicals, the EU has surplus against Southern African states. For instance, in machinery trade, the EU has trade surplus against all


158. Classical trade in this section is understood as roles where states in the South are raw material exporters and states in the North export processed and manufactured material. It is also understood as what Paul Krugman’s theory of product cycle theory takes for granted, “product cycle in which it is taken as given that there is continuous introduction of new products in the developed region, the North; at the same time the less developed region, the South, learns in each period to produce some of the goods formerly produced only in the North.” David Dollar, Technological Innovation, Capital Mobility, and the Product Cycle in North-South Trade, 76 AM. ECON. REV. 177, 177 (1986). For Krugman, a state’s terms of trade are improved when that particular state increases the range of products it can produce. Krugman’s theory is consistent with the history of economic development of South East Asian Tigers. Id.

159. The calculation for the percentage of fuel trade was done by the author by looking at specific details of trade flows between Angola and EU. For the year 2013, EU’s fuel import from Angola is 8,885 million Euros worth. Likewise, EU’s trade deficit against Angola in fuel trade is -8,643 million Euros. See EUROPEAN COMM’N, Angola, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122071.pdf (last visited Jan. 28, 2015). In short, when the overall EU’s imports from Angola are worth only 9,309 million Euros, it is easy to see lack of diversified industry on the Angolan side. Id.
Southern African states. Similarly, as shown in Table 2, the EU has surplus in trade in chemicals with all Southern African states except Swaziland.

<table>
<thead>
<tr>
<th>EU Exports</th>
<th>EU Imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Million Euro</td>
<td>Million Euro</td>
</tr>
<tr>
<td>USA</td>
<td>289.4</td>
</tr>
<tr>
<td>Switzerland</td>
<td>169.1</td>
</tr>
<tr>
<td>China</td>
<td>148.2</td>
</tr>
<tr>
<td>Russia</td>
<td>119.5</td>
</tr>
<tr>
<td>Turkey</td>
<td>77.7</td>
</tr>
<tr>
<td>Japan</td>
<td>54</td>
</tr>
<tr>
<td>Norway</td>
<td>50.1</td>
</tr>
<tr>
<td>U.A.E.</td>
<td>44.6</td>
</tr>
<tr>
<td>South Korea</td>
<td>39.9</td>
</tr>
<tr>
<td>Brazil</td>
<td>39.9</td>
</tr>
</tbody>
</table>

Table 3: EU-28 trade in goods leading trade partners, 2013 (million EUR)\(^{160}\)

Fourth, from the EU perspective, Southern African states are not significant trading partners. The EU’s main goods, supplies, and destinations are mostly found outside the Southern African hemisphere. As shown in Table 3, for the EU, USA, and China are the main export destinations, and import sources respectively. Although Southern African states are not the main trading partners for the EU, the EU remains the main trading partner for Southern African states. Between the years of

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2000-2009, SADC exports to the EU represent an average of 26.3% of SADC’s exports to the world. \textsuperscript{161} For the same period, for EAC states with a slight increase from SADC records show an average export of 30.2% to the EU. \textsuperscript{162} Similarly for COMESA member states, half of all of their exports are destined for European markets. \textsuperscript{163} When it comes to imports, SADC states have the highest share of imports from the EU—an average of 31.8% of total world imports. \textsuperscript{164} In conclusion, given current realities of trade between both trading partners, do Southern African states have equal partnership with the EU? Or is the idea of partnership just customary platitude?

\textit{1. EU-Africa Relations: Partnership or Customary Platitude?}

The existence of historical ties between both Africa and the EU, no matter how unequal, oppressive, and exploitative it was, resulted in divergent views of contemporary relationship of both continents. From the European perspective, José Manuel Barrosso, President of European Commission, argues that the EU and Africa are equal partners. \textsuperscript{165} In a more uncertain tone, Hage Geingob, Namibia’s Minister for Trade and Industry, skeptically notes, “[a] partnership means that all partners are equal. Why else would you include the word partnership in the EPA?” \textsuperscript{166}

