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The African Legitimacy Paradox

A critical inquiry into the apparent gap between the stance of African states towards the international human rights concept and their public presentation thereof (2000-2020)

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Name: Abeba Collee (5690331)

Email address: a.c.n.collee@students.uu.nl

Supervisor: dr. Frank Gerits

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Abstract

Ever since their accession to the international society through the course of the second half of the 20th century, African states have publicly committed to the international human rights regime that forms an integral part of it. Still, they have kept continuing the violation of human rights, causing both scholars from within the study of international relations and political practitioners to question the extent in which the African commitment to human rights is a genuine one. This thesis starts with an examination of the alleged gap between the stance of African states towards the international human rights concept and their public presentation thereof on the basis of the three ‘mechanisms of social control’ familiar among these scholars and practitioners: legitimacy, self-interest and coercion. What will become clear is that with regards to the African social system, these mechanisms are too limited – for by equating the mechanism of legitimacy to an unconditional internalization of, and the mechanisms of self-interest and coercion to a complete lack of interest in the concept of human rights, they do not take into account the room that is left for African states for genuinely wanting to commit to human rights, but not yet being able to unconditionally do so because of external factors tracing back to colonialism and the current system still. Accordingly, this thesis will reveal the broader paradoxical dynamic this structural disregard inflicts, in which the genuine willingness of African states to be part of the international society and the international legitimacy this entails simultaneously confirms the way in which they are fundamentally not.

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Introduction

In his article ‘The Attack on Human Rights’, the historian and former politician Michael Ignatieff discusses the ways in which the international concept of human rights and its presupposed legitimacy have been and are being challenged by distinctive sources: the Islam, East Asia and ‘the West’ itself, including both the United States (US) and Western Europe. The challenge from the Islam has been there from the beginning, when the Universal Declaration of Human Rights (UDHR) was being drafted in 1947: “[...] the authors of the draft declaration had,” or so they were accused of by the much resonated Saudi Arabian delegation to the United Nation (UN), “for the most part, taken into consideration only the standards recognized by Western civilization and had ignored more ancient civilization [...]”. It was not for the Committee to proclaim the superiority of one civilization over all others or to establish uniform standards for all countries of the world.”¹ Within the West, criticism towards the international concept of human rights originated in the last decades of the 20th century due to an influential group of scholars, since disputing the alleged universality of the doctrine as well. According to Ignatieff, this challenge was later amplified in East Asia. Largely because of its sudden economic success, Asian leaders felt confident enough ‘to reject Western ideas of democracy and individual rights in favor of an Asian route to development and prosperity’.²

African states, the Islamic instances in particularly the North aside, are not included in Ignatieff’s narrative, and within the academic historiography on human rights and its global ‘contestants’, this is certainly not an exception. One might consider this unusual. After all, following the data gathered by, among other instances, the World Justice Project (WJP), non-Islamic African states too have long been at the center of human rights violations, and though they have shown some progress, still are.³ Admittedly, the violation of human rights does not necessarily imply a fundamental aversion towards them. For human rights violations, as is explained by for instance the political scientists Neil J. Mitchell and James M. McCormick, are often the result of non-political factors such as low levels of economic well-being.⁴ Still, it seems to reveal a gap between the apparent stance of African states towards human rights and their public presentation thereof, that might be worth inquiring. Indeed, this is the inquiry

¹ Michael Ignatieff, ‘The attack on Human Rights’, *Foreign Affairs* (2001), 102-116, there 103.

² Ignatieff, ‘The attack on Human Rights’, 105.

³ World Justice Project, Rule of Law Index 2017-2018. Via: <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2017%E2%80%932018> (accessed on 12-05-2019).

⁴ Neil Mitchell and James McCormick, ‘Economic and Political Explanations of Human Rights Violations’, *World Politics Vol 40* (1988) 4, 476-498, there 497.

central to this thesis. The research question guiding it, will be as follows: How should the apparent gap between the stance of African states towards the international human rights concept and their public presentation thereof be explained? Appreciating the progress made since the launch of the concept, I will focus on the time period between 2000 and 2020.

Following the ideal theoretical way of thinking best known from the ever-prominent social scientist Max Weber⁵, the political scientist Ian Hurd makes a first move by offering two alternative reasons for publicly committing to international norms like human rights for what he, in case of an *intrinsic* commitment to human rights, would otherwise call a sense of legitimacy: self-interest or coercion⁶. Both sorts of reasons, however, imply an indifference towards the values conveyed by human rights that seems incompatible with the effort African states evidently exert on making the concept their own. What reasons, then, are left? To be able to answer this question, one must look beyond what has become the dominant, mostly Western understanding of the international social system within the study of International Relations. More specifically, one must look beyond what has become the dominant understanding of ‘international legitimacy’, that is central to this social system and has long prevented the true African reasons for committing to human rights from being recognized. One will come to realize that despite their lack of a sense of legitimacy towards the international concept of human rights, there still is room for African states to commit to it because of a genuine belief in the values it conveys, but in which external factors have kept prohibiting African states from truly internalizing these values in a way that would close the gap observed. The corresponding dynamic, in which the genuine willingness of African states to be part of the international society and the international legitimacy this entails simultaneously confirms the way in which they are fundamentally not, is what comprises what I will call the ‘African legitimacy paradox’.

Methodology and historiography

This thesis will substantiate the inevitability of the African legitimacy paradox in a world that is limiting itself to the mechanisms presented by Hurd, but will start from a position in which none of these mechanisms are yet ruled out. Through this methodology, that is borrowed from the discipline of philosophy, I hope being able to clarify the multiplicity of standpoints from

⁵ Sung Ho Kim, ‘5.2 Ideal Type’ in: ‘Max Weber’, *Stanford Encyclopedia of Philosophy* (2017). <https://plato.stanford.edu/entries/weber/#IdeTyp> (accessed on 12-05-2019).

⁶ Ian Hurd, ‘Legitimacy and Authority in International Politics’, *International Organization Vol 53* (1999) 2, 379-408.

within the political analysis of Africa that are too often hidden, as well as the way in which my position differs from these standpoints. Grouped into political theories, the available standpoints from within the political analysis of Africa are articulately sorted out by the long leading Africanist Patrick Chabal in his book *Africa. The Politics of Suffering and Smiling* from 2009. Most relevant to the subject I am exploring are what he calls the theories of development, the ‘indigenous’ theories, the neo-patrimonial theories and the democratic theory.⁷

With regards to the African stance towards the international human rights concept, the theories of development and the democratic theory are somehow similar. Where ‘development’ equals ‘unconditional respect for human rights’, as I will later argue it to today, both start from the assumption that there is a path to development which all countries follow, and that African states may or may no longer be behind on that path for they will, eventually, catch up. According to Chabal, the role of these theories, including both liberalist theories like that of Ignatieff and constructivist theories like that of Hurd, is ‘to identify those factors that hindered or facilitated the onward march of progress’.⁸ To some extent, that is what I will be doing as well. In doing so, however, I will argue for the way in which for African states (as, indeed, for every state), the given path can only be continued under condition of an authenticity that is central to the indigenous theories rather than those of development.

With this view, I am certainly not alone. African academics in particular, including political scientists as Bonny Ibhawoh⁹ and Josiah Cobbah¹⁰, often call for the local rather than the universal conceptualization of African politics and call into question the universal validity of the equation often made between modernization and westernization.¹¹ Moreover, starting from Chabal, they appreciate to claims made by historians such as Mark Mazower¹² and Steven Jensen¹³ that Africa had a much more central place in the development of modern world concepts such as human rights than is often assumed.¹⁴ This appreciation is closely

⁷ Patrick Chabal, *Africa. The Politics of Suffering and Smiling* (London and New York: 2009), 12.

⁸ Chabal, *The Politics of Suffering and Smiling*, 12.

⁹ Bonny Ibhawoh, ‘Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State’, *Human Rights Quarterly Vol 22* (2000), 838-860.

¹⁰ Josiah Cobbah, ‘African Values and the Human Rights Debate: An African Perspective’, *Human Rights Quarterly Vol 9* (1987), 209-331.

¹¹ Chabal, *The Politics of Suffering and Smiling*, 12.

¹² Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: 2009).

¹³ Steven Jensen, *The Making of International Human Rights. The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge: 2016).

¹⁴ Chabal, *The Politics of Suffering and Smiling*, 12.

linked to what Chabal calls the ‘question of agency’, revolving around the need for recognition of African agency and countering of ‘Afro-pessimism’, that has become a central theme within the political analysis of Africa.¹⁵ In the recent Routledge volume *Africa in Global International Relations. Emerging approaches to theory and practice*, for instance, several articles are dedicated to the theme.¹⁶ In particular, advocates of the need for recognition of African agency oppose the final sort of theories mentioned by Chabal; the neo-patrimonial theories, embodied by political scientists such as Christopher Clapham¹⁷. Rather than on their achievements, these theories have long kept an emphasis on the structural deficiencies of African states that they consider to be beyond the power of the people.

Structure

As will become clear throughout the course of this thesis, each of the mechanisms set out by Hurd falls within the scope of one of these theoretical standpoints when applied to the reasons of African states to publicly commit to human rights. Individually, then, these theories too will prove too limited. Since, however, this thesis will start from a position in which none of the mechanisms are yet ruled out, this thesis will start from a position in which none of the theories are yet ruled out either. Central to the first half of chapter one, will be the basic question what reasons, starting from the rather undetermined conception of the international social system granted dominance today, there are for states in general to follow norms. This question will be answered by means of a concise presentation of the argument set out in Hurd’s article ‘Legitimacy and Authority in International Politics’, built around the mechanisms of legitimacy, self-interest and coercion. In the second half of the chapter, following Hurd’s constructivist account of international relations, I will briefly analyze the international concept of human rights against the theoretical background just set out and determine the extent in which it should be considered a legitimate part of the international social system at all. Should it not or hardly be, then the entire inquiry in the African motivations for following them would turn out to be trivial with respect to the broader inquiry into the dominant conception of ‘international legitimacy’.

Central to chapter two is the question to what extent African states consider the international concept of human rights to be legitimate – or in other words: to what extent

¹⁵ Ibidem, 14.

¹⁶ Paul-Henri Bischoff, Kwesie Aning, and Amitav Acharya, *Africa in Global International Relations. Emerging approaches to theory and practice* (London and New York: 2016).

