



A Strong Norm for Democratic Governance in Africa

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Acronyms

AGA	African Governance Architecture
APSA	African Peace and Security Architecture
AU	African Union
ECOWAS	Economic Community Of West African States
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
PSC	Peace and Security Council
SADC	Southern African Development Community
UCG	Unconstitutional Change of Government

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Introductionⁱ

Non-acceptance of unconstitutional change of government (UCG) has become a central African norm since 1995. For decades, non-interference in state affairs characterized politics in the Organization of African Unity (OAU) and became a cornerstone of inter-African relations (Williams 2007). Against this historical backdrop, it is remarkable that the obligation to reject UCG was incorporated into the 2002 Constitutive Act of the OAU's successor, the African Union (AU) (African Union 2000, art. 4p; 30).ⁱⁱ By referring to its member states' constitutional order and demanding democratic governance, the AU Charter touches African political regimes at their core. Nevertheless, African heads of state and the AU developed this governance norm further and met the regional organization's normative requirements by intervening in most cases of UCG after the AU's creation in 2002.ⁱⁱⁱ AU member states agreed to further legalize and specify the norm of non-acceptance of UCG by adopting (in 2007) and ratifying (in 2012) the African Charter on Elections, Governance and Democracy (Henceforth African Democracy Charter) (African Union 2007).

Overall, in contrast to the OAU's lip service about promoting good governance and democracy in member states in the 1990s, the UCG norm has become more relevant under the auspices of the AU in two ways. First, the non-acceptance of UCG was strengthened legally (*legalization*). Second, the AU applied the UCG norm and intervened in most cases of UCG on the African continent after 2004 (*implementation*).

This evolution and the centrality of the UCG norm are particularly remarkable against the background of common theoretical explanations of the development of international governance norms. They cannot sufficiently explain why a democratic norm came into being and was further deepened after 2002. As regards the theory of convergence, states or regional organizations would simply adopt global democracy norms (Gleditsch and Ward 2006). But the OAU and AU developed a particular African notion of democracy protection and promotion, which differs substantially from other regions' approaches (Glen 2012, 150-151). As regards democratic lock-in effects, scholars would

expect that the more homogenous regional organizations' member states are with regard to democratic regimes, the more likely the organization is to have a democratic orientation and policies (Pevehouse 2002, 2005). Accordingly, democratic progress in Sub-Saharan Africa after the end of the Cold war first fostered the establishment of pro-democratic norms on the continental level (Tieku 2004). But democratization processes stagnated or reversed, while authoritarian regimes persisted in Africa in the new millennium (see Crawford and Lynch 2012).^{iv} Given this mixed picture, the AU would not be expected to be a driver of setting and evolving democratic norms.

This paper therefore seeks answers to the following question: Why did non-acceptance of UCG become a central norm of the AU from 1995 to 2012? First, the author assumes that AU members' emphasis on the instrumental character of democratic governance and constitutional order as a precondition for continental peace and security has facilitated norm building and strengthening. Second, although regional hegemons sought to strengthen their power on the African continent in the norm-building process of the late 1990s and early 2000s, realist views have limited ability to explain legalization and democratization of the norm after 2002. Alternatively, the following factors shed light on inner-African factors that explain why non-acceptance has successively gained importance: democratic lock-in by South Africa; the Economic Community of West African States (ECOWAS) as an indirect, normative reference model; and a principal-agent perspective on the role of the AU Commission. Third, based on a rationalist understanding of international relations, the analysis assumes that cooperation between the AU, AU member states and donors from the Organisation for Economic Co-operation and Development (OECD) influences norm building in the AU. AU member states and AU organs adapted Western norms in order to fulfil implicit and explicit preconditions of international financial support.

This paper comprises two main parts and a concluding section. Its first part focuses on the legal development and implementation of the UCG norm between 1995 and 2012. It describes *how* the norm of non-acceptance of UCG gained importance in African relations and became a cornerstone of the AU's normative framework. Its second part aims to explain *why* the non-acceptance of UCG developed into a central norm of the AU. In so doing, a set of inner-African and external factors takes centre stage of the analysis. The paper concludes with policy implications for the African norm-building process and promoting constitutionalism. The analysis is based on primary data, including interviews with representatives of the AU and its member states in November 2006 and November 2011.



Norm evolution: from non-interference to governance interventions

African states have been dealing with the consequences of UCG since the creation of the OAU in the 1960s. Their debates first focused on the recognition of governments and expounded the problems of the participation of coup architects in OAU sessions rather than situations within member states (Sesay 1985; Kufuor 2002). However, recognition processes lacked transparency, consistency and a legal foundation (Kufuor 2002, 389). Non-acceptance of UCG originated from the OAU's normative shift after the end of the Cold War.^v A more systematic examination of UCG only emerged in the broader context of global democratization processes in the 1990s (Makuwa 2003, 162; Organisation of African Unity 1999a; 2000, § 4). Following the coup in the Comoros in 1995, the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution created a subcommittee on UCG, which had the mandate to formulate a framework for OAU action in cases of unconstitutional change (Organisation of African Unity 1999a). But the subcommittee failed to fulfil its mandate because its members^{vi} could not agree on a definition of unconstitutional change (Witt 2012b, 5).

In 1997 the foreign ministers of OAU members proactively condemned the military coup in Sierra Leone and reactivated the debate on defining UCG (OAU Council of Ministers 1997).^{vii} Moreover, then-Secretary General Salim Ahmed Salim triggered the introduction of specific measures in cases of UCG (Legler and Tieku 2010, 469). The Lomé Declaration for an OAU Response to Unconstitutional Changes of Government (henceforth Lomé Declaration) defined UCG as an 'unacceptable and anachronistic act which contradicts the commitment to promote democratic principles and conditions' (Organisation of African Unity 1999b). As a consequence, they mandated the OAU organs with a norm-building task and demanded the establishment of a framework to deal with UCG member states.

In so doing, they provided a basis for integrating the norm of non-acceptance of UCG into the Constitutive Act of the new regional organization (the AU) (African Union 2000, art. 4h). Very soon after creating the AU, a conference on democracy, governance and elections took place in South Africa (African Union 2006, 1). It fostered the AU Commission's successful suggestion to introduce the African Charter on Elections, Governance and Democracy. Since then, AU organs have refined the norm further by broadening the understanding of UCG beyond a mere focus on *coups d'état* against incumbents (African Union 2002, 2007 and 2010) and have formulated policy frameworks that establish procedures to react against UCGs in AU member states.

The following will analyse whether this historical record of dealing with the UCG norm led to its increased legal and political importance after 1995.

