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COMMON PROBLEMS AFFECTING SUPRANATIONAL ATTEMPTS IN AFRICA: AN ANALYTICAL OVERVIEW

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1 Introduction

Ever since the colonial era, attempts have been made, throughout the various regions of Africa, at building supranational units chiefly for both administrative and legal convenience. Examples of such attempts include the Federation of Rhodesia and Nyasaland, the East African High Commission and the Federations in former French West and Equatorial Africa, all of which were attempts at forging a supranational nation state.

These "federations" could not withstand the intricate dynamics of the independence *tsunami,* mainly because the post-independence political elite consolidated colonially-defined national territorial integrity and sovereignty. Instead, efforts were geared towards establishing supranational organisations at sub-regional levels to cater for functional economic needs. At the continental level, the *OAU Charter* was far from establishing a continental supranational organisation. Rather, emblems of supranationalism remain prominent at the sub-regional levels: the East African Community (EAC), the Economic Community of West African States (ECOWAS), and the Organisation for Harmonisation in Africa of Business Laws (OHADA).

It is against this background that this article aims at investigating selected attempts at supranationalism on the continent, the successes and failures of such experiments, and the lessons to be learnt from them. As Africa embarks on the journey of solidifying its unity through the establishment of leviathan continental institutions, efforts should be geared towards building on the experiences of past

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and present experiments at the sub-regional level. Such experiments offer instructive lessons as they are rooted in similar historical and social contexts.

Thus, this article begins with an analysis of supranationalism. This is followed by an outline of attempts at supranationalism within Africa. It concludes by discussing some of the common challenges, as evident in the foregoing analysis, facing (supranational) integration in Africa.

2 The supranational focus

Supranationalism is a politico-legal concept which embodies but is not limited to the following core elements: decisional autonomy (in particular the rule of the voting majority as opposed to consensus), the binding effect of the laws of international organisations (where member states are precluded from enacting contradictory laws), the institutional autonomy of an organisation from its member states, and the direct binding effect of laws emanating from regional organisations on natural and legal persons in member states.[1] Essentially, supranationalism implies the existence of an organisation capable of exercising authoritative powers over its member states. This is the point where supranational organisations are different from intergovernmental institutions, since the latter are merely forums for inter-state cooperation. In this respect, the legal personality of an institution will determine whether or not it is a supranational institution.

Legal personality is the concept which defines "the actual attribution of rights and/or duties (of international organisations) on the international plane".[2] Such attributes are expressly or tacitly stipulated in the constituent treaty.[3] The constituent treaty will for example indicate the procedural capacity of an international organisation to make treaties, enforce its decisions and enter into agreements with other entities.[4] Similarly, such powers could be inferred from the powers and objectives of the

1 Weiler 1981 *YEL* 267-306. See also Hay *Federalism and Supranational Organisation* 69 and Pescatore *Law of Integration* 51-52.
2 Shaw *International Law* 194.
3 Shaw *International Law* 909.
4 Shaw *International Law* 191.

particular organisation. It is important to note that the extent of the functions of a particular organisation determines the level of its legal personality. For example, an organisation such as the European Union (EU) has a more extensive legal personality than the United Nations (UN) or the African Union (AU). This is because the EU, unlike the latter, has moved from the minimal threshold of inter-state cooperation to the creation of institutions parallel to and/or superseding the jurisdiction of its member states in relation to agreed matters of common interest.[5]

It must, however, be emphasised that the discourse on supranationalism should not begin from an "all-or-nothing" perspective. Any enquiry into the presence or lack thereof of supranational elements should not only be directed at identifying overarching supranational features but in addition should engage in highlighting the hybridity or juxtaposition of elements – intergovernmental and supranational. The reality is that even when an organisation possesses all of the elements of supranationalism, there are still some embedded features of intergovernmentalism. The EU, for example, is designated as a supranational organisation, but one of its primary decision-making organs, the Council of European Union, consists of national ministers who primarily champion the agenda of their governments.[6] The Council remains the apical decision-making body on matters relating to foreign policy, justice and home affairs.[7] Also the UN, an archetypal intergovernmental organisation, exercises supranational powers especially in relation to voting rules in the General Assembly and sometimes in the Security Council.[8]

5 The EU exercises both exclusive and shared competence in a number of areas. It has exclusive competence over matters such as its customs union, economic and monetary policy, competition laws, the common international trade policy, the common fisheries policy and the conclusion of some international agreements. It shares competence with member states on a wide range of issues such as food, the environment, social policy, transport, human rights and development aid. Available on European Commission official website (EC Date unknown http://bit.ly/YPSEv1).

6 Dashwood 1998 *E L Rev* 205-206.

7 Dashwood 1998 *E L Rev* 205-206.

8 Weiler 1981 *YEL* 305.

3 Overview of selected supranational attempts in Africa

3.1 Economic Community of West African States (ECOWAS)

The earliest manifestation of pan-African integration can be traced to West Africa.[9] Intertwined with the nationalist struggle against colonialism, activists from (British) West Africa, as early as the mid-nineteenth century, advocated for regional cooperation through either a federal arrangement or the establishment of common institutions such as the Court of Appeal and a university.[10]

Decolonisation in the early 1960s further intensified efforts at integration mainly by the political elite, a marked shift from the previous advocacy by non-state actors.[11] Concrete attempts to transform the "idea" of West Africa into an institutional form started in 1972 when the leaders of Nigeria and Togo, Generals Gowon and Eyadema respectively, signed a bilateral Treaty designed as a launch-pad for wider sub-regional cooperation.[12] On 28 May 1975 fifteen West African states converged in Lagos to sign the treaty establishing ECOWAS.[13] The economic focus of the 1975 treaty can be gleaned from some of its objectives, which include the elimination of customs duties, the free movement of persons, capital, and services, and the harmonisation of agricultural and industrial policies.[14]

The stark reality of a fast-changing global political and economic order,[15] especially the realisation that the 1975 Treaty proved inadequate at deepening regional

9 Thompson *Africa and Unity* 28. See also Kufuor *Institutional Transformation* 19-21 and Asante *Political Economy of Regionalism* 45-47.
10 Thompson *Africa and Unity* 28; Kufuor *Institutional Transformation* 19-20; Asante *Political Economy of Regionalism* 45-47.
11 Kufuor *Institutional Transformation* 20-21.
12 Asante *Political Economy of Regionalism* 55.
13 These states include Benin, Burkina Faso (formerly Upper Volta), Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. Cape Verde acceded to the *ECOWAS Treaty* in 1977. In 1999/2000 Mauritania withdrew its membership from ECOWAS.
14 Article 2 *ECOWAS Treaty* (1975).
15 Kufuor identifies the following as some of the factors that necessitated the move towards supranationalism in ECOWAS: the need for institutional efficiency; the search for political legitimacy by ECOWAS leaders; ideological change within West Africa; the desire for stronger regional security architecture; and the need to be a major player in international trade.

integration, led to the establishment in May 1990 of a Committee of Eminent Persons to review the 1975 Treaty.[16] One recommendation of the Committee was that more emphasis should be placed on supranationalism within ECOWAS, especially the vesting of more powers on the organs of the community.[17] The Committee's report formed the basis of the 1993 revised Treaty of ECOWAS.