¹⁷ Christopher Clapham, *Africa and the International System. The Politics of State Survival* (Cambridge: 1996)

African states have *internalized* the content of this concept. In answering this question, I will make use of three out of five of the operationalization methods Hurd provides: inquiring the African rates of compliance with human rights, examining the *reasons given* for compliance with human rights and studying the reasons given for *noncompliance* with human rights. I will be doing this by means of predominantly primary sources derived from the WJP, the UN General Assembly and its Human Rights Council, and will complement this by means of secondary literature from, among others, Firoze Manji, Carl O’Coill and Susan Dicklitch that should strengthen the conclusions drawn from these sources.

What must become clear is that African states have indeed not internalized human rights the way the dominant theories on legitimacy would expect them to. Therefore, in the third chapter, I will be answering the question what, then, *does* motivate African states to publicly commit to human rights; to what extent is the African motivation for committing to human rights compatible with the mechanisms of self-interest and coercion, and how does the insufficient extent in which this will appear to be the case reveal the limitations of the dominant conception of the international social system and the concept of ‘international legitimacy’, that is central to it?

The first part of this question will be answered by means of, predominantly, primary sources derived from within the African Union (AU), including the annual decision report and Agenda 2063. It will be argued that both self-interest and coercion are insufficiently compatible with the motivations African states have for committing to the international concept of human rights because of what I will demonstrate to be a genuine willingness to commit to this concept. In the second part of the question central to chapter three, this thesis will go further into the room left between *willingness* and *internalization* that, within the current historiography, has long been overlooked. Referring to secondary literature of primarily African academics including the aforementioned Ibhawoh and Cobbah, as well as Frantz Fanon, I will explain the way in which external factors resulting from 19th and 20th century colonialism and the current functioning of international institutions have prevented African states from internalizing the international concept of human rights. By subsequently comparing the paradoxical dynamic these factors leave African states in to the practice of ‘international legitimacy’ as proposed by Hurd and his colleague-political scientist Ian Clark, I will be able to reveal the limitations of the long dominant conception of the international social system and the concept of ‘international legitimacy’ with regards to Africa.

I will end with a conclusion, in which I will formulate an answer to the research question laid down.

I. The dominant framework of the international social system and its human rights intuitions

Within international relations studies, one of the most significant and, therefore, most often explored question is what motivates states to follow international norms, rules, and commitments. Naturally, all ‘social systems’ must face what Hurd calls the ‘problem of social control’, revolving around the way to get actors to comply with social rules. But, as Hurd explains; “[...] the problem is particularly acute for international relations, because the international social system does not possess an overarching center of political power to enforce rules”.¹⁸ Yet within international relations too, some measure of political order is a precondition to attaining most other objectives.

Nearly two and a half centuries ago, in 1795, when some ‘international community’ was just starting to emerge, the Enlightenment-philosopher Immanuel Kant explained the need for such an order on the basis of what he called the ‘spirit of commerce’ that would, sooner or later, take hold of every people, and could not exist side by side with war. “[...] of all the powers (and means) at the disposal of the power of the state,” Kant argued, “*financial power* can probably be relied on the most. Thus states find themselves compelled to promote the noble cause of peace [...]”.¹⁹ Subsequently, two (or three) world wars took place and added some weight to this perspective, showing that political order must be the basis for the practice of communication in general.

Today, then, the necessity of some international order is widely recognized. Still, the question what motivation individual states have for adhering to the social control it exercises, remains. Accordingly, in the first half of this chapter, the Weberian three ideal types for mechanisms of social control – coercion, self-interest and legitimacy – will be set out. The second half will revolve around the role of human rights as an international institution of social control and, more importantly, around the question as to what extent human rights are part of what might be called ‘international legitimacy’. As such, this chapter is meant to represent the dominant, largely Western view within international relations theory on state behavioral motivation and international legitimacy, and to serve as the modest but necessary background against which the African motivations regarding their commitment to human rights will later be set out.

¹⁸ Hurd, ‘Legitimacy and Authority’, 379.

¹⁹ Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (1795), 445.

Mechanisms of social control

The international order that might, in accordance with the English School of international relations theory, better be called the ‘international society’, was the somehow inevitable product of a bumpy road. Classical legal positivists like John Austin and Philip Soper in particular take this course of events to mean that the international system is only the resort to some Hobbesian ‘state of nature’, in which states concede to international norms, rules and commitments ultimately because of the fear to fall back in that state of nature in which poverty and continuous war are the *status quo*.²⁰ According to Hurd, with that representing the dominant trend within international relations theory on the international social system, this given dynamic is best seen as an example of a society based on the first ideal type mechanism of social control: coercion. Coercion, in this respect, “refers to a relation of asymmetrical physical power among agents, where this asymmetry is applied to changing the behavior of the weaker agent”.²¹

Essential to the mechanism of coercion is the emphasis on the rule rather than its content. It is particularly this element in which coercion distinguishes itself from a second possible motivation for compliance with rules that may be ascribed to the international society of states, that is the rather realist belief that compliance promotes one’s self-interest carried out by among others, the historian Stephen Krasner in his book *Sovereignty. Organized Hypocrisy*.²² Starting from Hurd, this belief suggests that any decision made by individuals with respect to international rules or norms is the result of an instrumental and calculated assessment of the *substantive* benefits of compliance versus non-compliance.²³ Given, for instance, Kant’s argument concerning the motivation of states to promote peace, it is not difficult to see why one would believe this to be states’ general motivation to comply with international rules and norms in general. For this seemingly rational, global promotion of peace, that is the main task of what, according to Kant, must eventually become the ‘federation of states’, does only exist by grace of the ‘mutual self-interest’ it represents.²⁴ As such, the given task could be carried out entirely even by what Kant calls ‘nations of devils’: “For such a task does not involve the moral improvement of man; it only means finding out

²⁰ Hurd, ‘Legitimacy and Authority’, 384.

²¹ *Ibidem*, 483.

²² Stephen Krasner, *Sovereignty. Organized Hypocrisy* (New Jersey: 1999).

²³ *Ibidem*, 385.

²⁴ Kant, *Perpetual Peace*, 445.

how the mechanism of nature can be applied to men in such a manner that the antagonism of their hostile attitudes will make them compel one another to submit to coercive laws”.²⁵

As an illustration for the mechanism of self-interest, Kant’s formulation, using terms as ‘compel’ and ‘coercive’, might be confusing. Only more confusing, then, might be his explicit use of the term ‘state of nature’, which he deploys to indicate the ‘standing offence’ states naturally are to one another ‘by the very fact that they are neighbors’.²⁶ Indeed, the mechanisms of coercion and self-interest share many of the same features. For one thing, both are forms of utilitarianism; when given a choice that involves threats of retaliation, for instance, states acting by the mechanism of self-interest and states acting by the mechanism of coercion will both follow the same logic and predict the same outcome, for they will reasonably both weigh the costs of choosing their own path against the costs of retaliation.²⁷ The key difference, however, is that in case of coercion, the actor will be worse off than they were beforehand, whereas the actor acting out of self-interest considers themselves better off than they would be taking ‘their own path’. In the words of Hurd: “self-interest involves *self-restraint* on the part of an actor [...], whereas coercion operates by *external restraint*”.²⁸ This is closely linked to the distinction earlier made between rule and content. For in making their choice, states acting by the mechanism of self-interest, even when coercively restricted, have the room to look into the detailed consequences both choices entail, whereas states acting by the mechanism of coercion can only ask themselves whether following the path set out for them will leave them worse off than they would be in the state of nature – which it virtually never would.

Significant too when distinguishing the mechanism of self-interest is a further clarification of the concept of ‘self-interest’ and, moreover, of the way this concept differs from the way more general concept of ‘interest’ as such. The motivation of interest, according to Hurd, is conceptually inherent to the rational conduct of any state or actor, insofar as it means nothing more than for a state or actor to want to pursue their goal. More relevant with regards to the question what motivates states to follow a certain norm or rule, however, is the question *why* the state, that is clearly *interested* in pursuing this norm or rule, is so. Within the mechanism of self-interest, this is all about the ‘self’, that implies a presumption about the egoistic attitude of the self toward the rules. This ‘instrumental’ attitude, in which every rule

²⁵ Ibidem, 444.

²⁶ Ibidem, 438.

²⁷ Hurd, Legitimacy and Authority, 385, 386.

²⁸ Ibidem, 386.

followed in considered instrumentally valid to the egoistic goals of the state itself, remains true in any situation.²⁹

It is this constant instrumental attitude that distinguishes states acting by the mechanism of self-interest from states acting by the third and final mechanism proposed by Hurd: legitimacy. “When an actor believes a rule is legitimate,” Hurd explains, “compliance is no longer motivated by the simple fear of retribution, or by a calculation of self-interest, but instead by an internal sense of moral obligation: control is legitimate to the extent that it is approved or regarded as “right””.³⁰ What Hurd calls the ‘operative process in legitimation’, then, is the internalization by the state in question of an external standard – more specifically; of the *content* of an external standard. Once internalized by a state, such standards will no longer be included in its instrumental calculus when making a decision, for from that moment on, their content has simply become part of what can be considered a state’s ‘structural self-interest’. Important for anyone interested in the motivations of states to follow international rules or norms to realize, is that internalization is a process, and that the rule or norm internalized was once a rule or norm followed out of self-interest, or even coercion.³¹

The constructivist account of human rights

For a long time, the study of international relation has been limited to the mechanisms of coercion and self-interest only. To a certain extent, so was often argued, the legitimacy of a rule could be of use – yet ultimately, it would always be secondary to the arbitrary power of the ruler controlling it.³² In his article, Hurd’s primary goal is to show that there is no obvious reason, either theoretical or empirical, for holding on to this thought. To do so, he turns to the international system to look for evidence, concentrating on the norms of sovereignty and non-intervention – that he considers to be an institution of social control. For, according to him; “Rather than being a quality of any single state in isolation, sovereignty is a feature of the international system”.³³

According to Hurd, the supposed fact that and the way in which sovereignty is a well-respected set of rules can only be explained by the generally deemed legitimacy of it: Since many borders do not appear to represent frontiers between balanced armies, it is hard to argue that the motivation for following the norm of sovereignty is the fear of physical coercion and,

²⁹ Ibidem, 386.

³⁰ Ibidem, 387.

³¹ Ibidem, 388, 389.

³² Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: 2000), 4.

³³ Hurd, ‘Legitimacy and Authority’, 393.

likewise, since we generally do not see states calculating at every turn the self-interested payoff to invading their neighbors, it is hard to argue that the motivation for following the norm of sovereignty is mere self-interest as well. Rather, Hurd asserts, states follow the norm of sovereignty because they have *internalized* the mandated scheme for political organization in which the norm of sovereignty contains the blueprint of an internationally acceptable structure.³⁴

Within this thesis, neither the case of sovereignty nor the question as to what extent sovereignty does or does not revolve around some kind of legitimacy is of any particular relevance. Since, however, the meaning of human rights to African states is, the norm of sovereignty can serve as a useful parallel. After all, the question as to what extent human rights are considered to be legitimate by African states is only really relevant in a system in which the norm of human rights, just like – according to Hurd – that of sovereignty, is considered to contain a blueprint of an internationally acceptable domestic structure too. For it is precisely this supposed function of human rights that makes them comprise such an integral part of the international legitimacy that I will later argue to constitute half of the African legitimacy paradox.