A powerful norm: legalization of non-acceptance of UCG

Non-acceptance of UCG is a norm that codifies collective actions against incumbent governments in AU member states. In order to trace the legal development of this norm between 1997 and 2012, I analyse its legalization (Abbott et al. 2000). Legalization comprises three interacting dimensions: obligation, precision and delegation (Abbott et al. 2000, 401):

- *Precision* refers to an unambiguous prescription that clearly indicates the required and authorized behaviour of those subject to the respective norm. Definitions can range from vague principles to elaborated rules.
- *Obligation* refers to a state's or other entity's legal litigation of rules or commitments (Abbott et al. 2000, 401). In international relations, commitments and rules range from explicitly non-legal norms to binding rules (*ius cogens*).
- *Delegation* refers to third parties that 'have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules' (Abbott et al. 2000, 401). Delegation varies between low forms such as diplomacy to high levels such as international courts and domestic application.

Accordingly, legalization would be high if AU member states were legally bound to the UCG norm, if UCG were prescribed precisely and if AU organs were authorized to implement measures in cases of UCG (including actions without the invitation of the respective member state), as well as the domestic application of this norm. Overall, developments between 1997 and 2012 led to a legalization of the norm of non-acceptance of UCG in the AU and OAU, respectively. Table 1 provides an overview of this development.



Table 1. Legalization of UCG norm (1997–2010)

	Document	Obligation	Precision	Delegation
1997	Decision of OAU Council of Ministers	Low	Low	Low
1999	Decision of OAU Assembly of Heads of State and Government in Algiers	Low	Low	Low
2000	Lomé Declaration	Low	High	Medium
2002	Constitutive Act of the AU	High	Low*	Low*
2003	Protocol Relating to the Establishment of the Peace and Security Council of the AU	High	Medium-high	High
2007	African Charter on Elections, Governance and Democracy	High	High	High
2010	Decision on the Prevention of Unconstitutional Changes of Government and Strengthening the Capacity of the AU to Manage such Situations	High	Medium-high	High

* Precision and delegation are low because UCG and mechanisms for implementation are regulated in other AU documents.

Adapted from (Abbott et al. 2000); for a detailed assessment see the Annex.

Precision

This main challenge of defining UCG and subsequent actions by the AU has been summarized as: ‘Would the Assembly decide on intervention to protect a regime, whether democratically elected or not, from the wrath of its own people, or rather to protect the people from the regime?’ (Kioko 2003, 816).^{viii} Whereas the content of non-acceptance of UCG was highly contested in inner-African debates in the 1990s, its purpose has become more evident—in terms of ‘protecting the people from the regime’—in legal documents throughout the first decade of the 2000s.

Precision was already very high when OAU member states decided to qualify four situations of UCG in the Lomé Declaration in 2000: (1) a military

coup d'état against a democratically elected government; (2) intervention by mercenaries to replace a democratically elected government; (3) the replacement of democratically elected governments by armed dissident groups and rebel movements; and (4) the refusal of an incumbent government to relinquish power to the winning party after free, fair and regular elections. Despite the conflicting views of AU members during informal debates between 2003 and 2006,^{ix} they agreed to introduce a fifth situation that constitutes UCG: attempts to stay in power through constitutional or legal changes in the African Democracy Charter in 2007—‘Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government’ (African Union 2007, 23(5)). Particularly, the fourth and fifth provisions challenge rulers of non-democratic and partly free regimes who erode democratic governance from within. Given the heterogeneity of the member states’ political regimes, it is remarkable that these five definitions of UCG were legally fixed in the African Democracy Charter (article 23) adopted in 2007.

There is a mixed picture of precision in the AU policies that deal with UCG. Inspired by the Inter-American Charter of the OAS (2001), the African Democracy Charter sets a universal framework for protecting and proactively promoting democracy on the African continent (Glen 2012, 157-60, 164). In so doing, it goes beyond the AU’s reactive approach to primarily protect incumbents and democratic regimes in cases of unconstitutional change and advocates a more structural, proactive promotion of democratic governance.^x It places UCG in a textual context of precise definitions of democracy and human rights. On the one hand, it takes the wind out of the sails of those who criticize the UCG norm as being biased and helps legitimize intentions to keep undemocratic leaders in power (Omorogbe 2011, 138). On the other hand, it focuses on the defining elements of UCG, but its precision is limited with regard to situations of ‘restored constitutional order’. This imprecision opened the door for inconsistent AU policies in cases of UCG (Sturman and Hayatou 2010; Vandeginste 2011; Witt 2012a). As a consequence, the AU and its member states had to define their benchmarks for restoring constitutional order in practice.^{xi} Moreover, the African Democracy Charter introduces an innovative element by allowing for interventions in uncertain situations that are likely to lead to UCG: ‘a situation [...] that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council (PSC) shall exercise its responsibilities in order to maintain the constitutional order’ (African Union 2007, art. 24). Whereas this article reflects the Charter’s telos of preventive, proactive promotion of democracy and governance, it leaves the interpretation of these situations open to the PSC of the AU and its member states.



Increasing precision can also be observed with regard to mechanisms and actions in cases of UCG. While the Constitutive Act stipulates that ‘Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union’ (article 30), the African Democracy Charter adapted and broadened the Lomé Declaration’s detailed procedures and measures for dealing with UCG (see Annex). The Charter admonishes the Assembly to apply diplomacy as well as other forms of (e.g., punitive economic measures) (African Union 2007, art. 27.7). It furthermore foresees the possibility to try perpetrators of UCG before an AU court (African Union 2007, 25.5). By prohibiting the participation of perpetrators of UCG in ‘elections to restore the democratic order’ (African Union 2007, 25.4) it partly responds to critics who demand more precise definitions of benchmarks for restoring constitutional order. AU heads of state re-emphasized the importance of these new elements in 2010 (African Union 2010).

Finally, scholars have discussed whether current provisions define the conditions for African military intervention in cases of UCG. According to article 4(h) of the Constitutive Act, military intervention is only possible under ‘grave circumstances’ (war crimes, genocide and crimes against humanity) (African Union 2000, 4h). However, the protocol of amendments to the Constitutive Act broadens the definition of ‘grave circumstances’ to include ‘serious threats to legitimate order to restore peace and stability’ (African Union 2003, art. 4). Baimu and Sturman argued in 2003 that these provisions would open doors to protect state stability—independently of regime type—instead of fostering human security (Baimu and Sturman 2003, 5). But ten years later, this definition has to be read in the context of the pro-democratic telos and textual context of the Union’s norms. Military intervention would have to serve to protect the people against their regime.

Obligation

Non-acceptance of UCG evolved from a guideline into a binding rule in relations between AU member states (Omorogbe 2011, 153). Despite being a continuous point of reference for member states, the Lomé Declaration of 2000, which had first defined UCG and a reaction mechanism to address such instances, does not fulfil the criteria of an international convention according to the Vienna Convention on Diplomatic Relations. However, the declaration shaped the practices and behaviour of the AU and its member states. AU member states gave it the status of hard law by introducing the non-acceptance of UCG first as a principle of the Constitutive Act of the

AU, then by ratifying a dedicated legal agreement (the African Charter on Elections, Governance and Democracy).