To underscore its mission of institutional transformation, the Authority in June 2006 approved the transformation of the Executive Secretariat into a nine-member Commission with a President, a Vice-President and seven Commissioners.[18]

Having experienced some of Africa's worst armed conflicts, ECOWAS found it important to put in place a supranational security mechanism.[19] In this regard the security architecture of ECOWAS has been adjudged as one of the best on the continent.[20] ECOWAS has successfully intervened in hot-spots such as Liberia, Sierra Leone, and Guinea Bissau.[21] Learning from the past mistakes of its interventions across the sub-region, ECOWAS has established an overarching, all-inclusive security mechanism which consists of a Mediation and Security Council, a Defence and Security Commission, and a Council of Elders.[22] The Mediation and Security Council is made up of ten members, and decisions are made by a two-thirds majority of six members.[23] In addition, civil society is encouraged to contribute to the organisation's early warning system mechanism.[24]

See Kufuor *Institutional Transformation* 40-46.

16 Kufuor *Institutional Transformation* 132-170.

17 Kufuor *Institutional Transformation* 146.

18 See the ECOWAS Newsletter 2006. Available on the ECOWAS official website (ECOWAS Date unknown http://bit.ly/YtEMgE).

19 According to Adebajo, the three civil conflicts in Liberia, Sierra Leone and Guinea Bissau claimed over 250,000 lives and generated over 1.2 million refugees. See Adebajo 2005 *Internationale Politik und Gesellschaft* 90.

20 Cilliers 2008 *Institute of Security Studies Papers* 13-14.

21 Adebajo 2005 *Internationale Politik und Gesellschaft* 90.

22 Adebajo 2005 *Internationale Politik und Gesellschaft* 90.

23 Adebajo 2005 *Internationale Politik und Gesellschaft* 90.

24 Adebajo 2005 *Internationale Politik und Gesellschaft* 90.

3.2 Southern Africa Customs Union (SACU)

The SACU[25] was established in 1910, thus making it the world's oldest Customs Union.[26] Its origins date back to the 1889 *Customs Union Convention* entered into between the British Colony of the Cape of Good Hope and the Orange Free State Boer republic.[27] The 1910 agreement extended membership of the organisation to the British High Commission Territories (HCT) of Basutoland (now Lesotho), Bechuanaland (now Botswana) and Swaziland. Namibia (then South West Africa) was a *de facto* member because it was then administered by South Africa.[28] The underlying idea behind this arrangement was to incorporate the HCTs into South Africa.[29]

The 1910 agreement tasked the SACU with supranational duties by providing for the free movement of manufactured products, a common external tariff on all goods imported into the Union, and a revenue-sharing formula for the distribution of customs and excise.[30] Under this agreement South Africa was to receive 98.7% of the joint revenue, Bechuanaland 0.27%, Basutoland 0.88% and Swaziland 0.15%.[31] Another feature of the SACU is the 1974 *Rand Monetary Agreement* (RMA), which made the rand the only legal tender within SACU.[32] However, Botswana pulled out of the arrangement in 1975. To address the concerns of other member states, especially in relation to independent monetary control, the agreement was amended in 1986 by giving more autonomy to Lesotho and Swaziland.[33]

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25 It consists of Botswana, Lesotho, Namibia, Swaziland and South Africa. Except for South Africa the member states are commonly referred to as the BLNS states.
26 SACU Date unknown http://bit.ly/102Dxkm.
27 SACU Date unknown http://bit.ly/102Dxkm.
28 SACU Date unknown http://bit.ly/102Dxkm.
29 The electoral victory of the National Party in South Africa in 1948 signalled the impossibility of such a move. See Gibb 1997 *JSAS* 75-76.
30 Gibb 1997 *JSAS* 75.
31 Gibb 1997 *JSAS* 75-76.
32 AU and ECA *Assessing Regional Integration* 185.
33 AU and ECA *Assessing Regional Integration* 185.

Growing concerns about certain policies emanating from South Africa, which largely resulted in trade diversion[34] and subsequently had a negative impact on the GDP of other member states, led to the replacement of the 1910 agreement by the 1969 agreement.[35] The 1969 agreement attempted to address the major source of contention, namely the revenue-sharing formula,[36] by making provision for the inclusion of excise duties in the common revenue pool.[37] This revenue pool is divided among the member states according to the annual imports, production and consumption of dutiable goods.[38] Based on this arrangement, the revenue share of member states, except for South Africa, is further enhanced by an annual 42% compensation allowance.[39]

These measures did little to change the *status quo,* mainly because South Africa still retained the sole decision-making power over policies affecting the customs union arrangement.[40] South Africa's transition to democratic governance and the independence of Namibia set the tone for a renewed engagement on SACU policies.[41] These negotiations gave birth to the 2002 *SACU Agreement*. To highlight the importance of joint decision-making, the new agreement created an independent administrative body (the Secretariat) to oversee the SACU.[42] Other independent institutions include the SACU Council of Ministers, the Commission, the National Bodies, the Tariff Board, the Technical Liaison Committees and a Tribunal.[43] On the contentious issue of revenue sharing, the new agreement provided for a revised formula which consists of customs, excise and development components.[44]

34 According to Gibb, trade diversion "occurs when a customs union adopts a protectionist external trade regime forcing member states to displace imports of efficiently produced goods from countries outside the trading arrangement with more expensive imports from partner countries". See Gibb 1997 *JSAS* 78.
35 Gibb 1997 *JSAS* 75.
36 The revenue derived from the SACU's common external tariff represents a significant source of economic development in the BLNS countries. According to Ngwenya, it makes up approximately 50% of Swaziland's and Lesotho's budget revenues, and 30% and 17% of the budget revenues of Namibia and Botswana. See Ngwenya 2002 *Sisebenze Sonke* 26.
37 Gibb 1997 *JSAS* 77. See also SACU Date unknown http://bit.ly/102Dxkm.
38 Gibb 1997 *JSAS* 77.
39 Gibb 1997 *JSAS* 75-76.
40 SACU Date unknown http://bit.ly/102Dxkm.
41 Alden and Soko 2005 *JMAS* 370-371.
42 Article 3 *SACU Agreement* (2002).
43 Article 7 *SACU Agreement* (2002).
44 SACU Date unknown http://bit.ly/102Dxkm.