To what extent, then, *is* the norm of human rights indeed considered to contain a blueprint of an internationally acceptable structure? In examining this question with regards to sovereignty, Hurd refers to the key works of the political scientist Stephen Krasner, in which he explains the respect of states, either large or small, for sovereignty as a prerequisite for a stable system of states in the future.³⁵ For some, including Krasner himself, this might seem like a motivation of self-interest rather than one of legitimacy – and one cannot blame them. For, as must have become clear in the former section, the mechanisms of self-interest and legitimacy share many of the same characteristics and, moreover, initial sources of interest. Essential to the distinction, however, is what gets included in the calculus of interest. Since we do not see states calculating at every turn the self-interested payoff to invading their neighbors, as had already been settled, it is fair to assume that they take for granted the existing structure of relations and only seek to improve their position within – hence not including it in their calculus the way self-interested states would.³⁶

Similarly, states may have chosen to commit to the norm of human rights in order to constrain future governments in favor of a stable world – regardless of the question as to what

³⁴ *Ibidem*, 393–399.

³⁵ *Ibidem*, 399.

³⁶ *Ibidem*, 386.

extent they were already committed to its content before. “An international accord can make abrogating human rights commitments more costly by strengthening domestic groups that support the same values,” Krasner explains:

[...] The governing authorities in Europe in 1950 could not be sure that their commitment to democratic principles and human rights would last. The German experience in the interwar years – Weimar followed by the Third Reich – had shown how vulnerable such values could be. By formulating the European Convention on Human Rights [...], the rulers of the early 1950s hoped to reduce the likelihood that their subjects would again be governed by murderous and repressive regimes.³⁷

Now in 1950, the global commitment to human rights might in general have been a decision of self-interest. Necessarily, however, it was a decision that depended on the premise that in the long run, people and states would commit to the norm of human rights consistently – that they would *internalize* the norm as if it were a universal one. In other words: the norm of human rights as ratified throughout the 20th century was, indeed, meant to contain a blueprint of an internationally acceptable structure – just like the norm of sovereignty was in 1648.

As such, following the constructivist account of Hurd, human rights do indeed comprise an integral part of what can be considered ‘international legitimacy’, by the once prominent political scientist Martin Wight defined as ‘the collective judgment of international society about rightful membership of the family of nations’.³⁸ In the first chapter of his book *Legitimacy in International Society*, this definition is further elaborated by Wight’s colleague political scientist Ian Clark. According to Clark, international legitimacy is not as much a collective *judgment* of the international society, as it is the very *basis* of it, insofar as it is the ‘political space’ to which members of the international society feel a sense of obligation. “Core principles of legitimacy,” Clark argues, “articulate a willingness to be bound, both to certain conceptions of rightful membership of society, and to certain conceptions of rightful conduct within”.³⁹ Only by genuinely willing to be bound to the international society, then, a state becomes a fundamental part of the society, and is considered internationally legitimate. Once again, this emphasizes the motivation for a state wanting to be considered ‘internationally legitimate’ at all. After all, to be absent from this international society entails many great impediments.

³⁷ Krasner, *Organized Hypocrisy*, 121.

³⁸ Martin Wight, ‘International Legitimacy’, *International Relations Vol 4* (1972) 1, 1-28, there 1

³⁹ Ian Clark, *Legitimacy in International Society* (United States 2005), 24.

Indeed, like most other states, African states too should want to express some commitment to the international concept of human rights. Still, even within the constructivist account of human rights, the question remains what motivation they *really* have for committing to the concept and norm. For in wanting to be considered internationally legitimate, they do not necessarily have to agree with the standards of that legitimacy. After all, the agreement of African states was never a condition for the international human rights norm to exist and to become an integral part of international legitimacy. Instead, African states might commit to the norm from one of the other two mechanisms set out: coercion or self-interest – or might commit to the norm for a reason long overlooked. In the following chapters, all possibilities will be examined.

II. On internalization: An investigation into the internalization of human rights within African societies

According to Hurd, we have good reasons to believe that legitimacy matters to international institutions and to the nature of the international system as a whole.⁴⁰ In theory, then, we have good reasons to believe that African states which do formally accept the international human rights norm, do so because they believe the norm to be legitimate. Accordingly, this is the assumption we are starting from. Still, this assumption is in need of being either corroborated or rejected. Accordingly, the question central to this chapter is as follows: To what extent consider African states the international concept of human rights to be legitimate – or in other words: to what extent have African states internalized the content of this concept?

To answer this specific question is even harder than to establish whether or not a norm is considered to be legitimate in general. After all, one will only be fully accepted to the international community by somehow acting *as if* they consider its fundamental norms to be legitimate – and to establish the real motivation behind that requires the study of something that is inherently invisible. Nevertheless, following Hurd, this thesis starts from the believe that there is a way to talk substantively about how a differentiation among motivations in general, and thus a differentiation among motivations of African states might be made. To do so requires some sort of evidence that might count for or against each motivation, which this chapter will try and collect by means of three out of the five methods that Hurd sets out: First, inquiring into the African rates of compliance with human rights. Second, examining the *reasons given* for compliance with human rights and third, studying the reasons given for *noncompliance* with human rights. The fourth and less explicitly the fifth method, regarding the centers of power coming to aid of human rights under threat and the logical necessity of legitimacy within the image of the broader social structure will be addressed in the following chapter, for they require an inquiry into the regional rather than the international arena, that falls outside the internationally focused scope of this chapter.⁴¹

Clearly, not every African state can be regarded the exact same when considering any of these data to be collected. Especially with respect to the compliance of African states with human rights, there exists a wide variety in degree, ranging from Cameroon at about the bottom of the WJP Rule of Law Index of 2017-2018, to Ghana sixty-six ranks higher.⁴² In

⁴⁰ Hurd, 'Legitimacy and Authority', 403.

⁴¹ *Ibidem*, 390, 391.

⁴² WJP Rule of Law Index 2017-2018.

order to cover both ‘sorts’ of countries in examining the extent in which African states do or do not consider human rights to be legitimate, then, these two countries will be used as central case studies within this paper. Aside from representing the very ‘extremes’ regarding the compliance with human rights, both Ghana and Cameroon hold quite a variety of different religions of considerable proportion. Although there are of course many ways in which this diversity might influence beliefs regarding human rights, such a religious diversity is of significance to this research insofar as it suggests that the given beliefs of those countries are not just religion-specific, like the beliefs within the Middle-East are often (yet questionably) considered to be. Moreover, potential human right violations are far less likely to be explained by the divide within the country, instead of by the lack of internalization of them.

African rates of compliance with human rights

Regarding the inquiry the African rates of compliance with human rights, there are two general reasons as to why this would tell us anything about the extent in which African states do or do not consider international human rights to be legitimate. First of all, the main effect of legitimacy is believed to be an increased likelihood of compliance with the rules in question. “When a government comes into being, a key factor shaping its success is the degree to which it can establish legitimacy among its citizens,” so is explained by Levi et al. by means of the legitimacy of governments. “Without legitimacy, governments have to expend more resources on monitoring and enforcement to induce sacrifice and compliance.”⁴³ In a similar way, states in which human rights are not considered to be legitimate, will need lots of resources to achieve the same rate of compliance with human rights as states *without* such resources in which human rights *are* considered to be legitimate – to the extent that such an achievement is possible at all. Second, there can only be a certain deviation of a norm like human rights before it loses its characteristic of being a *status quo*, or in more familiar words: of being part of an acceptable domestic structure. Indeed, the loss of human rights of that characteristic is directly linked to their likelihood of widely being considered legitimate. For in a world in which human rights are not a part of the status quo, there is no longer any reason for anyone to assume their legitimacy the way that I have, in fact, been doing.

As indicated, Cameroon claims one of the lowest ranks in the WJP Rule of Law Index of 2017-2018. Looking at the corresponding report, this seems mostly to be due to major corruption in all of the institutional branches, a great lack of government power constraints,

⁴³ Margaret Levi, Audrey Sacks and Tom Tyler, ‘Conceptualizing Legitimacy, Measuring Legitimizing Beliefs’ *American Behavioral Scientist* Vol 53 (2009) 3, 354-375, there 355.

and an unaccomplished right to life and security. Although Cameroon score relatively high (0.63/1.00) on the ‘absence of civil conflict’ scale, most probably linked to, as expected, an even higher score on the ‘freedom of religion’ scale (0.74/1.00), the country seems to be dominated by violence and a great undependability of the government to redress such violence. With respect to criminal justice, the country scores only 0.10/1.00 on government influence, increased to only 0.21/1.00 with respect to civil justice. On the scale of right to privacy, too, a fundamental human right, Cameroon scores only 0.15/1.00, and although relatively high compared to its other scores, its score of only 0.49/1.00 on ‘no discrimination’ is substantially insufficient as well.⁴⁴ Starting from the US State Department Human Rights Report on Cameroon (2017), the scores from the WJP Rule of Law Index can be explained by the ‘arbitrary and unlawful killings through excessive use of force by security forces’, ‘disappearances by security forces and Boko Haram’, ‘torture and abuse by security forces [...]’, ‘harsh and life threatening prison conditions’ and ‘trafficking in persons’ with respect to security and justice, ‘[...] government restrictions on access to the internet’ with respect to privacy and ‘criminalization and arrest of individuals engaged in consensual same-sex sexual conduct’ with respect to discrimination – one for one included in what the authors of the report consider to be the ‘most significant human rights issues’.⁴⁵

By many academics, such human rights violations have somehow been linked to a lack of democracy. After all, as is explained by for instance the political scientist Todd Landman, democracy is particularly grounded on the principle of participation and accountability, and starting from those principles, any right valuable to the population seems more likely to be protected.⁴⁶ Today, however, an explicit emphasis is put on the ‘threshold’ of domestic peace after which human rights violations should *really* decrease. According to the political scientists Cristian Davenport and David A. Armstrong II, it is only after that certain threshold that state repression declines in a way that will elicit the desired effect on human rights violations. “[...] until there is a particular combination of institutions and behavioral factors in place,” they explain, “authorities will not be compelled to respect human rights. Below the critical point, the constraints are not comprehensive or severe enough to deter repressive

⁴⁴ WJP Rule of Law Index 2017-2018, 66.