An increased obligation to actively reject and condemn UCG also emerges from linguistic refinement. Whereas the Lomé Declaration mostly uses non-committal language such as ‘situations that *could* be considered as situations of [UCG]’ or ‘*should* immediately and publicly condemn such a change...’ (Organisation of African Unity 2000),^{xii} the Constitutive Act and the African Democracy Charter employ binding language: ‘Governments [...] *shall* not be allowed to participate in the activities of the Union’ (African Union 2000, art. 30) or ‘shall draw appropriate sanctions by the Union’ (African Union 2007, art. 23). Most of the legally less-binding formulations in the African Democracy Charter have an innovative character and are not rooted in the Lomé Declaration. For instance, when referring to new punitive sanctions or the use of continental jurisdiction in cases of UCG: ‘The Assembly may decide to apply other forms of sanctions’ or ‘Perpetrators of [UCG] *may* also be tried before the competent court of the Union’ (African Union 2007, art. 25.7 and art. 25.5). These provisions will only be codified as international law if member states of the AU or AU organs pass enacting legislation and apply an according practice.

Delegation

Delegating powers related to a state’s internal affairs to international bodies is highly sensitive. Nevertheless, AU member states step by step delegated responsibilities and tasks in case of UCG in member states. While the central organ of the AU—the Assembly of heads of state and government (the OAU central organ)—takes decisions, AU member states additionally delegated decision making (and in particular the application of non-acceptance of UCG) to the Union’s PSC, which is given the power to ‘institute sanctions whenever an unconstitutional change of Government takes place in a Member State, as provided for in the Lomé Declaration’ (African Union 2002, 7g). On the one hand, this provision places the PSC at the centre stage of AU actions against UCG. On the other hand, the AU Charter might create problems of delegation because it does not define the Commission’s role.^{xiii} The strongest delegation would be a trial ‘before the competent court of the Union’ (African Union 2007, art. 25.5). But the respective provision neither specifies a court of the AU, nor fully delegates this task.

Principal organs of the OAU and AU must predominantly apply non-acceptance of UCG as long as their addressees are member states. However, some provisions also aim to delegate tasks to member states, which require



domestic application of this continental norm. For instance, article 14.2 of the African Democracy Charter provides that ‘state parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law’. In conjunction with the charter’s article 23.5, member states would have to revise their constitutions in order to prevent presidents from seeking a third term.^{xiv} Moreover, state parties of the Democracy Charter must guarantee that they deal with perpetrators of UCG according to the rule of law (article 14.3).

An effective norm: implementation of non-acceptance of UCG

Non-acceptance of UCG can be considered relevant in inter-African relations if its addressees (a) respecting the norm and (b) adapting states’ related behaviour. Comparing the different periods of the AU’s norm development reveals that AU organs and member states exhausted the existing legal instruments in all periods (see Table 2). During the period of active neglect of UCG (1995–2000), AU heads of state and ministers limited their actions to verbally condemning UCGs on the continent. After defining UCG in 2000, the AU condemned and suspended the six member states in which coups took place. After 2004, when the PSC started to function, the AU condemned two coups, suspended two members without sanctions, and applied suspensions and sanctions in six cases out of ten (see Table 2).

Most cases of UCG were *coups d’état* as covered by the Lomé Declaration. The AU did not hesitate to suspend and sanction coup plotters, except in Libya in 2011.^{xv} Observers criticized that the AU’s approach supports incumbents instead of democratic change because it did not take into account whether a coup was autocratic or pro-democratic (Omorogbe 2011). However, it is difficult to know whether coup protagonists are serious about proposed democratic reforms (Souaré 2010). Moreover, this argument does not hold with regard to the Libyan case, because the AU did not apply the norm of non-acceptance of UCG in that case. Responses to other instances of UCG—such as the refusal to relinquish power to the winner of an election (Côte d’Ivoire 2010) or constitutional manipulation to maintain power (Niger 2010)—were cautious.

Table 2. Overview of reactions to military coups (1995–2013)

	No reaction	Application		
		Condemnation	Suspension	Sanctions
January 1995 – June 2000¹	1995: Comoros ² 1999: Guinea-Bissau, Côte d'Ivoire, Niger, Comoros ³	1997: Sierra Leone ⁵	-	-
July 2000 – May 2004	2003: São Tomé and Príncipe ⁴	-	2001: Comoros, Central African Republic, Madagascar 2003: Central African Republic, Guinea-Bissau	-
May 2004 – December 2013		2010: Niger ⁶ 2011: Libya 2011: Egypt	2005: Mauritania 2010: Côte d'Ivoire	2005: Togo 2008: Mauritania, Madagascar, Guinea 2012: Mali, Guinea-Bissau 2013: Central African Republic, Egypt, Guinea-Bissau

¹ UCG not defined yet, but norm was in the making.

² No provisions yet, but starting point for debates about UCG in the AU and creation of the subcommittee on sanctions.

³ Lack of data.

⁴ No time to react, because the overthrown leader was restored hours after the coup.

⁵ Condemnation on the level of ministers (Executive Council), without legal provisions.

⁶ The AU supported the decisions of ECOWAS, but did not suspend Niger or implement targeted sanctions.

Source: adapted from (Souaré 2010)



Explaining relevance: from power to delegation

This section addresses the reasons for the increased legal and political development of the UCG in the AU and tackles the following questions: Why did member states agreed to UCG with a democratic notion of ‘constitutional order’ in the Constitutive Act of the Union in 2000? Why was the UCG norm strengthened in the African Democracy Charter of 2007 and 2012?

Curbing negative externalities: stability through governance standards

Global developments influenced the introduction and development of non-acceptance of UCG in the AU. After the end of the Cold War, African leaders struggled with reorientating and reforming their regional organization (Magliveras and Naldi 2004, part II). In this context, peace and security remained a central task of the OAU (Organisation of African Unity 1990, §11). While patterns of conflict shifted from international conflicts to intrastate conflicts, security problems persisted. High numbers of violent conflicts created international and regional externalities. According to the OAU’s emphasis on the roots of conflict and instability, the AU’s PSC adopted a functional understanding of security. As a consequence, functioning government and democratic governance were set as preconditions for stability on the continent (Sturman and Hayatou 2010). In their Lomé Declaration the heads of state declared that:

Aware that development, democracy respect for fundamental freedoms and human right, good governance [...] are essential prerequisites for the establishment and maintenance of peace, security and stability (Organisation of African Unity 2000).

In turn, continuing coups d’état, electoral violence, illegal changes of constitutions and legal instruments to hold power were increasingly perceived as threats to peace in Africa.