Compared to other sub-regional entities, the SACU can claim far-reaching and substantial achievements such as the harmonisation of policies on competition, investment and intellectual property rights.[45] In addition, the organisation also has a relatively successful framework for engaging with external parties such as the EU and the United States of America.[46]

3.3 The East African Community

East African integration dates back to the attempt by the British colonial authority to build an economic bloc and at the same time secure greater political control over the region.[47] Prior to the 1926 Governors' Conference, which laid a groundwork for future areas of cooperation, the region witnessed the establishment of supranational institutions such as the Kenya-Uganda Railway,[48] the Court of Appeal for East Africa (1902), a common currency (1905), a Postal Union (1917) and a Customs Union (1917).[49]

After a series of recommendations and reports highlighting the feasibility of closer integration in the region,[50] the East Africa High Commission (EAHC)[51] was officially established in 1948. The headquarters of the EAHC were situated in Nairobi, Kenya. The Commission comprised the Governors of Kenya, Tanganyika (later Tanzania) and Uganda, the administrator, a Commissioner for Transport, a Postmaster General and a Legal Secretary. The Legislative Assembly, with the consent of the High Commission, had the power to enact laws for the three territories.[52] The activities of

45 Alves, Draper and Halleson 2007 http://bit.ly/YB4KZQ.
46 Alves, Draper and Halleson 2007 http://bit.ly/YB4KZQ 18.
47 Ojeinda 2005 *E Afr J Peace & Hum Rts* 221-222.
48 The construction of this railway in 1894 is commonly regarded as the start of the integration process in the region. See Odhiambo "East African Customs Union" 214.
49 Ojeinda 2005 *E Afr J Peace & Hum Rts* 222.
50 Delupis *East African Community* 19-26.
51 Delupis observes that the EAHC was not an international organisation *strictu sensu* because its members were colonial entities. See Delupis *East African Community* 31.
52 Some of the important Acts enacted by the Assembly include the *Railways and Harbours Administration Act*, the *Customs Management Act*, the *Income Tax Management Act* and Acts setting up institutions of higher learning in East Africa. See Banfield "Structure and Administration" 32.

the High Commission covered a whole range of fields such as aviation, telecommunications, income tax, customs and excise, science and research, defence and education.

Being a colonial construct the EAHC's legitimacy was largely questioned by the majority of East Africans. They, in particular the leading political elites in the three territories of the region, questioned the composition of the commission, the loyalty of its members and its detachment from the realities on the ground.[53] The sharp disapproval of the EAHC was also fuelled by the quest for independence in the three territories. Political elites viewed the Commission as a vestige of the British Empire and were determined to wrest the control both of their territories and the organisation from the colonists.

The continued opposition to the functioning of the EAHC led to discussions between the East African leadership and their British counterparts. An agreement was finally reached and the EAHC was replaced in December 1961 by a new institution called the East African Common Services Organisation (EACSO).

The EASCO differed from its predecessor in a number of ways. Apart from the fact that it was established by an agreement among the three East African governments, the constitution also provided that the executive would be responsible to the three East African governments.[54] Unlike its predecessor, the EASCO reflected an African outlook by ensuring that East Africans were placed in leadership positions. The Central Legislative Assembly, for example, had more East Africans among its membership.[55]

The EASCO served as a platform for enhancing cooperation among the territories. The political elites of the territories viewed the independence of their respective territories as the first step, followed by the creation of a Federal East African state. In 1963, the political leaders of the East African states - Jomo Kenyatta (Kenya),

53 Banfield "Structure and Administration" 34.
54 Banfield "Structure and Administration" 32.
55 Banfield "Structure and Administration" 36-37. See also Springer "Community Chronology" 15.

Julius Nyerere (Tangayika)[56] and Milton Obote (Uganda) - signed a declaration of federation.[57] The declaration, amongst other provisions, aimed at establishing a Federation of East Africa.[58]

Pursuant to endowing the organisation with more powers and based on the recommendations of the Phillip Commission, the *East African Community Treaty* was signed in Kampala, Uganda on 6 June 1967 and was inaugurated in Arusha on 1 December, 1967. The East African Community (EAC) incorporated the EASCO. In terms of the institutional machinery, there was a major change in terms of the appointment of the members of the Legislative Assembly. Unlike the EASCO, where members of the Legislative Assembly were elected through a system of direct election by state legislatures, member states were now given the authority to select members of the Assembly.[59] This act stifled the performance of the Assembly since the new members' loyalties lay with the national powers and thus prevented them from being critical of the national authorities.[60] The Common Market Tribunal, the Court of Appeal for East Africa and the East African Industrial Court jointly held the judicial powers.[61]

The EAC inherited the organisational structure of the EASCO. It functioned through its organs:[62] the East African Authority; the East African Legislative Assembly; the East African Ministers; the Tribunals and the East African Development Bank. The EAC also operated the following Common Services: the East African Highway Cooperation (EAAC), the East African Posts and Telecommunications Cooperation

56 In 1964 Tangayika and Zanzibar united to form Tanzania.
57 See "The Federation Declaration" of 5 June 1963. The Declaration was issued by the governmens of East Africa in Nairobi on 5 June 1963.
58 As a result of Uganda's stiff resistance to surrendering sovereignty in respect of citizenship and foreign affairs, the idea of a political union was deemed no longer feasible. A major consequence of this was the 1965 decision to dismantle the East African Currency Board, thus introducing separate currencies in the three member states. See Delupis *East African Community* 49-50, 53.
59 Springer "Community Chronology" 22.
60 Springer "Community Chronology" 22.
61 The Tribunal had the power to hear cases relating to the alleged violations of the Common Market and also to give advisory opinion to the Common Market Council. The Industrial Court could rule only on disputes of an industrial nature while the jurisdictional competence of the Court of Appeal was determined by the national laws (Springer "Community Chronology" 23).
62 Article 3 *Treaty for East African Cooperation* (1967).

(EAP&TC), the East African Railways Cooperation (EARC) and the East African Harbours Cooperation (EAHC).