\begin{itemize}
    \item \textsuperscript{161} Econ. Comm’n for Africa, \textit{Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area}, June 2012, at 19–20 (showing direction of trade among regional integration arrangements). \textit{See also} Dirar \textit{supra} note 127, at 136 (Particularly see table 2.2.2, which shows trade between and among major regional integration arrangements of Africa and the European Union, US and China. It shows how extra-regional trade is bigger than intra-regional trade.).
    \item \textsuperscript{162} Econ. Comm’n for Africa, \textit{supra} note 161, at 19.
    \item \textsuperscript{163} \textit{Id.}
    \item \textsuperscript{164} \textit{Id.} at 20.
    \item \textsuperscript{165} \textit{See} José Manuel Barrosso, \textit{EU and Africa Enjoying ‘Partnership of Equals’}, \textit{Parliament}, May 12, 2014 (“This was my third summit as president of the European commission and I can confirm that it was one of the most successful summits ever held between our two continents, illustrating the shared commitment to maintain and deepen relations as equal partners.”).
\end{itemize}
Minister Geingob’s skepticism of partnership with the EU is a critique that highlights the existent power gap in the negotiations platform for EPAs.

Controversies surrounding the idea of equal partnership were also manifest in the recent EU-Africa summit. The EU took the sole power of defining who should and should not be invited to participate from Africa. As a result, the idea of equal partnership between both continents became controversial. Jacob Zuma, President of the Republic of South Africa, eloquently summarized the African critique of the EU’s role in defining who can and cannot represent Africa. He said,

(quoted Minister Geingob). See also Clair Gammage, (Re)conceptualizing International Economic Law: A Socio-legal Approach to Regionalism, in SOCIO-LEGAL APPROACHES TO INT’L ECONOMIC LAW 64, 71 (Amanda Perry-Kessaris ed., 2013) (discussing Minister Geingob’s comments on the issue of partnership with EU questions the motives of the Minister. Gammage noted that the Minister’s comments are not based on ideological anti-neoliberalism rather a possible maneuver to get election votes. Minister Geingob’s critique and skepticism of the EU negotiation platform and style address broader concerns of power—which could be normative, military or economic—between the EU and Southern African states and its impact on the negotiation platform.).


168. In the fourth EU-Africa summit, the EU barred Eritrea and Sahrawi Arab Democratic Republic (SADR). See, Abayomi Azikiwe, Several African States Boycott the EU Summit in Belgium, GLOBAL RESEARCH (Mar. 31, 2014), http://www.globalresearch.ca/several-african-states-boycott-the-eu-summit-in-belgium/5376073. The EU barred Eritrea for its human rights records. See id. In the case of the SADR, the justification was based on the result of its territorial dispute with Morocco. See id. It is interesting that the EU chose to invite Morocco, which is not a member of African Union, and bar SADR. See id. Similarly, the AU suspended Egypt as a result of the unconstitutional overthrow of elected government. See id. Nevertheless, without Egypt settling its affairs with the AU, the EU not only recognized the new military government in Egypt but also invited the latter to participate in the EU-Africa summit. See id. In short, without consideration of AU’s membership and AU’s concerns the EU decided the list of attendees. See id.

I think that time must pass wherein we are looked as subjects, we are told who must come, who must not come, we have not attempted to decide when we meet Europe; who must come and who must not come. It is wrong and causes this unnecessary unpleasantness. I thought the AU and EU are equal organisations representing two continents but there is not a single one of them who must decide for others.\textsuperscript{170}

In conclusion, African skepticism on the idea of equal partnership is a multi-faceted complexity of EU-Africa relations that has deep-rooted ideological and historical motivations. Historically, the memory and effect of a long history of colonial and racial-oppression perpetuated by European colonists is still felt. Ideologically, the debate is centered on the EU’s interest in promoting neoliberalism across the African continent. For African states in general, and Southern African states in particular, borrowing Kingsley Ighobor’s phrase, the focus on partnership is nothing but “customary platitude.”\textsuperscript{171}

2. Negotiations for EPAs and Global Trade Liberalization

The EU’s multilateral trade liberalization policies are the heart of EPA negotiations with Southern African states. EPAs, not only fit the WTO model of trade liberalization, but also narrow the policy space of African states, by promoting WTO plus liberalization agendas.\textsuperscript{172} In its foreign relations, the Treaty of Lisbon mandates the EU to aspire for free and fair trade.\textsuperscript{173} Unfortunately, however, pursuit of free trade policies

\textsuperscript{170}. Id.