Externalities of violent conflicts fostered the formulation of a regional approach to address these conflicts at the beginning of the new millennium. In particular insecurity, refugees and economic spillovers affected (and still affect) the stability and live of neighbouring peoples and states. A glance at the empirical context of African leaders’ decision making at the beginning of the millennium reveals their functional rationale:

- Regional *insecurity* has been the highest in the world. Out of a total of 52 wars and severe crises (including 13 wars) 16 took place on the African continent (HIIK 2002). Seven of these violent conflicts were wars (Angola 1975–2002, Burundi 1993–2005, Côte d’Ivoire 2002–07, Democratic Republic of Congo 1998–2003, Sudan 1983–2005 and Uganda 1987–2006). These conflicts cannot always be considered direct effects of UCG, but are linked to unstable government.
- High numbers of *refugees* constitute a continuing problem for the region. People often flee their countries because of the immediate or mid-term consequences of UCG. A total of 6 million refugees sought shelter in neighbouring countries or within their own countries in Sub-Saharan Africa in 2001 (United Nations High Commissioner for Refugees, UNHCR, 2002). Although these numbers had decreased to 4.2 million by 2002 (ibid.), the problem remains vital and represents the highest numbers of refugees over time.
- Instances of *coups d’état* that caused insecurity in the region influenced the formulation of the norm of UCG in the late 1990s and its integration into the AU’s Constitutive Act. For instance, Côte d’Ivoire was considered one of the most stable and economically well-off nations in Sub-Saharan Africa. The military *coup d’état* against President Henri Konana Bédié of 1999 came as a surprise for many African and extra-regional observers. Outbreaks of violence and increasing instability in the country led to more than 100,000 international and internally displaced refugees by the end of 2001.
- The *economic consequences* of UCG are difficult to measure, but have been of concern for AU organs. Unstable regimes and potential UCG are perceived as obstacles to international investments and the establishment of business. Low investment rates and limited capacities to enable business undermine Africa’s integration into the world market, and therefore hinder economic development in unstable contexts. Moreover, UCGs in states that are economic hubs of subregions—such as Nigeria or Côte d’Ivoire—affect the economic stability of neighbouring countries. In these cases, exports and imports stop or decrease, and migrant workers return to their home countries, which causes a decrease in remittances in poorer neighbouring countries (Naudé 2012).

In sum, the demand-driven instrumental character of the AU’s notion of democratic governance and constitutional order—seen as preconditions for peace and security on the continent—has facilitated norm building. Moreover, it has led to an intertwinement between the UCG norm and the African Peace and Security Architecture (APSA).^{xvi} However, continuing externalities of UCG in AU member states can explain why such a functional



rationale led to the application of this norm. However, the AU's aim to curb externalities does not necessarily explain why AU member states agreed to transform it into a binding legal norm and strengthen its democratic notion after 2002. There are other factors to be taken into account.

Regional hegemons: effective in norm building, but too diverse for policy making

According to a realist notion of inter-African relations, regional hegemons and their individual political leaders played a decisive role in placing non-acceptance of UCG on the continental agenda (Vale and Maseko 1998; Mattli 1999, 65; Tieku 2004). Political 'heavyweights' of the region—namely the presidents of Algeria (Abdelasis Bouteflika), Egypt (Hosni Mubarak), Libya (Mohammadar Ghaddafi), Nigeria (Olusegun Obasanjo), Senegal (Abdoulaye Wade) and South Africa (Thabo Mbeki)—aimed to stabilize their power on the continent by setting commonly accepted norms that should regulate inter-African relations. However, motivations for introducing the norm against UCG varied amongst these regimes. On the one hand, Algeria, Egypt and Libya aimed at continental support in case of a coup against their governments in order to stabilize their regimes. On the other hand, Nigeria and South Africa (and to some extent Senegal) fostered the introduction of democratic change of government as the only acceptable form of government change on the continent.

As regards the democratic notion of the UCG norm, regional hegemon South Africa sought the democratic log in of AU member states, particularly neighbouring states in Southern Africa. It pursued a proactive agenda of norm setting in the AU, especially integrating the UCG norm into the protocol of the PSC (2003) by convening conferences and expert meetings.

However, the simultaneity of a joint interest in stability and the different purposes of establishing a norm against UCG in Africa caused the policies of the two hegemonic blocks to diverge after 2002, which hampered effective policy making in the AU. Whereas a mechanism to react against UCG was established, instruments to proactively support democratic governance have been slowly developed and not widely implemented in member states.

In sum, although the motives of these six hegemonic powers diverged, their demand-driven coalition led to effective norm building. However, regional power can hardly explain why the AU would opt for the African Charter on Elections, Governance and Democracy if regional hegemons pursued different objectives with regard to non-acceptance of UCG. Nor can it

explain why regional hegemons would bind themselves to international law and delegate their power to influence national processes after UCG to a regional body with a limited number of members.^{xvii} Moreover, the personal political leadership of Obasanjo and Mbeki was one of the main drivers of a democratic understanding of the non-acceptance of UCG. When the African Democracy Charter was adopted and ratified by their respective governments, these leaders were no longer in power.

***ECOWAS as a normative reference model*^{xviii}**

Sub-regional processes are often overlooked when assessing regional-level reforms and changes. But in the case of legalizing the norm of non-acceptance of UCG after 2002, the AU's sub-regional influence in decision-making must not be dismissed.

The Economic Community of West African States (ECOWAS) pioneered the introduction of an intervention mechanism in cases of UCG in its (and, consequently, the AU's) member states (Hartmann and Striebinger, forthcoming). ECOWAS' Protocol for a Mechanism against Unconstitutional Change of Government (1999) served as a model for formulating pro-democratic governance norms in the Protocol for the PSC of the AU and in particular for the Democracy Charter. ECOWAS member states' good record in taking consequent action against UCG in the respective subregion helped set a good example for further developing the norm of non-acceptance of UCG.

In addition, norm entrepreneurs from the ECOWAS region fostered the introduction and enforcement of the African Democracy Charter in January 2012 and advocated the legalization of non-acceptance of UCG in Africa. Seven of 15 required ratifications to enforce the African Democracy Charter came from West Africa—one of the five African regions. Benin and Togo followed later in 2012.

In sum, sub-regional supply from West Africa, namely the ECOWAS region, promoted the legalization of non-acceptance of UCG and an increasingly democratic notion of this norm on the regional level. While ECOWAS served as a normative reference model for decision making in the AU, its member states supported legalization on the regional level individually.



The 'price' of delegation: increasing independence of the AU Commission

AU organs are often perceived as weak entities that depend solely on the will of AU member states. Accordingly, most assessments of norm building and implementation dismiss the role of the AU organs. But a principal-agent perspective helps shed light on the role of the AU Commission as an independent actor that is strengthening norms with regard to non-acceptance of UCG. According to the principal-agent model, member states of an international organization face a general dilemma (Vaubel 2006; Bauer, Andresen, and Biermann 2012). On the one hand, there are incentives to delegate certain tasks to an independent, efficient bureaucracy (e.g., control of application of norms). Yet on the other hand, member states (principal) lose control, while the agent (international bureaucracy) develops its own interests.

Although most assessments of the AU emphasize its strong intergovernmental character, the Commission developed certain areas of independent agency (Engel 2013). For instance, the creation of the APSA, the formulation and adoption of the Democracy Charter and the recent African Governance Architecture (AGA) demonstrate the importance of the Commission's role in legalizing and implementing non-acceptance of UCG.