Alongside the European Community it was widely acclaimed as one of the best experiments in regional cooperation. One would have expected that the shared values of the member states should be sufficient to hold the organisation together. As Mazzeo rightly pointed out, a multiplicity of factors (political and economic) contributed directly and indirectly to the dissolution of the community.[63] The disbanding of the East African Currency Board, a year after the signing of the EAC, was seen as the first ominous development in the long road towards the eventual dissolution of the community.[64] This particular act ensured that the member states effectively removed the idea of a monetary union from the radar screen of the community.[65]

The revival of the EAC, after its demise in 1977, had its origin in article 14.02 of the Mediation Agreement of 1984. In terms of this agreement, three heads of state (Kenya, Tanzania and Uganda) agreed to "explore areas of future co-operation and to make concrete arrangement for such co-operation".[66] The preparatory work for the re-establishment of the EAC began in 1993 when the three heads of state signed the Agreement for the Establishment of the Permanent Tripartite Commission for East African Co-operation. The Treaty establishing the East African Community was signed in Arusha on 30 November 1999. The Treaty entered into force in 2000. Article 9 of the *EAC Treaty* outlines the following as the institutions of the community: the Summit, the Council, the East African Court of Justice, the East African Legislative Assembly, the Secretariat, the Sectoral Committees and the Coordination Committees.[67] In a milestone development, Burundi and Rwanda became members of the EAC on 1 July 2007.

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63 Mazzeo "Experience of the East African Community" 151.
64 Mugomba 1978 *JMAS* 264. See also Odhiambo "East African Customs Union" 215.
65 Odhiambo "East African Customs Union" 215.
66 EAC Date unknown http://bit.ly/X13X8f.
67 See the *EAC Treaty* (1999).

In order to avoid the pitfalls of the past the preamble of the Treaty identified the following as the reasons for the dissolution of the old EAC:[68] a lack of strong political will; a lack of private sector and civil society participation; disproportionate sharing of benefits among partner states; and the inability to address these issues. The objectives of the EAC are, amongst others:[69]

- to establish a Customs Union (launched in 2005);
- to establish a Common Market (launched in 2010);
- to establish a Monetary Union (expected to be launched before the end of 2012, it is not yet in operation); and ultimately
- to establish a Political Federation.

In order to avert the mistakes of the past *vis-à-vis* the benefits being skewed in favour of Kenya, the Customs Union Protocol provides for the duty-free movement of all exports from Tanzania and Uganda into Kenya.[70] Goods from Kenya moving into Uganda and Tanzania are classified into two categories: Category A qualifies for immediate duty-free treatment while the goods in Category B would be subjected to gradual tariff reduction over a period of 5 years.[71]

3.4 Organisation pour l'Harmonisation en Afrique des Droit des Affaires (OHADA)

The OHADA (in English, the Organisation for the Harmonisation of Business Law in Africa) remains one of the boldest attempts at supranationalism on the continent. The character of the *OHADA Treaty*, which was adopted on 17 October 1993, is essentially pro-development and business inclined.[72] Built around the existing economic and political relations among francophone African countries,[73] the Treaty

68 *EAC Treaty* (1999).
69 Article 5 *EAC Treaty* (1999).
70 Article 11 *Protocol on the Establishment of the East African Customs Union* (2009).
71 Article 11(3) *Protocol on the Establishment of the East African Customs Union* (2009).
72 See generally, Dickerson 2005 *Colum J Transnat'l L* 17-73.
73 Each of the OHADA member states belongs to the two major French-based economic and monetary zones: West Africa – *Union Economique et Monetaire Ouest Africaine* (UEMOA) and Central Africa - *Communaute Economique et Monetaire l'Afrique Centrale* (CEMAC).

aims to accelerate economic development and foreign investments in member states through the provision of a secure judicial environment. The Treaty regulates - through the Uniform Acts - the following areas: company law, general commercial law, securities, enforcement measures, insolvency law, arbitration, accounting law and transport.[74] At present there are sixteen member states spread across west and central Africa.[75] Since the majority of the member states are francophone countries, the OHADA laws are largely based on the French legal system.[76] In pursuant of the goal of continental integration, the Treaty provides that membership is open to all member states of the AU.[77]

An important supranational component of the Treaty is the provision which stipulates that the Uniform Acts are immediately applicable in the domestic laws of each member state.[78] Unless specified otherwise (in the Uniform Act), the Treaty provides that Uniform Acts shall enter into force 90 days after their adoption.[79] In addition, the Uniform Acts shall have direct effect, allowing any party to rely on its provisions 30 days after their publication in the OHADA official journal.[80]

The OHADA Common Court of Justice and Arbitration (CCJA) is one of OHADA's strongest supranational institutions.[81] The CCJA has two functions vis-à-vis OHADA laws: an arbitration centre and a Supreme Court for judgments delivered by national Courts of Appeal. However, the role of the court as an arbitration centre remains

74 OHADA Date unknown http://bit.ly/108BPfz.

75 They include Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Gabon. Equatorial Guinea, Guinea, Guinea-Bissau, Mali, Niger, Senegal and Togo. Most of the OHADA members are francophone countries with a few exceptions: Equatorial Guinea (Spanish), Guinea -Bissau (Portuguese) and the English speaking parts of Cameroon.

76 The laws of Guinea Bissau (which was colonised by Portugal) and Equatorial Guinea (colonised by Spain) are similar to those of the French legal system. This was due to the influence of the French Commercial Code on the Spanish and Portuguese laws. These laws belong to the civil law tradition. See La Porta *et al* 1998 *Journal of Political Economy* 1118.

77 General Clause Title 1, Article 53 *OHADA Treaty* (1993). The following countries have signified their intentions to join the organisation – the Democratic Republic of Congo (which is in the process of becoming a member), Ghana, Nigeria and Liberia. See Carton and Cousin 2007 http://bit.ly/16dnpA9.

78 Article 10 *OHADA Treaty* (1993).

79 Article 9 *OHADA Treaty* (1993).

80 Article 9 *OHADA Treaty* (1993).

81 The other is the Council of Ministers, which is the legislative arm of OHADA. It is responsible for the adoption of Uniform Acts. See Article 3 *OHADA Treaty* (1993).

undeveloped.[82] As the Court of last resort in terms of the OHADA laws, the CCJA plays a primary role in ensuring that there is uniform application of the OHADA laws in member states.[83] In respect of interpretation of the treaty, both the member states and the Council of Ministers may approach the Court in this regard.[84] Appeal to the Court can be instituted either by one of the parties to the proceedings or by referral of a national court.[85] In relation to the enforcement of the Court's decisions, the Treaty entrusts the member states with this function.[86]

3.5 The West African Economic and Monetary Union (WAEMU/UEMOA)

WAEMU is one of two CFA franc zones in Africa, the other being the Central African Economic and Monetary Community (CEMAC). Built around a common, convertible currency - the CFA franc - and a shared colonial heritage,[87] the WAEMU was established in 1994 as a measure to address the attendant effects of the devaluation of the CFA franc and in turn, to strengthen the economic cooperation among member states.[88] The objectives of the organisation include the harmonisation of laws, the creation of a common market, and the convergence of the macro-economic policies of member states.[89]