⁴⁵ US State Department, Cameroon 2017 Human Rights Report (2017), 1..

⁴⁶ Todd Landman, ‘Democracy and Human Rights: Concepts, Measures, and Relationships’ *Politics and Governance Vol 6* (2018) 1, 48- 59, there 49.

action nor are the social control mechanisms well enough situated to provide viable alternatives for state repression.”⁴⁷

The given ‘threshold’ is no further specified, but it seems fair to assume that with a score of only 0.19/1.00 on the scale of ‘publicized laws and government data’, 0.37/1.00 on the scale of ‘freedom of expression’ and no more than 0.41/1.00 on the scale of ‘civic participation’, Cameroon has not reached it. To this thesis, this assumed fact becomes more relevant when looking at the claim made by the human rights specialist Susan Dicklitch in her article named ‘Failed Democratic Transition in Cameroon: A Human Rights Explanation’. “[T]oo much scholarship focuses on the institutions necessary for democracy,” she argues, “but not enough examines the level of ‘human rights culture’ or rights-respective culture that is a necessary foundation for democracy”.⁴⁸ According to her, a ‘substantive democracy’ comparable to the post-threshold democracy mentioned by Davenport and Armstrong, can only come into existence when the concerning country is made up of both a human rights-respecting society and a human rights-protective regime. The lack of democracy characteristic to Cameroon might be explained by a similar lack of respect for human rights.⁴⁹ On top of the general claims earlier made about the significance of compliance rates to the research question, this strengthens the case as to why a lack of democracy, coupled with other human rights violations, would tell us anything about the extent in which African states like Cameroon consider the international human right norm to be legitimate.

As for Ghana, the situation seems slightly different. By most members of the ‘international society’, Ghana is considered to be the leading African country when it comes to democracy – and its government too loves proclaiming this in public speeches or debates.⁵⁰ Indeed, in the WJP Rule of Law Index of 2017-2018, the overall score of Ghana exceed all of those of the other African continents. Especially with regards to civil justice, constraints on government powers and fundamental rights, the country does well, claiming the number one regional position.⁵¹ As such, the case of Ghana seems to call for what, in the introduction, has been presented as the ‘theories of development’, including the democratic theory: if one African country is able to develop the way Western countries have been doing, would it not be fair to assume that other African countries are too?

⁴⁷ Cristian Davenport and David A. Armstrong, ‘Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996’ *American Journal of Political Science* Vol 48 (2004) 3, 538-554, there 542.

⁴⁸ Susan Dicklitch, ‘Failed Democratic Transition in Cameroon: A Human Rights explanation’ *Human Rights Quarterly* Vol 24 (2002) 1, 152-176, there 153.

⁴⁹ Dicklitch, ‘A Human Rights explanation’, 153.

⁵⁰ UN General Assembly, Seventy-second session, 11th plenary meeting (A/72/PV11) (2017).

⁵¹ WJP Rule of Law Index 2017-2018, 82.

Ghana too, however, has a variety of problems when it comes to the actual compliance with human rights and, in fact, democracy, that might counter this conclusion. Instead, as will be elaborated on in the conclusion of this chapter, the exhilaration that is so often proclaimed with regards to the alleged ‘democratization’ of Ghana might call for the extent in which by proponents of the theories of development, more structural factors are consistently overlooked. Although the country does score 0.77/1.00 on the ‘civic participation’ scale, only 0.03 points lower than the US itself, it scores a poor 0.25/1.00 on the scale regarding publicized laws and government data, only 0.49/1.00 on the ‘right to information’ scale and no more than 0.58/1.00 on the scale regarding complaint mechanisms. Really, Ghana seems to be some sort of ‘formal democracy’ which, starting from Dicklitch, is fundamentally different from the substantive democracy: to establish whether a country is a substantive democracy, one should not just focus on the narrow politics of alone but should take into account the variety of both political and economic aspects of democracy, largely overlapping with, indeed, human rights.⁵²

Considering these ‘human right’ aspects, there do indeed seem to be some serious problems: On the ‘absence of violent redress’, the country scores only 0.31/1.00 – about the same as Cameroon, and judging by several different scales, the country seems to have a severe problem with fairness within the system in general. On the scale of absence of corruption in the legislature, for example, Ghana scores only 0.30/1.00, reflected in the lack of corruption with respect to civil justice (0.53/1.00), the lack of corruption with respect to criminal justice (0.45/1.00) and the effectiveness of the correctional system (0.31/1.00) as well. Moreover, with a score of 0.68/1.00, discrimination remains a problem in in the country as well.⁵³

As for the economic aspects of democracy Dicklitch underlines, it is useful to take a look at the score on labor rights, which is only 0.58/1.00 in Ghana. Starting from the US State Department Human Rights Report on Ghana (2017), this is likely to be explained by the fact that the right conduct of legal strikes is restricted for workers who provide ‘essential services’. ‘Essential services’ for the Ghanaian law, however, include many sectors falling outside the International Labor Organization’s essential services definition. Additionally, by the Emergency Powers Act of 1994, authorities seem to be granted the power to suspend *any* law and prohibit public meetings. Moreover, though any form of forced labor is prohibited, the government does not effectively enforce this prohibition: “There were indications of forced

⁵² Dicklitch, ‘A Human Rights explanation’, 53.

⁵³ WJP Rule of Law Index 2017-2018, 82.

labor affecting both children and adults in the fishing sector, as well as child labor in informal mining, agriculture, domestic labor, portage, and hawking”.⁵⁴

Finally, as is emphasized by Hurd too, it is impossible to take fairly high rates of compliance with human rights, like that in Ghana, as evidence for the legitimacy of the rule, for it cannot help us distinguish among the three mechanisms of legitimacy, self-interest and coercion. “The merely external fact of the order being obeyed,” so Hurd cites his muse Weber, “is not sufficient to signify domination [legitimate authority, ed.] in ours sense. [...] [authority] involves a reciprocal relationship between rulers and ruled, in which the actual frequency of compliance is only one aspect of the fact that the power of command exists”.⁵⁵ Mere compliance as such, should indeed be the behavioral outcome of all of the three mechanism.

In sum, for the reasons set out throughout this section, the supposed fact remains that lower rates of compliance count against a motivation of legitimacy when it comes to publicly supporting the rule. At least to some extent, then, it seems fair to say that there has already been collected some evidence counting for the claim that African countries like Cameroon and Ghana do not consider human rights to be legitimate – that they have not *internalized* them. Aside from impeaching the Ghanaian motivations for its relatively high rates of compliance, however, the previous paragraph also raises the question as to how strong this evidence really is – when compliance should be the outcome of any mechanism. Are not other reasons than mere negligence more likely to explain the low rates of compliance with the rules that African countries, given their need for international legitimacy, should logically want to follow? Indeed, the picture of both legitimacy and motivation is a complex one. In order to adhere to that complexity and to be able to say something meaningful regarding it, this thesis should go more deeply into the provided motivations for compliance as well as non-compliance, as conveyed by the countries more explicitly. Both will be discussed in the next section.

Public motivations for African (non-)compliance with human rights

Public speech of African countries regarding any subject can take place on three different levels: the national level, the regional level, and the international level. Within this section, only the subject of human rights is relevant. More specifically; it is only public speech involving the compliance or non-compliance with human rights that is of relevance. Since

⁵⁴ US State Department, Ghana 2017 Human Rights Report (2017), 23.

⁵⁵ Hurd, ‘Legitimacy and authority’, 390.

both take place in the international ‘arena’, both the national level and regional level can thus be left aside. The level that is left is the international level, of which this section will take the most prominent institutional stages for public speech to analyze the African motivations for compliance and non-compliance with human rights. With regards to human rights, these are the UN General Assembly, founded in 1945 as the main deliberative, policymaking and representative organ of the UN, and the United Nations Human Rights Council (UNHRC), created by the General Assembly in 2006 in order to strengthen the promotion and protection of human rights around the globe.

Best insight regarding any public motivation for non-compliance can be derived from the Universal Periodic Review (UPR), one of the most important mechanisms of the UNHRC in which the human rights records of all UN member states are reviewed. In the article ‘Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council’ the Ethiopian diplomat Allehone Mulugeta Abebe sets out the four phases by which the UPR operates: first, the gathering of information on the human rights situation in the state under review, second, an interactive dialogue in the so-called ‘UPR Working Group’, third, the final adoption of the ‘outcome’ report, including recommendations to the reporting state by the plenary Council and last, the ‘follow up’ to the review.⁵⁶ It is especially the so-called follow-up report, in which the state under review responds to the recommendations presented by the Working Group, that provides us useful information about the motivations behind compliance and non-compliance.

As for Cameroon, the main critiques expressed in advance of and during the interactive dialogue of the Third Cycle UPR in 2018 involved about the same human right violations as mentioned within the previous section. In particular, members and observers of the UNHCR were concerned about the human rights violations of the Anglophone minority, woman and homosexuals. To this, other stakeholders like Amnesty International added their concerns about the lack of accountability for crimes committed by security forces.⁵⁷

In theory, there are roughly four ways to respond to such concerns – each somehow indicating a different stance towards the legitimacy of human rights. Notably, all sorts of responses were carried out by Cameroon. First, to a considerable extent, the country acknowledged the problem and committed itself to progress: out of the 196 recommendations

⁵⁶ Allehone Mulugeta Abebe, ‘Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council’, *Human Rights Law Review Vol 9* (20s09) 1, 1-35, there 7.

⁵⁷ UN Human Rights Council, Report of the Human Rights Council on its 39th session (A/HRC/39/2) (2018), 101.

received, 134 enjoyed the support of Cameroon. With respect to the motivation behind this, the president of Cameroon simply ‘re-affirmed that the rule of law, modernity and progress are greatly valued in Cameroon’.⁵⁸ Now clearly, within a Human Rights Council, this is about the only reasonable motivation possible. Cameroon’s expression of that motivation, then, tells us no more than what was already established; that the county feels the need to acknowledge the standards of international legitimacy. Whether it feels this need because of a sincere human rights respectiveness, however, remains unclear.

Accordingly, it is helpful to take a look at the other UN institutions in which human rights are mentioned by Cameroon. Remarkable in various General Assembly debates appears that especially by the presidents of Cameroon, the protection of human rights is more often linked to prosperity, than it is to the worth of human rights as such. “We must not lose sight of the fact that human beings, whose development depends on living conditions, are at the heart of the Organization’s objectives,” so is, on behalf of the President, states by Lejeune Mbella Mbella, Cameroonian Minister of Foreign Affairs. “The complex relationship between peace, development and human rights allows us to consider the eradication of poverty and the improvement of people’s living conditions as the surest means of achieving lasting peace, adequate protection of the individual and viable democracy.”⁵⁹ The given focus on economic development, that was carried out in earlier summits as well, is fully comprehensible, for it is basic needs that are at stake. This does not take away from the apparent reality, however, in which international human rights somehow seem to be regarded no more than a rhetorical instrument.