- Expert opinions and analysis of staff or consultants of the Commission's divisions of Peace and Security as well as Political Affairs supported the creation and implementation of the APSA and AGA, independently of member states' direct influence. In particular, the Commission advocated proactive measures to foster democratic governance.
- A highly developed ability to lobby for specific issues fosters member states' support for policies against UCG. This becomes evident with regard to the ratification of the African Democracy Charter. Despite its adoption in 2007, it was only ratified and operational in 2012. Strong lobbying efforts by the political affairs unit of the AU commission supported its ratification and set the legal preconditions for the Union's proactive democracy support.

In sum, member states delegated control over the legalization and implementation of the non-acceptance of UCG to the AU organs, in particular the Commission, which laid the groundwork for a legally binding pro-democratic norm that must be implemented by all AU member states.

External powers matter: OECD donors' influence

Cooperation between the AU, AU member states and donors influenced the legalization and increasing importance of the democratic notion of non-

acceptance of UCG between 2002 and 2012. International cooperation of OECD members is value based; most aim to support democratic governance and link their financial and technical aid to political conditionalities. Aid is therefore said to be an important incentive for adopting and adapting Western values. Despite the limited effects of conditionality, donors primarily influenced the legalization of non-acceptance of UCG in two ways:

1. Seeking international legitimacy has been one reason for African states' (particularly aid-dependent states in Sub-Saharan Africa) commitment to support democratic norm development on the regional level. Superficially supporting democratic norms on the international level is a welcome condition of aid for regimes that intend to pay lip service to donors but do not pursue substantial democratic reforms on the national level. However, their strategy fails when regional norms become stronger and regional pressure increases.
2. Second, substantial external funding makes it likely that AU organs adapted Western norms in order to increase the Union's international legitimacy (Leininger forthcoming). Donors finance more than two-thirds of the AU's programme budget. Dialogue between the Commission and donors (as well as pressure from donors) fostered the formulation and enforcement of the African Democracy Charter. In so doing, donors strengthen the Commissions' agency and help increase its independence from member states.

In sum, the financial dependence of AU organs and individual AU member states on OECD donors helps explain the significant international influence on African processes of norm building. Yet a wide range of internal factors have also played an important role in norm building and the legalization of non-acceptance of UCG in Africa. Against this backdrop, and according to general knowledge about the effectiveness of aid, it is likely that OECD support only maintains ongoing processes but is not a decisive explaining factor for change in the AU.

Conclusion

Non-acceptance of UCG is an African norm that was legalized between 2002 and 2012. Today, it is a legally binding norm that holds the national governments of AU member states responsible for maintaining a stable and democratic regime within their countries. Moreover, the notion of UCG has become more democratic. Accordingly, fears that non-acceptance of UCG would support governments that aim to stabilize a non-democratic regime are not realized—at least on the normative level. Despite the reduced space for



a pro-autocratic legal interpretation of this norm, it remains the task of AU member states to implement it in a democratic way.

The analysis showed that the interplay of five factors influenced the legalization and democratization of the non-acceptance of UCG in the AU. Inner-African factors outweigh the role of OECD donors’ influence. While demand-driven factors explain norm creation until 2002, support-driven factors fostered its legalization and democratization after 2002 (see Table 3).

Table 3. Factors for introducing and legalizing the UCG norm

Explanatory factor	Introduction of UCG	Legalization of UCG
Demand driven		
Curbing externalities of conflict	X	(X)
Regional power pushes for norm	X	
Supply driven		
Delegation of tasks to regional body		X
Normative reference model		X
OECD donors		X
Donors demand norm		X

Source: author’s compilation

On the demand side, a functional approach that guaranteed peace and security on the African continent as well as the vital interests of the hegemonic powers led to the introduction and codification of the non-acceptance of UCG. On the supply side, ECOWAS served as a normative reference model; its member states proactively supported the legalization of the non-acceptance of UCG on the regional level. Moreover, the AU Commission’s contributions make clear that non-acceptance of UCG has become a binding rule and democratic provision. Finally, donors’ financial support of member states and AU organs reinforced regional developments and strengthened the independence of AU organs from their member states.

Policy implications

Legalization and democratization (as well as their explanations) have implications for future decision and policy making for African norm-building processes and a future agenda of promoting democratic constitutionalism. Despite the positive conclusions with regard to democratic norm building on the regional level in this analysis, the main challenges of supporting and realizing democratic governance in Africa remain on the implementation level. These policy implications address four sets of interlinked actors:

AU organs: revise functional approach and become more independent from member states

The norm of non-acceptance of UCG is based on a functional logic. Accordingly, democratic governance is perceived to be a precondition for peace and wealth in Africa. But good democratic governance has lately been criticized for its assumed limited success with regard to economic and social development. Governance reforms are said to have led to economic growth but did not necessarily improve the situation of the poor and the distribution of wealth in African nations. Against this backdrop it is difficult to convince AU member states to implement the Democracy Charter. It is therefore important to review the functional logic of this norm in order to engage all AU member states in supporting democratic governance.

Independence from AU member states has proven to be a driver of the legalization of non-acceptance of UCG. Despite South Africa's controversial, powerful role in the current AU Commission, the AU bureaucracy must continue to be independent for the Democracy Charter to be implemented in the long run.

Sub-regional organizations/ regional economic communities: foster norm diffusion and inter-regional dialogue on the effectiveness of instruments to support democratic governance

ECOWAS' role as a normative reference model indicates a high potential for norm diffusion in Africa. Sub-regional organizations such as ECOWAS and the Southern African Development Community (SADC) could engage in a vertical learning process with the AU's substantial democratic governance agenda as outlined in the Democracy Charter, taking sub-regional particularities into account. However, peer learning is limited when it comes to implementing democratic governance support policy, which has been weak



in all regional organizations. If forces are joined to bring the AU agenda of democratic governance support forward, all sub-regional entities must be included.

Inter-regional peer learning among regional organizations has a high potential with regard to the norms of (democratic) governance. While the formulation of the AU's Constitutive Act was inspired by an exchange with the Organization of American States in 2000, dialogue about instruments to support democratic governance can now be fruitful. Guiding questions could be: What set of instruments should be used to support democratic governance? What instruments were used, and which ones were not? Why? How effective were those instruments in supporting democratic governance?

Against the background of the Arab revolutions and continuing difficult processes of political transitions in some North African and Arab countries, an inter-regional dialogue about norms of (democratic) governance could be fruitful. Guiding questions could be: What are the genuine notions of democratic governance in the respective region? What fosters their formulation and adaptation?

African civil society organizations: create a democratic vision and demand that your governments implement the Democracy Charter

Civil society organizations have played a limited role in the AU's expert-driven and elite-focused norm-building process. However, the participation of civil society organizations will be necessary for the effective implementation of the AU's democratic governance agenda, in particular the Democracy Charter. It is therefore important for African civil society organizations to join forces and create democratic visions for the African people. In various member states, national consultation processes have led to formulating visions for better living. Such exercises could help identify entry points for the support of democratic governance in African societies. Regular surveys such as the Afrobarometer can support this process.

The Democracy Charter will only be a success in the long run if there is demand for its implementation. Civil society organizations should therefore hold their governments responsible for respecting and implementing the charter.