The supranational ambition of the organisation is affirmed in article 6 of the UEMOA Treaty.[90] Lavergne notes that the supranational nature of the UEMOA can be inferred from four functions highlighted in the treaty:[91]

82 Dickerson 2005 *Colum J Transnat'l L* 56.
83 See Articles 13-18 *OHADA Treaty* (1993).
84 See Article 14 *OHADA Treaty* (1993). On a number of occasions the CCJA has ruled that the OHADA laws are superior to any conflicting national laws. See Dickerson 2005 *Colum J Transnat'l L* 56.
85 Article 15 *OHADA Treaty* (1993).
86 Article 20 *OHADA Treaty* (1993).
87 The original seven members - Benin, Burkina Faso, Cote d'Ivoire, Mali, Niger, Senegal and Togo - are francophone countries. Guinea-Bissau, a Portuguese-speaking country, later joined the group in 1997.
88 Masson and Pattillo *Monetary Union in West Africa* 8-9. See also Alexander, Oleynik and Oliynik *WAEMU Business Law Handbook* 6-7.
89 Article 4 *UEMOA Treaty* (1994).
90 Article 6 states that the UEMOA's statutes are superior to the laws of member states.
91 Lavergne "Regional Integration and Cooperation in West Africa" 18-21.

- Supranationality over monetary matters
- The prohibition of the application of new protectionist measures against member states (Article 77)
- The obligatory nature of institutional directives, regulations and decisions (Article 43)
- The existence of surveillance mechanisms and sanctions (Articles 64, 65, 72-75)

The institutional architecture of the organisation comprises of the Conference of Heads of State, the Council of Ministers, the Court of Justice, the Commission and the Central Bank of the States of West Africa (BCEAO).[92] The BCEAO is the institution that truly reflects the supranational status of the organisation.[93] It is the institution solely responsible for the issuing of currency on the territory of its member states and also for monetary policy within the zone.[94] In this regard the BCEAO has been commended for pursuing prudent monetary policy amidst worsening economic performance in some member states.[95]

Among the achievements of the WAEMU since its inception are the convergence of macro-economic criteria, the harmonisation of business laws (especially indirect taxation regulations), and the establishment of a customs union and a common external tariff. [96]

3.6 The Central African Economic and Monetary Community (CEMAC)

As previously stated, the CEMAC[97] is the second CFA Franc zone in Africa. In 1994 the CEMAC replaced the Customs and Economic Union of Central Africa (UDEAC), an organisation that had been established in 1961 to promote monetary cooperation

92 WAEMU Date unknown http://bit.ly/X50p55.
93 See eg Busch 2009 http://bit.ly/WPcxpp.
94 Busch 2009 http://bit.ly/WPcxpp. See also Alexander, Oleynik and Oliynik *WAEMU Business Law Handbook* 6-7.
95 See IMF 2001, http://bit.ly/WRp0J0.
96 AU and ECA *Assessing Regional Integration* 30.
97 Of the six members of the organisation, five - Cameroon, Central Africa, Congo, Gabon and Chad - are former French colonies. The sixth member, Equatorial Guinea, is a former Spanish colony.

among francophone central African nations.[98] The CEMAC, like the WAEMU, aims to create a common market, harmonise laws and sectoral policies, and promote the convergence of the macro-economic policies of member states.[99] The organisation is made up of the following institutions: the Conference of the Heads of States, the Council of Ministers, the Community Parliament, the Court of Justice, and the Bank of Central African States (BEAC).[100]

As with the WAEMU, the BEAC is the supranational institution responsible for issuing the CFA Franc within the zone and in addition controls the monetary policy of the zone.[101] At present the CEMAC has in place financial and legal (harmonisation of business laws) regulatory mechanisms.[102]

However, the customs union is yet to function effectively largely as a result of the low level of intra-community trade, bureaucratic bottlenecks that hinder the free flow of goods and services, and the lack of political will to fast-track integration.[103]

4 Common factors hindering the maximal realisation of supranationalism in Africa

As is evident in the preceding discussion, experimentation with supranationalism is not novel in Africa. Some of the organisations discussed above have made considerable progress on certain fronts, especially on monetary, security, business and judicial matters. Setting the tone for continental integration, these institutions have made often modest but sometimes bold incursions into issues bordering on state sovereignty. Although mainly working within the rigid context of the over-bearing influence of member states, organisations like the CEMAC and the WAEMU have put in place structures for monitoring and ensuring compliance with the monetary policies of member states. The OHADA framework ensures, through its

98 CEMAC Date unknown http://bit.ly/ZMMIpU (translated version).
99 CEMAC Date unknown http://bit.ly/ZMMIpU (translated version).
100 CEMAC Date unknown http://bit.ly/ZMMIpU (translated version).
101 CEMAC Date unknown http://bit.ly/ZMMIpU (translated version)
102 AU and ECA *Assessing Regional Integration* 29.
103 World Bank Date unknown http://bit.ly/ZQjAy5.

institutions, the supranationality of its jurisdiction on matters relating to the harmonised business laws. In a series of interviews conducted by Dickerson with various stakeholders across OHADA member states, optimistic views were expressed about the success of the process, especially in relation to the execution of judgments.[104] In the SACU, the revenue derived from the Common External Tariff (CET) amounts to a significant portion of the budget revenue of its member states.[105] All of these facts point to the beneficial nature of supranationalism and its potential in addressing some of the continent's problems.

In spite of the achievements outlined above, there is still room for improvement. As will be shown below, the worrying question relates to the glaring disconnect between commitment to supranationalism at public fora and the creation of an enabling environment for it to be operational. Put simply, there has been a gross lack of political will on the part of Africa states to translate goals and objectives into reality.[106]

Thus, this section will attempt to tease out some of the obstacles to integration in Africa, especially within the context of supranationalism. In essence, the discussion will primarily focus on the factors responsible for the inability of regional organisations in Africa to exercise supranational powers.

4.1 Weak institutional machinery

A major impediment to operationalising supranationalism in Africa is the fact that regional institutions are not independent enough to implement integration initiatives. These institutions are expected to operate in accordance with the whims of member states which are often run by dictators with personal interests at heart, rather than to fulfil the ambitious objectives of the organisation. It is thus not uncommon to see

104 Dickerson 2005 *Colum J Transnat'l L* 65.

105 It makes up approximately 50% of Swaziland's and Lesotho's budget revenues, and 30% and 17% of the budget revenues of Namibia and Botswana. See Ngwenya 2002 *Sisebenze Sonke* 26.