Second, Cameroon denied some of the human rights violations it was accused of, specifically those of Non-Governmental Organizations (NGOs) “Cameroon noted that the majority of non-governmental organizations made reports,” so the UNHRC reports reads, “which they could not accept as they deemed them full of errors and containing unfounded accusations”.⁶⁰ Looking at the report, however, the NGOs in question did not make any claims very different from that of the member and observer states, so why are they the ones called out? For one thing, NGOs are a way easier targets than other states, for they do not take (direct) part of the international society that states like Cameroon, to some extent, depend on and thus form less of a diplomatic ‘threat’. Another explanation is offered by Firoze Manji

⁵⁸ A/HRC/39/2, 102.

⁵⁹ UN General Assembly, Seventy-third session, 11th plenary meeting (A/73/PV11) (2018), 48.

⁶⁰ A/HRC/39/2, 102.

and Carl O’Coill in their article ‘The missionary position: NGOs and development in Africa’, that might be worth addressing as well.

According to Manji and O’Coill, NGOs have become the new embodiment of what missionaries once were: “Today their work contributes marginally to the relief of poverty, but significantly to undermining the struggle of African people to emancipate themselves from economic, social and political oppression”.⁶¹ Starting from this explanation, the response given by Cameroon might teach us something even more valuable. For although the alleged perception of organizations *proclaiming* human rights does not necessarily equal the perception of human rights *themselves*, it does provide us with a little insight in the way in which the human rights ‘doctrine’ might still be considered to be connected with the colonialism once dominating Africa.

Third, there were accusations of human rights violations that Cameroon acknowledged as such but denied any responsibility for. With regards to the crimes committed by security forces, ‘Cameroon highlighted that its Government follows the rule of law and that they did not initiate the use of force’. “It was individuals who broke the law and targeted the State,” so is reported, “seeking to destabilize the institutions that initiated the conflict. [...] putting the Government and the perpetrators of violence on the same footing is to conceal the truth”.⁶² I will not burden myself with the question as to what extent this is true. Fact remains that just like Amnesty International claimed, there does indeed seem to be a lack of accountability of the Cameroonian government with regards to these human rights violations. To the question to what extent Cameroon considers human rights to be legitimate, this appears to be a valuable fact when considering the ‘traditional approach’ towards political legitimacy, in which accountability is considered to be one of the main attributes telling us whether or not an institution is legitimate.⁶³ And in his article, Hurd too provides us with a reason why a lack of accountability would count against the legitimacy of the rules to be accounted for. For him, the only way to escape from the conclusion that a non-complied rule is not considered legitimate, seems to be for the actor responsible for non-compliance to feel the need to justify its actions as still being within the limits of the allowable.⁶⁴ And starting from its third response, Cameroon does not.

⁶¹ Firoze Manji and Carl O’Coill, ‘The missionary position: NGOs and development in Africa’ *International Affairs Vol 78* (2002) 3, 567-583, there 568.

⁶² A/HRC/39/2, 102.

⁶³ M. Stephen Weatherford, ‘Measuring Political Legitimacy’, *American Political Science Review Vol 86* (1992) 1, 149-166, there 150.

⁶⁴ Hurd ‘Legitimacy and Authority’, 391.

The conclusion that Cameroon does not consistently feel the need to justify its actions as still being within the limits of the allowable, is strengthened by Cameroon’s fourth and final response to the accusations made within the UPR interactive dialogue, that involves a straight rejection of the legitimacy of some human rights violated. In the report of the Human Rights Council’s thirty-ninth session, there does not seem to be such a response. In the sessions following the Second Cycle UPR, however, there is, with regards to homosexuality: “As His Excellency Minister of Foreign Affairs Pierre Moukoko Mbonjo stated in May 2013,” so is recalled by Cameroon in the given session, “homosexuality has not been seen as a value accepted by the society, and the legislator has simply enshrined this dominant sociological value in law”.⁶⁵ After receiving many concerns regarding the criminalization of homosexuality from both the Council members and observers and other stakeholders, the president again reiterates ‘that this issue remained sensitive for its society, culture and civilization’.⁶⁶ To be clear: the explicit refusal of only one element of the human rights doctrine cannot be extended to the whole concept of human rights. The mere fact that Cameroon considers gay rights to be illegitimate, thus, certainly does not tell us that the country considers all human rights to be illegitimate. In his explanation, however, the president of Cameroon makes a clear divide between the international society, in which human rights are the primary standard, and the domestic society, in which the domestic culture is. To the extent that the domestic culture has, apparently, not internalized the international standards then, this *does*, again, suggest that Cameroon does not consider the international human rights institution to be inherently legitimate.

During the Third Cycle UPR of Ghana, homosexual, woman and children rights seemed to be the main concern of the countries involved. Like Cameroon, Ghana welcomed recommendations concerning woman and children rights, but rejected (or in formal terms; ‘noted’) about all of the recommendations on homosexual rights.⁶⁷ In contrast to Cameroon, Ghana did not provide any reason as to why it rejected these recommendations – not even in the Second Cycle session. In the latter, Ghana did explicitly address the recommendation on homosexuality, but instead of elaborating on its rejection, the country tried to emphasize the alleged fact that decriminalization of homosexuality was unnecessary: “[...] the delegation reiterated that Ghana did not have a policy of non-equal treatment of its citizens; any act of

⁶⁵ UN Human Rights Council, Report of the Human Rights Council on its 24th session (A/HRC/24/2) (2013), 215.

⁶⁶ A/HRC/24/2, 220.

⁶⁷ UN Human Rights Council, Report of the Human Rights Council on its 37th session (A/HRC/37/2) (2018), 88.

violence perpetrated against any person in Ghana was investigated and appropriately addressed”.⁶⁸ To some extent, then, Ghana did in fact seem to feel ‘the need to justify its actions as still being within the limits of the allowable’, as Hurd proclaimed to be an indication of regarding the ‘limits’ in question to be considered legitimate. By leaving the actual problem unnamed, however, being the lack of political measures to ensure those laws of within the limits, the country rather shifted the issue, just like Cameroon did with regards to the crimes committed by security forces. Indeed, this seems to be a trend within Ghanaian public speech. While continuously proclaiming its belief in democracy and human rights, Ghana never explicitly seems to address its own human rights violations.

Certainly, this makes sense. For by addressing its own human rights violations, Ghana would undermine its belief in democracy and human rights and, moreover, its established position as the African forerunner of both. The fact, then, that during the Third Cycle UPR, 212 out of 241 recommendations received *were* in fact supported, is no surprise.⁶⁹ Still, the question remains as to what extent these recommendations are internally respected as well. In answering this question, it may help shifting to the regional level, on which African states might less feel the need to proclaim only what they are internationally expected to proclaim. An inquiry into the motivations expressed on this level, however, will not only provide us with answers regarding the extent in which African states act by the mechanism of legitimacy, but with answers regarding the extent in which African states act by the mechanisms of coercion and self-interest as well. Therefore, this question will be included in the next chapter.

As for the past chapter, a case has been made for the limited extent in which both Cameroon and Ghana, despite of their public commitment to it, have in fact *internalized* the international human rights institution. With regards to Ghana in particular, this lack of internalization is often overlooked. To a reasonable extent, this is to blame on the theories of development that many people today, including most constructivists like Hurd, are starting from. Proponents of these theories consider economic and political factors to be the primary factors relevant to ‘ultimate development’ and democracy and too often equate the relative economic and political progress made in countries like Ghana, combined with a public echo of the things they want to hear, with an internalization of the values they link to that progress, such as human rights.⁷⁰ In doing so, they tend to disregard the alternative reasons there exist

⁶⁸ UN Human Rights Council, Report of the Human Rights Council on its 22nd session (A/HRC/22/2) (2013), 179.

⁶⁹ A/HRC/37/2, 92.

⁷⁰ Kwame Boafo-Arthur, ‘Structural Adjustment, Democratization, and the Politics of Continuity’, *African Studies Review* Vol 42 (1999) 2, 41-72.

for showing such progress, for publicly committing to the international human rights institution.

So what might these reasons be? What does the limited extent in which African states like Cameroon and Ghana have proven to have internalized the international human rights institution really teach us about the reasons they have for publicly committing to it? Are they in fact *unwilling* to be bound to human rights and other standards constituting ‘international legitimacy’, like Clark seemingly suggested states with a perspective falling outside that of the ‘legitimate political space’ to be, and do they commit to human rights only because they are either coerced or egoistically moved to do so? Or may there be some room left for other reasons that have long been overlooked within the study of international relations? These are the questions that will be addressed in the following chapter.

III. To willingness: A new perspective on the dominant framework of the international social system

In the book *Africa and the International System. The Politics of State Survival*, the political scientist Christopher Clapham argues that it has been primarily their need for survival that moved African rulers to seek out for international recognition and support. “[...] the less solid the state,” Clapham claims, “the greater the need to look beyond it for an understanding of how the society that it claims to govern fits into the international system”.⁷¹ Once recognized, international conventions were able to protect and strengthen the power of the ruler. Simultaneously, however, their power came to depend on those very rules, at least as much as it depended on the on the support of the people of the state which they governed.⁷²

Starting from this line of reasoning, that arguably belongs to what has swung by within the introduction of this thesis as the ‘neo-patrimonial theories’, it seems clear why one would claim the African motivation to publicly commit to the international human rights institution, or at least that of its governments, to be the product of a mechanism of either coercion or self-interest. Coercion, if these international rules turned out to be an external restraint that leaves African states with only two options; to follow them or to fall back into a ‘state of nature’; self-interest, if it appeared to be true that the African states consider the content of the rules in question and well-calculatedly decide following them to be the better choice. Still, however, a claim to either of these mechanisms brings some fundamental problems. On the one hand, African states do in fact seem to look into the content of human rights in a way that coerced states would not. On the other, we generally do not see African states calculating at every turn the self-interested pay-off to evading (parts of) that content either.

What reasons, then, *do* African states have for committing to human rights? This is a significant part of the question central to this chapter. Central to the first section, building on the previous chapter, are the regional human rights engaged institutions within Africa, that indicate the considerable extent in which African states do indeed seem to consider the content of human rights. The way in which they function, however, that leaves a thing or two to be desired, and the potential explanations for this, do not only call for an absence of the mechanism of legitimacy, but for an absence of the mechanism of self-interest as well. For it often seems to be some instrumentally irrational factor that moves them to make one choice or

⁷¹ Clapham, *The Politics of State Survival*, 6.