OECD donors: identify regional agendas, interlink regional activities and support strong AU organs

Given the relevance of genuine regional factors, donors must continue to identify regional and sub-regional agendas that favour democratic governance. OECD support must align with these agendas. It is particularly important to link external support of sub-regional organizations such as ECOWAS and SADC to the regional level, since isolated support of different entities might contradict regional-level policies. One option might be to strengthen the liaison offices of sub-regional organizations at the AU headquarters. However, this kind of support might be politically sensitive and therefore not welcomed by AU member states.

Finally, donors should continue to support the independence of AU organs, in particular the Political Affairs Unit of the AU Commission. Only a stronger capacity to advocate democratic governance in member states will make the implementation of the Democracy Charter possible.

References



- Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. The Concept of Legalization. *International Organization* 54 (3):401-19
- African Union. 2000. The Constitutive Act. edited by A. Union. Lomé, Togo
- African Union. 2002. Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 9 July 2002. Durban
- African Union. 2003. Protocol on Amendments to the Constitutive Act of the African Union, 3 February and 11 July 2003. Addis Ababa and Maputo: AU
- African Union. 2006. Report of the Ministerial Meeting on the Draft African Charter on Democracy, Elections and Governance and on the Revision of the Lomé Declaration on unconstitutional changes of government in Africa, 29 June 2006. Banul: AU
- African Union. 2007. African Charter on Elections, Governance and Democracy, 30 January 2007. edited by S. o. H. o. States. Addis Ababa: AU
- African Union. 2010. Decision on the Prevention of Unconstitutional Changes of Government and Strengthening the Capacity of the African Union to Manage such Situations. Addis Ababa: AU
- Baimu, Evarist, and Kathryn Sturman. 2003. Amendment to the African Union's Right to Intervene. A shift from human security to regime security? *African Security Review* 12 (2):37-45
- Bauer, Steffen, Steinar Andresen and Frank Biermann. 2012. International bureaucracies. In *Global Environmental Governance Reconsidered*, edited by F. Biermann and P. Pattberg. Cambridge: MIT Press

- Crawford, Gordon, and Gabrielle Lynch. 2012. Democratization in Africa: progress and retreat. *Democratization* 19 (2):380-84
- Engel, Ulf. 2013. The Changing Role of the AU Commission in Inter-African Relations: The Case of APSA and AGA. In *Africa in World Politics*, edited by J. Harbeson. Boulder CO: Westview Press
- Gleditsch, Kristian S., and Michal D. Ward. 2006. Diffusion and the International Context of Democratization. *International Organization* 60 (Herbst 2006):911-33
- Glen, Patrick. 2012. Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Elections and Governance. *African Journal of Legal Studies* 5 (2012):149-75
- Hartmann, Christof and Kai Striebing. Forthcoming. ECOWAS - Pioneer of Democratic Norm-building in Africa, Berlin
- HIIK (Heidelberger Konfliktbarometer). 2002. Konfliktbarometer 2002, 11. Jährliche Konfliktanalyse. Heidelberg: Heidelberger Institut für Internationale Konfliktforschung e.V
- Kioko, Ben. 2003. The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention. *International Review of the Red Cross* 85 (852):807-25
- Kufuor, Kofi Oteng. 2002. The OAU and the Recognition of Governments in Africa: Analyzing Its Practice and Proposals for the Future. *The American University Journal of International Law* 17 (2):369-401
- Legler, Thomas, and Thomas Kwasi Tieku. 2010. What Difference Can a Path Make? Regional Democracy Promotion Regimes in the Americas and Africa. *Democratization* 17 (3):465-91
- Leininger, Julia. forthcoming. Governance Transfers of the African Union. In *Governance Transfers by Regional Organizations*. Berlin: Free University Berlin
- Magliveras, Konstantinos, and Gino J. Naldi. 2004. *The African Union and the Predecessor Organization of African Unity*. The Hague: Kluwer Law International

- Makuwa, Tiyanjana. 2003. The Constitutive Act of the African Union and Institution-Building in Postcolonial Africa. *Leiden Journal of International Law* 16 (01):157-70
- Mattli, Walter. 1999. *The Logic of Regional Integration: Europe and Beyond*. Cambridge: Cambridge University Press
- Naudé, William. 2012. Migration, Remittances and Resilience in Africa. Helsinki: UNU Wider
- Öhm, Manfred et al. 2011. Entfremdung zwischen Europa und Afrikanischer Union? Zeit für ein politischeres Verständnis der Afrikanischen Friedens- und Sicherheitsarchitektur (APSA), Berlin: Friedrich-Ebert-Stiftung
- Omorogbe, Eki Yemisi. 2011. The African Union, Responsibility to Protect and the Libyan Crisis. *Netherlands International Law Review* LIX:141-63
- Omorogbe, Eki Yemisi 2011. A Club of Incumbents? The African Union and Coups d'État. *Vanderbilt Journal of Transnational Law* 44:123-54
- Organization of African Unity. 1990. Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the Political and Socio-Economic Situation in Africa and the fundamental Changes Taking Place in the World, 9 July 1990. Addis Ababa: OAU
- Organization of African Unity (Council of Ministers). 1997. Decision on Sierra Leone, 31 May 1997. Addis Abeba: OAU
- Organization of African Unity. 1999a. Decision, 14 July 1999. edited by Assembly of Heads of States and Government. Algiers: OAU
- Organization of African Unity. 1999b. Report of the Secretary General on the Follow-Up on Decisions of the Council and Summit on Unconstitutional Changes of Government. Addis Ababa: OAU
- Organization of African Unity. 2000. Lomé Declaration, 11 July 2000. Lomé: OAU
- Organization of American States. 2001. Inter-American Charter of the OAS. Washington D.C.: OAS

- Pevehouse, Jon C. 2002. With a Little Help from My Friends? Regional Organizations and the Consolidation of Democracy. *American Journal of Political Science* 46 (3):611-26
- Pevehouse, Jon C. 2005. Democracy from Above? Regional Organizations and Democratization, Cambridge University Press, New York
- Sesay, Amadu. 1985. The OAU and Regime Recognition: Politics of Discord and Collaboration in Africa. *Scandinavian Journal of Development Alternatives* 25: 25-31
- Souaré, Issaka. 2010. The PSC and Unconstitutional Changes of Government in Africa. A Critical Assessment. In *The African Union Peace and Security Council. A Five-year Appraisal*, edited by T. Murithi and H. Lulie. Johannesburg: ISS
- Sturman, Kathryn, and Aïssatou Hayatou. 2010. The Peace and Security Council of the African Union: From Design to Reality. In *Africa's New Peace and Security Architecture: Promoting Norms, Institutionalizing Solutions*, edited by U. Engel and J. Gomes Porto. Farnham: Ashgate
- Tieku, Thomas Kwasi. 2004. Explaining the Clash and Accommodation of Interests of Major Actors in the Creation of the African Union. *African Affairs* 103 (411):249-67
- United Nations. 1961. Vienna Convention on Diplomatic Relations. Vienna
- United Nations High Commissioner for Refugees (UNHCR). 2002: Refugees by Numbers 2002, Geneva: UNHCR
- Vale, Peter, and Siphon Maseko. 1998. South Africa and the African Renaissance. *International Affairs* 74 (2): 271
- Vandeginste, Stef. 2011. The African Union, constitutionalism and power-sharing. In *Working Paper 2011.05*. Antwerp: University of Antwerp
- Vaubel, Roland 2006. Principal-Agent Problems in International Organizations. *Review of International Organizations* 1 (2):125-38
- Williams, Paul D. 2007. From Non-intervention to Non-indifference: The Origins and Development of the African Union's Security Culture *African Affairs* 106, (423):253-79