106 See eg Thompson 1990 *Afr J Int'l Comp L* 86.

the dissolution or derailment of integration initiatives based on the change of government in member states, or personal differences among heads of state.[107]

The dissolution of the first EAC is a classical case. The 1971 military putsch in Uganda quickened the eventual demise of the community. Julius Nyerere, being a close friend to the overthrown Milton Obote, disliked Idi Amin, the new Ugandan leader.[108] As Garba[109] notes, both Nyerere and Amin threw caution to the wind by verbally abusing each other at public forums. The functioning of the community was adversely affected by this enmity.[110] This was because the decision-making powers resided with the heads of states and government.

There is a strong nexus between the effective implementation of integration initiatives and the autonomy of regional institutions. The ability of these institutions to act above member states in respect of specific areas of common interests ensures that integration is firmly placed in capable and neutral hands and insulated from the vagaries of national politics. It also guarantees that integration proceeds at a significant pace since decisions will not always be taken unanimously or by consensus. In the case of the OHADA, it could be argued that the successful implementation of the harmonisation of business law is largely attributable to an independent and reliable Court of Justice.[111] The same could be said about the BCEAO and BEAC as independent institutions within the WAEMU/UEMOA and the CEMAC respectively.

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107 In relation to the New Partnership for Africa's Development (NEPAD), some analysts have expressed concern about the continued existence of the programme, especially after its main architects, Olusegun Obasanjo and Thabo Mbeki, retired from office as presidents of their respective countries. See eg Dowden *Africa* 534. Since the retirement of both presidents, the momentum that heralded the establishment of the programme has largely dissipated.

108 Nyerere also resented the fact that Idi Amin was seen by white minority regimes in Southern Africa as an archetypical embodiment of the failure of black African leadership. See Gregorian "Plowshares into Swords" 189.

109 Garba *Diplomatic Soldering* 125.

110 As Mazzeo observed, the East African Authority, the highest decision making organ of the community, had no meeting in seven years as a result of this clash. See Mazzeo "Experience of the East African Community" 156.

111 In a series of interviews conducted by Dickerson with various stakeholders in OHADA member states, many expressed their optimism about the success of this initiative and also praised the clarity of OHADA laws vis-à-vis the execution of judgments. See Dickerson 2005 *Colum J Transnat'l L* 65.

Another factor that hampers the smooth running of integration initiatives is the lack of funds. The epileptic state of the economies of some African states, coupled with their obligations to pay annual dues to the various sub-regional organisations they belong to, largely contributes to their inability to discharge their financial obligations.[112] There is no gainsaying the point that the availability of funds is crucial for the virility of any organisation, most especially an organisation charged with the responsibility of furthering a capital-intensive project - regional integration and co-operation.[113]

4.2 Non-implementation of key integration initiatives

As stated earlier, one of the core features of supranationalism is the binding nature of the laws emanating from the international institutions. In order for such laws to have teeth, it is necessary that they either enjoy equal legal status with domestic laws or in some cases supersede them. This is where the doctrinal question of the relationship between international and domestic law comes into the picture.

In international law, there are three theories governing such a relationship: monism, dualism and harmonisation.[114] According to monists, law is hierarchical, with international law and domestic/national law being part of the same legal order.[115] Therefore, international law applies in the domestic system without any need for its incorporation.[116] Dualists view that international law and domestic law are two distinct fields of law.[117] Furthermore, in order for international law to be binding in the domestic system, there is a need for some process of incorporation or

112 The issue of overlapping and multiple memberships will be discussed below.

113 In CEMAC for example, it has been observed that the lack of funds has made it impossible to retain or hire qualified staff (IMF 2005 http://bit.ly/YDkvPV). In their analysis of the problems of finance in the African Union (AU), Ncube and Akena highlight that the organisation functions each year with only 50-60% of its required finance, and that only 1.9% of the total budget is targeted for regional integration programmes (Ncube and Akena 2012 http://bit.ly/14juxwz).

114 Dugard *International Law* 43-47.

115 Dugard *International Law* 47.

116 Dugard *International Law* 43-47.

117 Dugard *International Law* 47-48.

transformation.[118] Lastly, the harmonists seek to arrive at some form of convergence by holding that where there is a conflict between the application of international law and domestic law, the court should apply the rules operative within its jurisdiction.[119] The consequence of this is that the court may apply either of the two.[120]

Placing these theories within the African context, the issue is not so much the nature of the legal framework, be it monist or dualist, but rather the lack of political will to domestically implement international law in the form of integration programmes such as the elimination of tariffs and the free movement of persons.[121] In spite of the agreement on the free movement of persons and goods within ECOWAS, it has been observed that security agents continue to harass and intimidate citizens across ECOWAS frontiers.[122] Also, the proposed common currency for the West African sub-region, the Eco, which was expected to be launched in December 2009, remains unlikely due to the non-implementation of convergence criteria by member states.[123] The routine disregard or non-implementation of these policies decimates the relevance of the institutional machinery.[124]

Also related to the above discussion is the issue of the dichotomised legal tradition bequeathed to Africa by colonisation. A principal effect of colonisation is the adoption of the legal system of the colonists. African countries therefore have divergent rules and regulations governing specific issues. Citing the example of the Mano River Union (MRU), Thompson shows how the income tax regime in Sierra Leone, colonised by Britain, frustrates foreign investment, while the tax regime in

118 Umozurike *Introduction to International Law* 30.

119 Umozurike *Introduction to International Law* 31.

120 Umozurike *Introduction to International Law* 30.

121 Thompson 1990 *Afr J Int'l Comp L* 90. See also Kufuor 1996 *Afr J Int'l Comp L* 6-7.

122 Bakare *The Punch* 67. In 1983, the Nigerian government, in contravention of the *ECOWAS Protocol on Free Movement of Persons*, expelled nationals of ECOWAS member states from its territory. See Kufuor 1996 *Afr J Int'l Comp L* 33. The *ECOWAS Protocol on Free Movement of Persons* and the right of residence and establishment were enacted in 1979. The Protocol guarantees the free entry of citizens from member states without visa for 90 days. The free entry aspect of the Protocol was ratified in 1980, and the right of residence aspect was ratified in 1986. The component on the right to establishment is yet to come into force.

123 The West African Monetary Zone (WAMZ) is a monetary arrangement among five countries: Gambia, Guinea, Nigeria, Sierra Leone and Ghana. See Obayuwana and Okwe 2009 http://bit.ly/108o2FO.

124 According to the IMF, in spite of the establishment of a customs union within WAEMU and CEMAC, the momentum of integration continues to be slowed down by member states' non-compliance with key convergence criteria. See IMF 2005 http://bit.ly/YDkvPV 16.

Liberia, influenced by the United States of America, is more favourable.[125] The consequence of such dissimilarities is the uneven implementation or outright disregard of policies by member states.[126] This reality is more evident in the preference of some African states to integrate around shared legal system (eg OHADA and WAEMU). There is no doubt that a shared legal system makes integration easier, especially with regard to the harmonisation of laws.