⁷² *Ibidem*, 25.

another. The given ‘factor’ will be further explored in the next section, that this section will argue to be the product of primarily the way the international human rights institution came into existence and has been functioning since. In the final section, a concluding light will be shed on the implications this has for the meaning of international legitimacy to African states, and on the way in which this differs from the dominant understanding of international legitimacy in international relations studies.

Regional human rights engaged institutions and their functioning: Explaining the absence of the prevalent mechanisms of social control

The by far most prominent and internationally influential, regionally overarching institution in Africa is the African Union (AU). The AU was both initiated and established by the Organization of African Unity (OAU) that came into existence in 1963. According to the Namibian lawyer and author Bience Gawanas, the OAU was founded on the principles of state sovereignty and non-interference: “The Charter establishing the OAU [...] stipulated the fight for the decolonization of Africa among its main objectives, as it was believed that Africa could not be considered free unless the last colony had gained its independence, achieved the right to self-determination, and won the fight against apartheid”⁷³. By adopting an unconditional position on non-interference, however, the OAU became ineffective in the development of what was later called ‘the process of economic and political integration in the continent’.⁷⁴ Accordingly, from 1999 on, the Assembly held four summits, leading to the official launching of the AU in 2002.

Gawanas argues that with regards to human rights, the AU’s Constitutive Act, adopted in 2000, marked a major departure from the OAU charter in the following respects: “Moving from non-interference to non-indifference [...], explicit recognition of human rights, promotion of social, economic and cultural development, an approach based on human-centered development and gender equality”.⁷⁵ Throughout its following conferences, meetings, declarations and resolutions the AU and its member states kept conveying these objectives and principles, moreover initiating several human rights instruments such as, most recently, ‘Agenda 2063’.

⁷³ Bience Gawanas, ‘The African Union: Concepts and implementation mechanisms relation to human rights’ in: *Human rights in Africa: legal perspectives on their protection* (Windhoek: 2009), 136.

⁷⁴ African Union, ‘AU in a Nutshell’ (date unknown). <https://au.int/en/history/oau-and-au> (accessed on 08-03-2019).

⁷⁵ Gawanas, ‘The African Union’, 138.

In contrast to what realists would argue, human rights instruments like Agenda 2063 and the African Charter on Human and Peoples' rights, or Banjul Charter, cannot simply be considered a thoughtless copy of the Universal Declaration of Human Rights (UDHR), and thus provide evidence of the way in which African states do consider the content of the concept of human rights. Agenda 2063, for instance, proclaims a 'bottom-up approach', that is indeed reflected in what seems to be the core of the Agenda: its focus on 'the voices of the African people'. Among the seven aspirations guiding the Agenda are not only 'internationally required' aspirations such as 'good governance' and 'respect for human rights' (though such as well), but also aspirations for 'an Africa with a strong cultural identity, common heritage, shared values and ethics', for an African Renaissance and, in sum for 'Pan-Africanism'.⁷⁶ In their article 'Human Rights in Africa – A New Perspective on Linking the Past to the Present', El-Obaid Ahmed El-Obaid and Kwadwo Appiagyeyi-Atua place a similar emphasis on African culture and community, presenting the way in which African human rights really are authentic. Important to note, according to them, is that this focus can in fact go hand in hand with the individual rights that are considered to be essential to the international human rights institution, for it is essentially the *person* that is granted his or her full potential through the exercise of communal rights.⁷⁷ And similar beliefs are, again, presented in the Banjul Charter.

Without shirking the international human rights institution, then, the human rights central to African institutions express an authenticity that is incompatible with the mechanism of coercion. Moreover, in being able to express that authenticity, African states demonstrate a degree of agency that is incompatible with the fairly neo-patrimonial theories promoted by people like Clapham as well. For in actively developing their own human rights institutions, African states prove the way in which human rights are more to them than just an external byproduct of the resources they need from Western powers in order to secure their survival.

Still, as must have become clear, human rights are widely being violated – whether they are 'African' or 'Western' in nature – and hardly are these violations ever addressed within the AU. Within the decision report of the last (semi-)annual African Union Summit, the (rather abstract) principles of good governance, accountability and transparency were 'recalled', the adequate implementation of all the audit recommendations was 'requested' from the African Court on Human and Peoples' Rights, some decisions and reports on woman

⁷⁶ AU Commission, Agenda 2063, First ten-year implementation plan 2014-2023 (2015), 11.

⁷⁷ El-Obaid Ahmed El-Obaid and Kwadwo Appiagyeyi-Atua, 'Human Rights in Africa – A New Perspective on Linking the Past to the Present', *McGill Law Journal Vol 41* (1998), 821-854, there 837.

and children's rights were 'endorsed', and the content of several reports of the African Commission on Human and Peoples' Rights was 'underlined', again 'recalled' or 'welcomed', but no concerns or condemnations regarding human rights violations were explicitly expressed. In fact, with regards to the 'humanitarian situation in Africa', only concerns regarding conflicts, terrorism, political instability and natural disasters were stressed.⁷⁸

First, recalling Hurd's methods on 'measuring' legitimacy, this regional ignorance once more counts against the African internalization of human rights: "if few come to the defense of a crumbling institution," Hurd explains, "we might reasonably infer that it possessed little legitimacy".⁷⁹ To a convincing extent, however, the limited protection African states provide for the African human rights institutions counts against the adaptability of the mechanism of self-interest as well. For starting from a position of self-interest within the international society, it would often seem more rational for a country to come to the defense of a human rights institution. So why do they not?

In his article 'The New Legitimacy and International Legitimation: Civilization and South African Foreign Policy', the political scientist Derick Becker provides the outset of a possible explanation. In discussing the *African Renaissance* under former South African president Thabo Mbeki, Becker seems rather positive as to what effect the associated discourse, drawing on both the Western values and African culture, has had on the position of South Africa in the 'international community'. At the same time, however, he underlines the way in which Mbeki was often struggling with crafting an idealistic foreign policy while being pragmatic as well. Central to this struggle was Mbeki's fear for what Becker, in line with the South African author and journalist Mark Gevisser, calls the 'one good native syndrome': "[...] to Mbeki, Mandela was viewed by the world as the one good African capable of running a modern state." he explains. "[...] while this may have had a personal impact [...], it also manifested itself in Mbeki's *Renaissance* and his emphasis on continent wide government reform; Africa as a whole must prove that it has good leaders".⁸⁰ According to Becker, this fear explains Mbeki's failure to condemn the violations of particularly Zimbabwe's President Robert Mugabe: "Mbeki's Africanism and anti-imperialism led him to

⁷⁸ Assembly of the Union, Thirty-second ordinary session, decision report (Assembly/AU/Dex.713) (2019).

⁷⁹ Hurd, 'Legitimacy and Authority', 391.

⁸⁰ Derick Becker, 'The New Legitimacy and International Legitimation: Civilization and South African Foreign Policy', *Foreign Policy Analysis* (2010) 6, 133-146, there 139.

silence critics of Zimbabwe as racist and imperialist and wholly ignore his stated commitment to democracy and good governance”.⁸¹

Becker’s analysis can be extended from Mbeki’s ‘ignorance policy’ to the policy of most African states and governments. Not because they all fear to be viewed the ‘one good native – rather, because the ‘Africanism’ Becker mentions, as must have become clear from Agenda 2063, is not something limited to Mbeki or the South African people. Instead, Africanism of ‘Pan-Africanism’ in this sense, as opposed to the Africanism embedded in another post-colonial culture, is the awareness of Africa not as a site of contention, but as a land with people, culture and pride.⁸² Both aware and convinced of this, most African states are naturally sensitive to any discourse calling this image into question. Clearly, the discourse of human rights violations is such a discourse, for it often seems to put away the African continent as ‘the heart of darkness it always were’. By condemning others, then, African states might feel like they demonize the entire continent – and so they do not, or hardly, and only in the most general terms. During the Third Cycle UPR follow-up session, for instance, Ghana (though Ghana, among the African member and observer states, alone) did ‘urge’ Cameroon to ‘finalize its ratification of regional and international human rights treaties’, and similar ‘urges’ with regards to ratification are here and there included in the AU Summit decision reports. Far more often, however, African states ‘praised’, ‘congratulated’, ‘welcomed’ or ‘complimented’ each other.⁸³

By some, it might be argued that in contrast to what has been suggested earlier in this section, the reasoning portrayed does in fact count for the mechanism of self-interest. For the decision to withhold oneself from any condemnation of others for the sake of what could be considered a more favorable picture of oneself, might seem to be a well-calculated move that fits best within the mechanism of self-interest. At this point, however, it is important to recall another subtle yet significant characteristic separating the mechanism of self-interest from what was considered to be the mechanism of coercion: the form of restraint causing an actor to take one path being *self*-restraint.⁸⁴ Instead, the fear central to the given explanation can only be considered some sort of *external* restraint. For essentially, fear takes away the freedom of choice that determines whether a choice is made because of self-restraint or external restraint.

⁸¹ Becker, ‘The New Legitimacy’, 138.

⁸² Pal Ahluwalia, ‘The Struggle for African Identity: Thabo Mbeki’s African Renaissance’, *African and Asian Studies Vol 1* (2002) 4, 265-275, there 267, 257.

⁸³ UN Human Rights Council, Report of the Human Rights Council on its 39th session (A/HRC/39/2) (2018).

⁸⁴ Hurd, ‘Authority and Legitimacy’, 386.

In conclusion, then, African states seem in fact to be genuinely willing to commit to human rights as such, but are hindered in internalizing at least the international, institutional version of them by an (instrumentally) irrational factor that, simultaneously, confirms the absence of the mechanism of self-interest in a way undermining the neo-patrimonial theories of, among others, Clapham. In the past section, this ‘irrational factor’ has been explained as the ‘fear for continental demonization’ but, obviously, there is more to it. Therefore, a broader analysis of this ‘irrational factor’ and its foundations will be provided in the following section.