\textsuperscript{171}. Kingsley Ighobor, \textit{Trade Between Two Unequal Partners: Africa and Europe Search for an Elusive Agreement}, 28 AFR. RENEWAL, Aug., 2014, at 3 (discussing how sixty one heads of government and top level officials both from Africa and Europe in their discussion of EU-Africa relations came out with “customary platitudes,” one of which was “[w]e take particular pride in the breadth and depth of our partnership”) (emphasis added).

\textsuperscript{172}. Hurt, supra note 128, at 495–504 (discussing how negotiations for trade liberalization between EU-Africa could lead to shrinking of policy space of African states).

\textsuperscript{173}. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 2(5), Dec. 13, 2007, 2007 O.J. (C 306) 1, (“In its relations with the wider world, the Union shall uphold and promote its values and
has shadowed initiatives for fair-trading arrangements between Southern African and EU states.\textsuperscript{174}

Trade liberalization with the EU—is the biggest trading destination for Southern African products—has a significant impact on African states’ position on global trade liberalization efforts. Africa’s position, reluctance, and timely stalemate on global trade liberalization, would lack consistency both in terms of value and substance if African states liberalize trade with their major trading partner.\textsuperscript{175} In other words, it would be difficult for African states to argue against liberalized global economic order if and after they have liberalized the trade arrangement with their biggest trading destination. Of course, when one presumes that it could pave the way for African states signing into multilateral liberalization, in a way, one is assuming that African states are not capable of negotiating their stance at the multilateral level. Second, one is also assuming that African states will never be able to renegotiate EPAs once they sign into the agreement. On the contrary, no such assumption is made here, although the possibility of one or both of the assumptions coming into reality is possible.

interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”) (emphasis added).

\textsuperscript{174.} See generally Alasdair R. Young & John Peterson, ‘We care about you, but ...’: the politics of EU trade policy and development, 26 CAMBRIDGE REV. INT’L AFF. 497 (2013) (discussing the complex trade policy of the EU. Young and Peterson argue that the EU’s approach on trade as a tool for development shows a paradox between promoting development on the one hand and promoting global neoliberal market policies.).

B. Norms of Solidarity and Trade Relations with the EU

Given the dependence of Southern African exporters in European markets and the unequal negotiation platform, loss of preferential access to European markets has a consequential impact for revenues of Southern African states. How do fears of loss of revenues and market access affect norms of solidarity among Southern African states? Historically, norms of solidarity are a reactionary construction of identity to European racial and colonial domination. Now that white colonial and racial domination has ended in the Southern African hemisphere, how influential are economic pressures in constituting or re-constituting solidarity arrangements of the region? Among Southern African states, are ideational concerns of norms of solidarity limited to decolonization and anti-apartheid aspirations?

Norms of solidarity, among Southern African states are a culmination of the recognition of the relationship between ideational and material concerns. The history of SADC shows that in their anti-apartheid struggle, Southern African states emphasized ideational concerns at the multilateral level and limited material concerns to the state level. In other words, Southern African states galvanized global condemnation of

176. San Bilal & Vincent Roza, Addressing the Fiscal Effects of an EPA, 2007 EUR. CTR. FOR DEV. POL’Y MGMT. 10 (2007), http://ecdpm.org/wp-content/uploads/2013/11/Addressing-Fiscal-Effects-EPA-2007.pdf (showing that as a result of trade liberalization with Europe, it is estimated that Tanzania and Zambia would lose revenue amounting to 32.5% and 15.8%, respectively). See also Phillip Oladunjoye, Nigeria Rejects EPA over U.S. $1.3tr Revenue Loss –Man, DAILY INDEP. (LAGOS), Aug. 15, 2014 (discussing how trade liberalization with the EU would cost Nigeria over a trillion U.S. dollars).