Yet it is equally important that in order to translate the vision of continental integration into practice member states should be prepared to embark on the reconciliation of laws in various areas. In this regard more efforts should be made to identify the common denominators in each of the legal systems and, more importantly, to devise laws which suit the peculiarities of Africa.[127]

4.3 Crowded integration landscape

The proliferation of regional organisations is an indicator of the failure of African states to genuinely commit to a single, well-thought-out and implementable programme.[128] The competing objectives and programmes of these institutions ensure that member states are unable to wholly adhere to the supranational programmes of the various institutions they belong to. This lack of coordination provides an avenue for non-commitment to supranational objectives. Although the *Constitutive Act* provides that the AU must "coordinate and harmonise the policies between the existing and future RECs for the gradual attainment of the objectives of the Union",[129] the AU is yet to adopt the Protocol which will provide a legal

125 Thompson 1990 *Afr J Int'l Comp L* 96.
126 Thompson 1990 *Afr J Int'l Comp L* 94-97.
127 See eg Fagbayibo 2009 *CILSA* 321-322.
128 According to a ECA survey, the following points were identified as the reasons why African countries join more than one REC: strategic and political reasons; economic reasons; complementarity; historical reasons; geographical proximity; the need for additional external resources; political pressure; and cultural vision. See AU and ECA (n 32) 52-54.
129 See Article 3(l) of the *African Union Constitutive Act* (2001).

framework for the relationship between it and the RECs.[130] In order to address this, a number of views have emerged on how to rationalise the RECs.[131]

As long as the landscape of African integration is defined by the existence of multiple RECs with overlapping and replicated membership, integration will remain a mirage. Integration cannot be achieved in a situation where the constituent agencies are pulling in different directions. To effectively proceed with the rationalisation process, a detailed audit of each of the fourteen RECs should be carried out with the purpose of determining their viability and relevance to the integration process. The audit should establish key points such as the proximity of each REC's activity to the realisation of the steps outlined by the *Abuja Treaty*, the feasibility of limiting the membership of states to one REC, the delineation of duties and objectives among the RECs, the synchronisation of their policies, and the consequence(s) of narrowing down the number of the RECs to five.

130 See the Draft Protocol on the Relationship Between the Regional Economic Communities (REC) and the AU *EX/CL/158(1X).*

131 The UN Economic Commission also proposed five possible scenarios: a) Managing the status quo, b) Rationalisation by merger and absorption, which would entail the merging of existing RECs in order to come up with 5 RECs in each of Africa's sub-region, c) Rationalisation around rooted communities, which calls for the creation of RECs according to common characteristics such as geography, ethnicity and sociology. d) Rationalisation by division of labour, which divides cooperative efforts into regional and sub-regional programmes, categorising them according to the interests of the countries in the same region and e) Rationalisation through harmonisation and coordination, which aims at the harmonisation and coordination of trade liberalisation, and macro-economic convergence policies and criteria of the current regional economic blocs. See AU and ECA *Assessing Regional Integration* 115-126. The AU Commission has also proposed four possible rationalisation scenarios: a) Maintaining the status quo, b) Maintaining the tenets of the Abuja Treaty within a shorter time frame, c) Rationalisation by anchored community, d) Rationalisation of a political decision by heads of state. See Report of the meeting of experts on the rationalisation of Regional Economic Communities (RECs) held in Ouagadougou, Burkina Faso. 27-29 March, 2006.

4.4 Skewed distribution of benefits and hegemonic threats

One of the principal motivations behind a state's participation in regional integration initiatives is the expectation of immediate and long-term welfare gains. In a situation where a country loses out on the benefits accruing from integration schemes, there is a strong possibility of such a country either committing half-heartedly to integration objectives or completely pulling out.[132] As Molle points out, two reasons underlie the need for redistribution policies in a regional integration scheme. The first is the "efficiency argument," which holds that the uneven distribution of benefits such as production factors and economic activities prevents the economy from reaping full profits and attaining maximum potential.[133] The second is the "equity argument," which states that inequality is socially unacceptable and morally unfair.[134]

The position with regional integration in Africa is that the countries with the strongest economies end up deriving maximum advantage, to the detriment of other member states. For example, in the old EAC Kenya, due to its relatively developed economy, benefited more than the other partner states. Various measures were put in place to address this imbalance. The transfer tax system was adopted to ensure that industries in Uganda and Tanzania operated efficiently through the provision of additional budgetary revenues.[135] A related measure was the East Africa Development Bank's (EADB) decision to increase its investment in the less industrialised states.[136] Due to its limited resources, the EADB could not achieve a significant result in this regard.[137] Another criticism levelled against the bank was that it invested in projects which had little effect on the strengthening of the economies of member states. One of the measures taken in an attempt to ensure redistribution was the relocation of the headquarters of common services and the

132 Molle 1997 *Inter-American Development Bank Working Paper Series* 7-8.
133 Molle 1997 *Inter-American Development Bank Working Paper Series* 8.
134 Molle 1997 *Inter-American Development Bank Working Paper Series*) 9.
135 Mazzeo "Experience of the East African Community" 153.
136 The Bank's development activity was unevenly distributed in order to benefit the less developed member states: Tanzania (38.75%), Uganda (38.75%) and Kenya (22.5%). See Fredland "Who killed the East African Community" 65-66.
137 Mazzeo "Experience of the East African Community" 155.

decentralisation of the operations. The lack of clarity with regard to the objective of decentralisation brought about a position in which there were two centres of power: the Community on the one hand, and the country headquarters on the other.[138]

These measures, in spite of their well-intentioned aims, were insufficient to redress imbalances which had their roots in the colonial administrative configuration. The low level of development of member states accentuated even the slightest trace of inequality. This situation exacerbated the rivalry in the Community and thus contributed to the dissolution of the Community.

As noted earlier, the transformation of the SACU from an organisation "cast in imperialist mould"[139] into an institution of equals led to the review of the revenue-sharing formula. Alden and Soko observe that South Africa, due to its developed infrastructure and currency, remains the dominant partner in the SACU relationship In spite of the generous and favourable revenue-sharing formula.[140] The fact that the South African rand remains the legal tender within the zone, except for Botswana, means that member states cannot exercise independent fiscal and macro-economic policies without South Africa's consent.[141]

In a situation where regional *hegemons* solely dictate and determine the pace of integration, there is bound to be the decimation of the influence of regional organisations. In such a scenario regional organisations become the mouth-piece of regional powers and thus lose legitimacy and the support of smaller member states. This situation is pointedly explained as follows:

> [T]he more obvious the existence of a regional *hegemon,* the more vigorous the rejection amongst smaller states. The independence of this variable in relation to "national identities" is based on the fact that asymmetry can be perceived as a hazard without this being based on national sentiments: citizens can shirk supranational projects involving a much larger entity due to fears that the lack of

138 Mazzeo "Experience of the East African Community" 154-155.
139 Alden and Soko 2005 *JMAS* 373.
140 Alden and Soko 2005 *JMAS* 372-273.
141 Alden and Soko 2005 *JMAS* 372.