Obstacles to African internalization of international human rights

In his article ‘Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State’, the historian Bonny Ibhawoh examines the dilemma that, according to him, confronts many African states when trying to achieve a ‘balance of values’ between the international human rights regime and the human rights approach of constituent communities within the state. Following Ibhawoh, this dilemma is certainly not an insoluble one, for culture, as understood by him, is not a monolithic entity, but an inherently responsive construct between individuals and social groups; “It is a network of perspectives in which different groups hold different values and world views, and in which some groups have more power to present their version as the true culture”.⁸⁵ Through a process of change and adaption, then, Ibhawoh believes it possible for both human rights standards to meet new human rights standards that, in the case of Africa, are founded on universal principles, but do bear what he, following the professor of law Makau W. Matua, calls an ‘African cultural fingerprint’.⁸⁶

Following Ibhawoh, this ‘African cultural fingerprint’ must be based primarily on African cultural *content* and has long been absent because of a lack of such content which Ibhawoh, starting from the pioneering work of the political scientist Claude Welch Jr., attributes directly to the colonial imposition of external rule: Within colonial spheres, African people were left little room to develop a legal recognition and protection of human rights themselves, somehow forcing them to ‘import’ the ‘Western European models with scant attention paid to the need to focus on local initiative and input’.⁸⁷ In many African states, “initial constitutional provisions were drawn overwhelmingly from patterns familiar to the

⁸⁵ Ibhawoh, ‘Between Culture and Constitution’, 842.

⁸⁶ *Ibidem*, 843.

⁸⁷ *Ibidem*, 845.

departing colonial power,” Ibhawoh explains, “hence reflecting assumptions far more common in the metropole than in particular African societies”.⁸⁸ As has been explained earlier on, and as is soon recognized by Ibhawoh as well, African states have attempted to turn these trends since colonial independence in the form of for instance the Banjul charter and, recently, Agenda 2063. In no way, however, have these turns been included in the international human rights institution. Accordingly, by lack of a shared new standard, African states have still not been able to internalize the international human rights institution that is, in contrast to African human rights, an expression of international legitimacy, allowing the unnecessary gap between ‘Africa’ and ‘the international society’ to be maintained, in turn allowing human rights violations to continue to take place.

Examination of a variety of evidence suggests, however, that even more powerful to the gap between ‘Africa’ and ‘the international society’, though unnamed by Ibhawoh, might not be just the lack of African *content within*, but the lack of African *contribution to* the international human rights institution. Indeed, this assertion is what distinguishes the standpoint central to this thesis from the standpoint conveyed by the majority of proponents of what has in the introduction been called the ‘indigenous’ theories, that stem from a local rather than universal conceptualization of African politics and so, with regards to human rights, tend to *emphasize* the voice that they believe African states have in fact had in the establishment of the international human rights institution.⁸⁹

Virtually, there are two ways in which the lack of an African contribution to international institutions such as human rights have fostered the gap between Africa and ‘the international society’. First, there is again colonialism, which Ibhawoh already mentioned, but of which he seemingly failed to explain the more exhaustive leverage it has on the meaning of international human rights to African states. Below, a (concise) rationale will be set out that will argue that the way in which the international human rights institution was ‘implemented’ in African states allowed the colonial relations from the 19th and 20th century to be maintained, hindering the intended African internalization of these human rights not necessarily for their content, but for their formal nature. Second, primary sources will be deployed to indicate how the way in which international institutions have been functioning since, leaving little room for an African voice, have kept distancing African states from these institutions and their (human rights) content.

⁸⁸ Ibidem, 846.

⁸⁹ Leading proponents of these theories are the aforementioned historians Mark Mazower and Steven Jensen.

In 1987, Josiah A.M. Cobbah, professor in law studies, blamed the international human rights institution for not leaving enough room for an African perspective to be developed. According to him, the natural rights origin of what he considers to be the ‘Western human rights concept’ denies the concept of culture in a very fundamental sense, and given the importance of culture to African states, this denial has prevented African states from articulating an African sense of human rights. The aim of his article ‘African Values and the Human Rights Debate: An African Perspective’ was to, finally, ‘direct African and non-African scholars along a cross-cultural path’, that would demonstrate the way in which it would be profitable for everyone to talk about human rights in a cultural context.⁹⁰ By Cobbah, individualism and ‘communalism’ are presented as two fundamentally different perspectives on human rights. ‘Concern for the needy’, for instance, he believes to have no real place in the individual perspective on human rights, for through individualism, or so he argues, we are able to draw a sharp distinction between *duties* not to harm others, *supererogatory* acts of benevolence. If we would view society as an organized community made up of individual members, however, as is by Cobbah considered to be the case within the communal perspective on human rights, then we could ‘fathom individual and community obligations that supercede the simplistic logic of supererogation and ethical individualism’.⁹¹

Cobbah’s understanding of the ‘Western human rights concept’ seems to be somewhat limited. By linking the concept inextricably to the ‘natural rights doctrine’ of people like Thomas Hobbes, he limits what will again be called the international human rights institution to the desire for self-preservation, whereas this has proven to be only one of its many possible explanations and foundations. The individualist and communalist perspectives on human rights, then, might just not be as incompatible as he claims them to be – as was earlier argued by El-Obaid and Appiagyei-Atua as well. Nevertheless, with regards to effect of 19th and 20th century colonialism on international relations now, there is much to learn from the way in which Cobbah argues against the alleged ‘abstraction of the natural man’ in favor of a cultural world view in which each individual human being is considered to be product of its environment.

“[F]rom a pre-political ‘state of nature’,” Cobbah asserts, “man’s struggle for self-awareness takes him from crude desire to survive as an individual to a desire for clearer self-awareness. The new ‘self’ then depends on the relationship of human beings to one

⁹⁰ Cobbah, ‘African Values and the Human Rights Debate’, 310.

⁹¹ *Ibidem*, 311.

another.”⁹² He derives this line of thought from the philosopher Georg W.F. Hegel who, simply put, further argued that because of the given dependence of the ‘self’ on the relation to other human beings – or more specifically; because of the dependence of the ‘self’ on the *recognition it receives from* other human beings, one cannot be fully free until they feel intrinsically equal to others.⁹³ The original expression of this dynamic was depicted by Hegel as what he called the ‘master and slave dialectic’, that was meant to embody the most primate process of individuals needing to subjugate the other to oneself in favor of recognition.⁹⁴ Harrowingly, since recognition can only be acquired from another equal to oneself, the so-called ‘master’ that had both physically and psychologically subjugated the then become ‘slave’ did never have the opportunity to become free. In contrast, the initial slave did. For he, for reasons of which an extended analysis exceeds the aim of this paper, was able to create new conditions for recognition through the work he was doing for his master.⁹⁵

In the seventh chapter of *Black Skin, White Masks*, one of the most influential books in postcolonial history, the French-African psychiatrist Frantz Fanon was the first to use Hegel’s master and slave dialectic in order to illustrate the alleged way in which the people of the postcolonial African world would, indeed, have gotten stuck in their way to recognition and freedom. In contrast to the ordinary ‘slaves’ who liberated *themselves* from their masters through work and action, he explains, the black man was acted *upon*:

One day, a good white master, who exercised a lot of influence, said to his friends: “Let’s be kind to the niggers.” So the white masters grudgingly decided to raise the animal-machine man to the supreme rank of *man*, although it wasn’t easy. [...] The upheaval reached the black man from the outside. [...] Values that were not engendered by his actions, values not resulting from the systolic gush of his blood, whirled around him in a colorful dance. The upheaval did not differentiate the black man. He went from one way of life to another, but not from one life to another.⁹⁶

Indeed, through institutions like democracy and human rights, ‘white man values’ kept playing a dominant part in everyday African life. Despite the formal retreat of the West, then, its culture remained dominant. And although no longer subjected to the concrete white man,

⁹² Ibidem, 318.

⁹³ Alexandre Kojève, trans: James H. Jr. Nichols, *Introduction to the reading of Hegel* (Ithaca and London: 1947), 40.

⁹⁴ Kojève, *Introduction to Hegel*, 41.

⁹⁵ Ibidem, 49.

⁹⁶ Frantz Fanon, *Black Skin, White Mask* (1952), 194, 195.

the African people psychologically remained subjected to its values – not because of an aversion toward the content of them, but simply because of the colonizers they had replaced.

Now over the decades, much has changed, and through authentic work and action, African people might in fact have liberated themselves in the way originally ‘planned out’ for them by Hegel. Indeed, the awareness hereof is what, again, distinguishes the standpoint central to this thesis from the theories of development as well. Still, there does seem to be at least some kind of psychological friction between the African people and what once were Western values. During the 71st session of the General Assembly (2016) for instance, John Dramani Mahama, former president of Ghana, praised the possibilities of democracy, but critically called for ‘more space for Africans to express themselves’ as well – thereby demonstrating the psychological gap still seems to be present indeed. “Democracy is not a one-size-fits all system,” he insisted; “different countries are at different stages of the democratic journey. Democracy evolves and cannot be forced on the people. It does not help for bigger Powers to proselytize democracy across the continent.”⁹⁷ A similar message, though far more pronounced, was conveyed by Robert Mugabe, former president of Zimbabwe, during the 26th AU Summit (2016). “I wonder whether you told them that we are also humans,” so he spoke to Ban Ki-moon, then Secretary-General of the UN, referring to American and European states in particular. “Tell them, tell them that we are not ghosts. That we also belong to the world. Part of the world called Africa. And Africans shall no longer tolerate a position of slavery. Slavery by every other name.”⁹⁸ Within the Union, the message was widely applauded.

The given friction between African people and the West might further be intensified by the way in which the institutions in control of these values are still functioning, leaving little room for an African voice. Within the UN Security Council, only three out of fifteen seats are reserved for African countries whereas, according to the African Centre for the Constructive Resolution of Disputes, 53% of the resolutions provided between 2004 and 2014 have been related to African topics.⁹⁹ Certainly, African states have been fairly critical on this subject, that has been entering the General Assembly plenary meetings year after year. “We want to build a Ghana that will enable our people to deal with the rest of the world on an

⁹⁷ UN General Assembly, Seventy-first session, 11th plenary meeting (A/71/PV.11) (2016), 16.

⁹⁸ Robert Mugabe via SABC Digital News (ed.), ‘AU Chair Robert Mugabe address: 26th AU Summit’, *YouTube* (2016), 13:50. <https://www.youtube.com/watch?v=rNa8bWLCUYU> (accessed on 11-05-2019).