177. Mazrui, supra note 62. See also Samir Amin & Cherita Girvan, Underdevelopment and Dependence in Black Africa – Their Historical Origins and Contemporary Forms, 22 SOC. & ECON. STUD. 177, 177 (1973) (discussing how interaction with other culture—for instance European colonialism—did not break African united identity. In his words, “[t]he image of an ancient, isolated and introverted Africa no longer belongs to this age: isolation—naturally associated with so-called ‘primitive’ character—only corresponded to an ideological necessity born out of colonial racism. But these exchanges with other cultures did not break the unity of the African personality. On the contrary, they helped to assert and enrich it. The colonial conquest of almost the whole of the continent strengthened this feeling of unity of Black Africa.”).
apartheid practices, while at the same time forged agreements with Apartheid South Africa. 178 Most of these agreements concern economic relations. Zimbabwe, for instance, despite its concerns for equality of majority South Africans, forged trade relations with Apartheid South Africa. 179 In short, Southern African states, although advocating ideational concerns for equality of all races in South Africa, constantly checked and re-checked material or self-interest maximizing policies as well.

In the context of relations with the EU, Southern African states fragmented negotiation syndrome—where each states attempts to advance its concerns individually and as a member of a group—is a balancing act of norms of solidarity. However, what is not clearly defined in EPA negotiations is a common ideational concern of Southern African states. Review of current negotiations seems to focus on maintaining access to European markets rather than normativity. In

178. All Southern African states with the exception of Malawi severed formal relations with South Africa. Despite lack of formal relations, however, several Southern African states maintained unofficial relations with the apartheid regime. South Africa’s Foreign Relations During Apartheid 1948, SOUTH AFR. Hist. Online, http://www.sahistory.org.za/20th-century-south-africa/south-africas-foreign-relations-during-apartheid-1948 (last visited Feb. 16, 2015) [hereinafter South Africa’s Foreign Relations]; see also Zimbabwe, Dep’t of Int’l Relations & Cooperation, http://www.dfa.gov.za/foreign/bilateral/zimbabwe.html, (last visited Feb. 16, 2015) (discussing the history of relations between South-Africa and Zimbabwe). [hereinafter Zimbabwe]. Botswana, Lesotho, and Swaziland, as members of SACU, had formal trade relations with Apartheid South Africa while at the same time condemning the latter’s discriminatory policies. See South Africa’s Foreign Relations supra; Zimbabwe supra. All Southern African states, with the exception of Malawi, severed formal relations with South Africa. See South Africa’s Foreign Relations supra; Zimbabwe supra. Despite lack of formal relations, however, several Southern African states maintained unofficial relations with the Apartheid regime. See South Africa’s Foreign Relations supra; Zimbabwe supra. Botswana, Lesotho, and Swaziland, as members of SACU, had formal trade relations with apartheid South Africa while at the same time condemning the latter’s discriminatory policies. See South Africa’s Foreign Relations supra; Zimbabwe supra.

conclusion, EPAs and trade liberalization are not capable of uprooting continental identity of African-ness. Nevertheless, as a result of a lack of common ideational concerns, in their negotiations with the EU, the value of norms of solidarity in framing foreign relations is in an actual state of degeneration.

CONCLUSION

Norms of solidarity define the way Southern African states behave towards each other. Norms of solidarity, by establishing identity of African-ness, harnessed support for decolonization and anti-apartheid movements. As a result of norms of solidarity, African states successfully triumphed over racial and colonial oppression. Norms of solidarity, now that white colonial and racial domination has ended in economic relations with the EU, emphasized material concerns. Indeed, Africa’s emancipation movement has changed and moved beyond the struggles against white racial and colonial oppression, and includes new forms of social emancipatory movements. However, the role and application of norms of solidarity in changing faces of African emancipatory movements has been overshadowed by concerns of maintaining access to European markets. Future re-constitution of norms of solidarity has the force to bring social emancipatory and global fair trade movements to light without challenging feelings of African-ness. To date, however, the ideational concerns of norms of solidarity has become of past triumphs. In conclusion, this Article is an attempt at theorizing norms of solidarity among Southern African states.