Witt, Antonia. 2012a. *Jointly Working for Democracy? The African Union and Unconstitutional Changes of Government*. In *DVPW Kongress*. Tübingen

Witt, Antonia. 2012b. *Negotiating Political Order(s): The Politics of Unconstitutional Changes of Government*. In *CAS Working Paper Series*. Leipzig: University of Leipzig

Annexes

Year	Content	Obligation	Precision	Delegation
1997	Decision of OAU Council of Ministers			
	<p>'STRONGLY AND UNEQUIVOCALLY CONDEMNS, the coup d'etat which took place in Sierra Leone on 25 May, 1997; and CALLS for the immediate restoration of constitutional order' [...]</p> <p>'CALLS ON all African countries, and the International Community at large, to refrain from recognizing the new regime and lending support in any form whatsoever to the perpetrators of the coup d'etat'; [...]</p> <p>'APPEALS to the leaders of ECOWAS to assist the people of Sierra Leone to restore constitutional order to the country; and CALLS FOR the support of other African countries and the International Community at large, in that regard.' [...]</p>	<p>Low: only makes recommendations for member states and third parties</p>	<p>Low: neither mechanism of 'restoration of constitutional order' nor 'support' specified</p>	<p>Low: calls on principle of subsidiarity by naming ECOWAS, African states and international community</p>
1999	Decision of OAU Assembly of heads of state and government in Algiers			
	<p>'Determined to promote strong and democratic institutions'</p>	<p>Low: declaration of intent</p>	<p>Low: no definition of democratic institutions</p>	<p>Low: no specification</p>
	<p>'DECIDES that Member States whose Governments came to power through unconstitutional means after the Harare Summit, should restore constitutional legality before the next Summit;¹</p>	<p>Low: Assembly decisions are binding but 'should' equals a recommendation</p>	<p>Low: precise indication of timeframe and expected result, but the 'how' is not specified</p>	<p>Medium: task of governments of member states</p>



Year	Content	Obligation	Precision	Delegation
2000	Lomé Declaration for an OAU response to UCG			
	<p>'principles as a basis for the articulation of common values and principles for democratic governance in our countries: i) adoption of a democratic Constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy; ii) respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament; iii) separation of powers and independence of the judiciary; iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process; v) the principle of democratic change and recognition of a role for the opposition; vi) organization of free and regular elections, in conformity with existing texts; vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders; viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981; ix) guarantee and promotion of human rights'</p>	<p>Low: founding values and guiding principles of organization</p>	<p>High: precise and comprehensive definition of democratic governance</p>	--
	<p>'[...] definition of situations that could be considered as situations of unconstitutional change of government: i) military coup d'état against a democratically elected Government; ii) intervention by mercenaries to replace a democratically elected Government; iii) replacement of democratically elected Governments by armed dissident groups and rebel movements; iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.</p>	<p>Low: definition of UCG is not definite because of 'could'</p>	<p>High: precise description of instances of UCG</p>	--

Year	Content	Obligation	Precision	Delegation
	<p>'[...] Current Chairman of the OAU and our Secretary-General, on behalf of our Organization, should immediately and publicly condemn such a change and urge for the speedy return to constitutional order [...they] also convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognized by the OAU [...they] should urge for consistency of action at the bilateral, inter-state, sub-regional and international levels. The Central Organ should thereafter convene, as a matter of urgency, to discuss the matter [...]</p> <p>'Following the initial response of condemning the unconstitutional change by the Central Organ: (a) A period of up to six months should be given to the perpetrators of the unconstitutional change to restore constitutional order. During the six month period, the government concerned should be suspended from participating in the Policy Organs of the OAU. [...] (b) The Secretary-General should, during this period gather facts relevant to the [UCG] and establish appropriate contacts with the perpetrators with a view to ascertaining their intentions regarding the restoration of constitutional order in the country [...] should seek the contribution of African leaders and personalities in the form of discreet moral pressure on the perpetrators of the [UCG] in order to get them to cooperate with the OAU and facilitate the restoration of constitutional order [...] should speedily enlist the collaboration of the Regional Grouping [...] At the expiration of the six months suspension period, a range of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order should be instituted'</p>	<p>Low: AU organs might act in cases of UCG according to this declaration, but are not obliged to do so</p>	<p>High: detailed description of follow-up of OAU to UCG in member state</p>	<p>Medium: OAU organs that should act are entitled to (but not granted) full authority</p>

Year	Content	Obligation	Precision	Delegation
	'We have agreed on the establishment of a Central Organ sanctions sub-committee of 5 members chosen on the basis of regional representation.'	Low: forum for dialogue	Medium: composition and topic clarified, but work assignment unclarified	Medium: concrete institution set up to define sanctions, but no authority
2002	Constitutive Act of the African Union			
	§ 3g [Objectives] 'promote democratic principles and institutions, popular participation and good governance;'	High: constitutional rank of act and 'shall'	Low: concepts not specified	Low: to be defined in other provisions due to general character of founding document
	§4 'The Union shall function in accordance with the following principles': m 'respect for democratic principles, human rights, the rule of law and good governance' j 'the right of Member States to request intervention from the Union in order to restore peace and security;' p 'condemnation and rejection of unconstitutional changes of governments '	Medium: functioning requires respect for (and behaviour according to) certain principles	Low: concepts not specified Low: concepts not specified, and form of intervention not obvious Low: concepts not specified, but practice of condemnation exists	Low: to be defined in other provisions due to general character of founding document
	§30 [Suspension] 'Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'	High: document has constitutional rank, and clearly prohibits participation in case of UCG	Low: leaves open what UCG, participation and activities comprise	Low: action of AU required
2003	Protocol Relating to the Establishment of the Peace and Security Council of the African Union			
	§7g [Powers] In conjunction with the Chairperson of the Commission, the Peace and Security Council shall: g 'institute sanctions whenever an unconstitutional change of Government takes place in a Member State, as provided for in the Lomé Declaration;'	High: obligation to sanction UCG	Medium: instance of action indicated, but no definition of sanctions	High: delegation of tasks to certain AU organs and request that member states cooperate with PSC (§7[2-4])