⁹⁹ Marina Magalhães Baretto da Silva, ‘United Nations Security Council Reform. An African Perspective’, *African Centre for the Constructive Resolution of Disputes* (2015). <https://www.accord.org.za/conflict-trends/united-nations-security-council-reform/> (accessed on 29-03-2019).

equal playing field,” so is stated by Nana Addo Dankwa Akufo-Addo, current president of Ghana, during the 72nd session of the General Assembly (2017):

I am saying nothing new when I draw attention to the urgent need to reform the Organization. [...] The time is long overdue to correct the long-standing injustice that the current structure and composition of the Security Council represents for the nations of Africa. We cannot continue to preach democracy and fairness and insist on peace and justice around the world when our Global Organization is not seen by the majority of its Member States as having a structure that is just and fair.¹⁰⁰

Indeed, during that same session, former president Paul Biya of Cameroon, among many others, called for more equality as well:

All countries must join forces to achieve peace. Is it not high time then for the voice of poor countries, especially those of Africa, to be heard? Is it not high time that Africa’s message to the world was better taken into account? Is it not high time that we structured our Organization to give more weight to Africa’s voice within a revitalized General Assembly and a Security Council that is more receptive and more even-handed to us?¹⁰¹

“[...] we cannot continue to marginalize Africa,” so is reiterated by Biya’s successor Mbella Mbella one year later, “which remains the only continent that does not have a permanent seat in the main body in charge of international peace and security”.¹⁰² And by Mugabe neither, the subject remained untouched: “If the United Nations is to survive, we must be equal members of it. Members who can say [...] that we can now speak truly as members with a voice that is understood, respected and honored.”¹⁰³

In conclusion, then, the international human rights institution, being part of the international society under attack, has indeed been lacking what Ibhawoh called the ‘African cultural fingerprint’ – not only with regards content but, more importantly, with regards to form and development as well. Given the distance this lack of an African fingerprint has appeared to be fostering between Africa and the rest of the international society, this might in fact explain the limited extent in which African states have internalized the international concept of human rights – regardless of their genuine willingness to commit to these rights. In the following and final section, a concluding light will be shed on the implications this has for

¹⁰⁰ A/72/PV.11, 21.

¹⁰¹ UN General Assembly, Seventy-second session, 15th plenary meeting (A/72/PV.15) (2017), 2.

¹⁰² A/73/PV.11, 48.

¹⁰³ Mugabe, ‘26th AU Summit’, 11:50.

the meaning of international legitimacy for African states and on the way in which this differs from the dominant understanding of international legitimacy in international relations studies.

International legitimacy for African States

Re-examination of the evidence presented in chapter one suggests that the international norm of human rights is not just an isolated norm as such, but that it comprises an integral part of ‘international legitimacy’. By looking for a comprehensible explanation of the apparent limitation of the three mechanisms displayed by Hurd, then, insofar as neither an internalization of the norm, nor the self-interest coupled with it, nor the coercion practiced through it has turned out to be compatible with the reasons of African states to commit to human rights, it is this concept we should turn to. According to Clark, ‘international legitimacy’ is the political space to which members of the international society feel a sense of obligation. Based on his further explanation of the practice of legitimacy and the international society it belongs to, and on the many academics referred to in this explanation, each element of this definition expresses a meaningful characteristic of the concept of international legitimacy as dominantly perceived within the study of International Relations, and of the way this differs from the actual meaning of international legitimacy for African states.

First, Clark speaks of some ‘political space’. To him, and many others, this is essentially what constructs the concept of legitimacy, that is ‘consensually mediated’, instead of being ‘a set of values as such’.¹⁰⁴ As such, the practice of legitimacy ‘describes the political negotiation amongst the members of international society as they seek out an accommodation between those seemingly absolute values, and attempt to reconcile them with a working consensus to which all can feel bound’.¹⁰⁵ Now clearly, this is not a consensus to which African states feel bound, causing academics to conclude that they might not have the willingness to be part of the international society and to be considered internationally legitimate. Overlooked, however, is then the fact that they *cannot* feel bound. For, as evidence throughout the past chapter suggests, they do not have access to the presupposed ‘accommodation’ for the institutional and psychological reasons set out.

The alleged convergence of a state’s *willingness* and the extent in which it has *internalized* the values comprising international legitimacy is confirmed in Clark’s emphasis on what he calls a ‘sense of obligation’ to these values. According to Clark, ‘examining closely discussions of the English school’, which can be considered the forerunner of the

¹⁰⁴ Clark, ‘International legitimacy’, 23.

¹⁰⁵ *Ibidem*, 29, 30.

study of legitimacy in general, it is this notion of obligation that lies at the heart of international society and international legitimacy. In his argument, Clark briefly yet name-worthy mentions the irrelevance of a state's specific reasons for bounding oneself to these values.¹⁰⁶ With regards to his earlier pronounced claims, however, this seems remarkable, for particularly this *sense* of obligation and *belief* in being bound implies an unconditionality that seems to be compatible only with some genuine form of internalization. Starting from this necessary conjunction, then, it does indeed seem fair for academics like Clark and Hurd to expect a state that has not *internalized* a certain set of values, not to have the *willingness to be bound* to it either. Yet again, they do not take into account the factors that *despite* the genuine willingness of African states to be bound to these values, prevents them from internalizing them because of, once again, the distance created by colonialism and the current functioning of institutions between them and international society.

All comes together in the final element of Clark's definition of international legitimacy, that is the 'international society' *to which* states do or do not have this belief of being bound. "Where there is a *belief* in being bound," Clark asserts, "there is an international society."¹⁰⁷ In other words; where there is an *intrinsic willingness* to be bound, there is an international society – or even more specifically; where there is an *internalization of values*, there is an international society. Accordingly, an international society exists by grace of the (indeed, accommodated) values its members profess unconditionally. States like those of Africa that do or cannot, or so is generally implied, are not a true member of international society, and do not deserve to be considered internationally legitimate.

As a result, 'international legitimacy' as dominantly understood becomes for African states a concept that is simply out of reach. As such, the dynamic in which these states find themselves is indeed a paradoxical one, in which the genuine willingness of African states to be part of international society simultaneously confirms the way in which they are fundamentally not. This stings – even more so because the efforts of African governments to obtain this international legitimacy might plausibly detract from the domestic legitimacy of those governments, that is somehow artificially differentiated from international legitimacy *because* of the distance created between African states and international society.¹⁰⁸

To breach this African legitimacy paradox, people, both academics and practitioners, should come to realize that internalization does not equal willingness, and that mechanisms as

¹⁰⁶ Ibidem, 24.

¹⁰⁷ Ibidem, 23.

¹⁰⁸ Clapham, *Africa and the International System*, 272.

displayed by Hurd, following Weber, are thus too limited. Only by recognising this difference, outsiders will be able to identify motivations other than self-interest or coercion to reign in African states. And only after having identified these motivations, room will arise for people to change what has distressingly maintained to be the status quo.

Conclusion

Today, with regards to legitimacy, African states find themselves in a real-life paradox: the African legitimacy paradox. Within this paradox, the genuine willingness of African states to be part of the international society and the international legitimacy this entails, simultaneously confirms the way in which they are fundamentally not, for they are denied the characteristics conditional to being part of that society as a result of no more than the position they got stuck with through history and politics. Throughout this thesis, I have argued for the way in which this paradox is (co-)generated by the dominant, yet limited understanding of the concept of international legitimacy. For centuries, academics including Ian Hurd and Ian Clark have invariably linked the applicability of the concept to the mechanism of internalization or some intrinsic willingness to be bound and have been overlooking the way in which states might well be willing to be bound, but are hindered in unconditionally doing so by, indeed, factors that are beyond their reach.

I have illustrated this argument by means of the international concept of human rights, that comprises an integral part of international legitimacy. Through an investigation of the African rates of compliance with human rights, the reasons given by African states for compliance with human rights and the reasons given for noncompliance with human rights, I have been able to confirm that African states have not internalized the international human rights concept the way dominant theories on legitimacy would expect them to. At the same time, by taking a look into the African human rights instruments that cannot simply be considered a thoughtless copy of the UDHR, I have revealed the way in which African states do in fact seem genuinely committed to the concept – thereby eliminating the remaining two mechanisms from within the dominant, largely Western understanding of the international social system, self-interest and coercion, as well.

These findings have allowed me to disclose the room left between the African internalization of and the African willingness to commit to the international human rights concept. I have explained the given room in terms of what I have called an ‘irrational factor’ composed of, in short, the lack of an African fingerprint both substantially *and* formally, that has indeed been hindering African states from internalizing the international human rights concept because of the distance it has fostered between African states and the concept, both on itself and as a part of the international society in general. Returning to the research question laid out at the beginning of this thesis, then, of how the apparent gap between the African stance towards the international human rights concept and their public representation

thereof should be explained, the following can be said: That to a considerable extent, the positive way in which African states publicly approach the concept is genuine, and that the alleged 'gap' is smaller than is often assumed. Though that still, African states do indeed feel the need to publicly depart from their natural stance towards the international human rights concept for they, despite their willingness to do so, have not yet been able to internalize its content the way that is in fact expected from them by the international society.

With this thesis, I have wanted to add to the fairly limited historiography on Africa and international relations theory. Still, there is much more to do. With respect to this subject specifically, it would be worth inquiring the practical leverage the African legitimacy paradox might have. In the last section of chapter three, I have quickly mentioned the way in which the paradox might detract from the domestic legitimacy of African governments because of its somehow artificial distinction with the international legitimacy these governments keep pursuing. Am I right suggesting this, or is it really me making that distinction? Would I be right then additionally, the search for a solution to the paradox would render only more important. Judging from several academics from within the African population itself, including Bonny Ibhawoh, such a solution seems realistic – if only the African cultural fingerprint was granted some more room within the international society. As must have become clear, however, such an African fingerprint must entail more than many academics have foreseen. Hence, although I do in fact have good hopes myself as well, this does ask for a critical inquiry into the extensive process needed.

Finally, it might prove valuable further examining the premises I have adopted and the assumptions I have rejected while developing my argument. Within the indigenous theories, for instance, one of the theories included in the historiography of the political analysis of Africa first presented via Chabal within the introduction of this thesis, many scholars, as must have further become clear throughout this thesis as well, point at the several ways in which African states have in fact contributed to the evolution of the international human rights concept. Though I have been able, or so I believe, to draw attention to the fact that, regardless of whether or not this is true, African states still experience a psychological gap between them and the 'international society', it is worth further exploring the given standpoint in order to bring more depth to my conclusion. The same applies to the case made by, among others, Clapham, who can and has been considered a proponent of the neo-patrimonial theories that emphasize the absolute *lack* of choice and agency of African states. To what extent does this undermine my premise regarding, particularly, the genuine willingness of African states to

commit to the international human rights concept and how might this affect my comprehensive conclusion in general?

It is of great importance for all of these questions to be taken seriously. After all, Africa forms a major part of the world at large – and to miss out on the role it may or could indeed have within the international human rights institution and the international society in general is not only unjust to the people of Africa, but a loss to the study of international relations as well. For by overlooking the unique part Africa plays within the world, valuable theoretical insights too will continue to be overlooked, and within a world of academics proclaiming their deference to complexity and completion, this is no longer tolerable.

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