Year	Content	Obligation	Precision	Delegation
	§7 m 'the Peace and Security Council shall: . . . (m) followup, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by Member States.'	High: obligation to prevent conflicts	High: reference to framework in specific cases	High: delegation of task to AU organ
2007²	African Charter on Elections, Governance and Democracy			
	§ 2 (4) [Objectives] 'Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;'	High: binding objective	Medium: names objectives, but does not specify concepts	Low: character of article; delegation specified later
	§ 3 [Principles] 'State Parties shall implement this Charter in accordance with the following Principles: [...] (10) Condemnation and total rejection of unconstitutional changes of government'	Medium: functioning requires respect for (and behaviour according to) certain principles	Low: concepts not specified, but practice of condemnation and rejection exists; UCG specified later in charter	Low: member states are held responsible
	§ 14 (2) [Democratic Institutions] State Parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law. § 14 (3) [Democratic Institutions] State Parties shall cooperate with each other to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.	High: 'shall' indicates the binding character of the provision	Medium: addressees not specified	High: domestic application required Medium: certain behaviour expected
	§23 [Sanctions in cases of UCG] State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union: [see i-iv Lomé Declaration] 5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.	High: AU must act in cases of UCG	High: definition of UCG, but not of 'constitutional order'	--

Year	Content	Obligation	Precision	Delegation
	§ 24 [...] a situation [...] that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order [...]	High: action of PSC required	Legitimate: legitimacy not defined, but democratic institutions defined in previous articles	High: delegation of powers to PSC
	§25 (1) 'When the Peace and Security Council observes that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of the Union [...]	High: obligation to sanction	High: clear instruction on how to act in specific case	High: sanction, not necessarily with consent of state party
	§25 (4) 'The perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State.'	High: obligation to refrain from elections ('shall')	High: detailed instruction for specific instance in member state	Low: no delegation of powers, but instruction to act
	§25 (5) 'Perpetrators of unconstitutional change of government may also be tried before the competent court of the Union.'	Low: no obligation, but possibility ('may')	Medium: instance specified, but not procedure	High: optional delegation of state powers to international court
	§25 (6) 'The Assembly shall impose sanctions on any Member State that is proved to have instigated or supported unconstitutional change of government in another state [...]	High: obligation of AU organ to sanction specified behaviour	Medium: subject of sanctions specified, but no definition of sanctions	High: AU organ interprets and decides
	§25 (7) 'The Assembly may decide to apply other forms of sanctions on perpetrators of unconstitutional change of government including punitive economic measures'	Low: no obligation, but possibility ('may')	Medium: subject of sanctions specified, but no definition of sanctions	High: AU organ interprets and decides
	§25 (10) 'State Parties shall encourage conclusion of bilateral extradition agreements as well as the adoption of legal instruments on extradition and mutual legal assistance'	Medium: foster legal agreements among member states	High: regulation of treatment of extraditions	High: domestic application required
	§44 (2) 'The Commission shall ensure that effect is given to the decisions of the Union in regard to unconstitutional change of government on the Continent.'	High: definition of Commission's task	Medium: subject of implementation specified, but mechanism not clarified in this article	High: responsibility for implementing UCG norm

Year	Content	Obligation	Precision	Delegation
2010	Decision on the Prevention of Unconstitutional Changes of Government and Strengthening the Capacity of the African Union to Manage such Situations			
	'REQUESTS the Peace and Security Council, pursuant to the provisions of Article 7(m) of the Protocol Relating to the Establishment of the PSC, which stipulates that this body, in collaboration with the Chairperson of the Commission, shall 'follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life by Member States', to examine regularly progress made in the democratisation processes, on the basis of a report prepared by an independent Rapporteur to be appointed by the Chairperson of the Commission, who will be given the necessary support in terms of personnel and expertise. The Assembly DECIDES that, for 2010, Year of Peace and Security in Africa, this review shall be effected by a meeting of PSC at ministerial level'	High: PSC obliged to review democratization processes	High: objective, legal references, addressees and process specified	High: delegation of specific task to AU organs
	REQUESTS the Commission to redouble its efforts to ensure the follow-up and effective implementation of the recommendations made by the Panel of the Wise in its Report on the Strengthening of the Role of the African Union in the Prevention, Management and Resolution of Elections-related tensions and violent conflicts in Africa as endorsed by the Thirteenth Ordinary Session of the Assembly of the Union [...], considering the fact that differences concerning the conduct of an electoral process contribute to the occurrence of an unconstitutional change of Government;	High: demand to implement previous decision	High: precise formulation of task	High: delegation of specific task to Commission

¹ Refers to Comoros, the Republic of the Congo (Brazzaville), Guinea-Bissau and Niger.

² Entered into force on 16 January 2012 after ratification.

Source: adapted from (Abbott et al. 2000)

Notes



- ⁱ This paper is based on the outcomes of the research project “Governance Transfers of Regional Organizations” at the Free University Berlin. A short version of this paper appears in: Börzel, Tanja and Vera van Hüllen (eds): *Governance Transfer by Regional Organizations*, Palgrave Macmillan (forthcoming).
- ⁱⁱ Despite introducing their principle of non-indifference (CA, art. 4,h), the Constitutive Act maintains the principle of non-interference.
- ⁱⁱⁱ For more detailed information, see Table 2.
- ^{iv} For instance, the Freedom House Index shows an increase of not-free AU member states, compared to 2012 (39.6 per cent) and 2000 (36.5 per cent). Partly free regimes decline from 46.2 per cent (2000) to 39.6 per cent (2012), whereas there are improvements with regard to free regimes (17.3 per cent in 2000 compared to 20.8 per cent in 2012).
- ^v Until the 1990s, the OAU was based on the principle of non-interference among member states and the OAU (OAU Charter 1963, art. III 2 and 3).
- ^{vi} According to Witt 2012, the sub-committee comprised Gabon, Egypt, Kenya, Lesotho and Senegal.
- ^{vii} This coup took place against the civilian government of Ahmed Tejan Kabbah in Sierra Leone in 1997. See also the Annex.
- ^{viii} Kioko’s statement refers to military intervention as outlined in the Protocol of the amendment of the Constitutive Act (2003), which has not yet been ratified. However, the same question applies to non-military interventions in cases of UCG.
- ^{ix} In its report on the meeting on the draft of the African Democracy Charter in 2006, the Executive Council stated that ‘It should be noted that the question of the revision of constitutions as a ploy to stay in power had dissenting opinions which were reflected in the Draft’ (African Union 2006, 2).
- ^x For an analysis of the African Democratic Charter’s content see (Omorogbe 2011, 135-37; Glen 2012).
- ^{xi} For an analysis of different AU practices see (Witt 2012).
- ^{xii} Emphasis added.
- ^{xiii} See for an assessment of conflicts within the Commission’s work in this area, see Engel 2013.
- ^{xiv} For the text of this provision, see the Annex.
- ^{xv} From a humanitarian and security perspective, one might argue that the AU was obligated to intervene according to article 4 of the Constitutive Act (Öhm et al. 2011).
- ^{xvi} Actions against UCG are mainly taken in the AU’s PSC.

^{xvii} The PSC has 15 members that proportionally represent the five regions of the continent.

^{xviii} This section is based on interviews due to a lack of literature on this topic.