> influence of their own country within the arrangements will harm local interests, regardless of their attitudes towards the concept of nationhood.[142]

While the influence of regional *hegemons* in any integration process cannot be completely wished away, the point being made is that it is essential that mechanisms which allow the indispensability of smaller member states in the decision-making process are put in place.

4.5 Political instability

It is trite knowledge that the implementation of integration objectives demands some level of political stability in member states. Supranational organisations can (effectively) assert their control and influence only in a stable climate. The fact that integration programmes require domestic and uniform implementation, for example, lends credence to this assertion. The instability in most African countries as a result of election rigging, the intimidation of the opposition and of the citizenry clearly frustrates the attainment of the uniformity of standards and objectives. From Gabon to Ethiopia, Zimbabwe to Cameroon, Equatorial Guinea to the Gambia, African leaders continue to make a mockery of the core principles of good governance and democracy. This has in turn spurred a litany of perennial conflicts plaguing the continent.[143]

The negative impact of armed conflicts on the continent's economy cannot be over-emphasised.[144] According to the IMF, the crisis in Cote d'Ivoire, the largest country in the WAEMU zone, impacted negatively on the economic situation of the whole zone.[145] Conflicts undermine the integration process by creating distrust among member states and more importantly the diversion of funds that could have been

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142 MacClanahan 2004 http://bit.ly/10daoCG.
143 See eg Cilliers 2005 http://bit.ly/14nsKqk.
144 It is estimated that over a period of 15 years, 1990-2005, Africa has lost $284 billion to conflicts and wars. The continent's economy has also within this period shrunk by an average of 15% yearly. See Oxfam, IANSA and Saferworld 2007 http://bit.ly/ZlTq6j.
145 See International Monetary Fund 4.

used to promote and sustain integration initiatives.[146] Such commitments should include the devolution of monitoring and disciplinary powers to regional institutions. With such powers, regional institutions would be able to promptly intervene in (potential) conflict situations and also impose relevant sanctions on errant member states.

4.6 Democratic deficit

The centrality of democracy to the integration process cannot be understated. As previously highlighted, integration requires the uniform application of standards and objectives. In this regard, member states are expected to embrace and practise the principles of good governance and democracy. The need for adherence to democratic values is even more pertinent considering the fact that the onus of enforcing decisions is placed on member states. If integration is understood as a process which not only promotes the establishment of common institutions but also the upliftment of individuals, then it is crucial that these individuals are able to exercise their democratic rights. As Habib *et al* point out:

> These norms are critical to further deepen integration… Africa will unite faster if Africans embark on democratisation drives and create democratic institutions based on the logic of the self-empowerment of the people on the foundation of an effective and engaged state civil society nexus.[147]

The problem with the integration process in Africa is that the people are excluded from matters relating to integration. Decisions and policies emanating from regional integration are neither subjected to referendums nor to broad consultation with the people concerned. The consequence is that the people know little about the integration process and thus attach little or no significance to the regional institutions. It thus begs the question: If some African leaders are not prepared to

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146 It is also estimated that about 24 African countries have spent around USD300bn on conflicts since 1990. See Oxfam, IANSA and Saferworld 2007 http://bit.ly/ZlTq6j 3.

147 Habib, Muchie and Padayachee 2006 http://bit.ly/ZQestQ.

allow democratisation at the national sphere, what is the probability of their encouraging it at a transnational or regional level?

Even when integration is exclusively based on business and monetary matters (e.g. OHADA, WAEMU and CEMAC), the idea of democracy and good governance cannot be totally removed from it. While some may argue that matters like these have nothing to do with human rights, the reality is that the absence of the rule of law in member states may also have negative effects on the willingness of potential investors.

As long as the commitment to democratic values remains within the realm of rhetoric, integration initiatives will continue to flounder, unable to attain their full potential. Therefore, it is essential that regional institutions are bequeathed with the necessary powers to monitor compliance with democratic standards in member states.

5 Conclusion

This article provides an analysis of supranational experiments within Africa. It further offers an insight into the organisational framework of such experiments. Like other regional integration schemes, African integration has had its fair share of problems. Africa has never been in short supply of integration initiatives. The problem with them, however, lies mainly in the lack of sufficient political will in member states to translate their idealistic statements into concrete action.

Political will, beyond the oft-cited problem of the weak economic structures of African states, plays a major role in the success of any integration process. As is evident from the relative success of the OHADA, the granting of the requisite powers to regional organisations is fundamental. It is not suggested that political will is the only requirement for a successful regional integration process, but it certainly helps firm up the foundation on which virile cooperation may be built.

The success of supranationalism on the continent could be enhanced by learning from the experiences of organisations that have attempted to establish leviathan institutions. As shown in this article, the problems experienced by these organisations are similar. It is simplistic to assume that addressing the factors discussed above will guarantee the effective operation of supranationalism in Africa. Nevertheless, working towards understanding these obstacles and gradually correcting them would be a necessary first step.

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List of abbreviations

Afr J Int'l Comp L	African Journal of International and Comparative Law
AU	African Union
BCEAO	Commission and the Central Bank of the States of West Africa
BEAC	Bank of Central African States
CCJA	OHADA Common Court of Justice and Arbitration
CEMAC	Central African Economic and Monetary Community
CET	Common External Tariff
CILSA	Comparative International Law Journal of Southern Africa
Colum J Transnat'l L	Columbia Journal of Transnational Law
E Afr J Peace & Hum Rts	East African Journal of Peace & Human Rights
E L Rev	European Law Review
EAAC	East African Highway Cooperation
EAC	East African Community
EACSO	East African Common Services Organisation
EADB	East Africa Development Bank
EAHC	East Africa High Commission
EAHC	East African Harbours Cooperation
EAP&TC	East African Posts and Telecommunications Cooperation
EARC	East African Railways Cooperation
EC	European Commission
ECOWAS	Economic Community of West African States
EU	European Union
HCT	British High Commission Territories
IMF	International Monetary Fund

JMAS	Journal of Modern African Studies
JSAS	Journal of Southern African Studies
MRU	Mano River Union
OAU	Organisation for African Unity
OHADA	Organisation for Harmonisation in Africa of Business Laws / Organisation pour l'Harmonisation en Afrique des Droit des Affaires
REC	Regional Economic Communities
RMA	Rand Monetary Agreement
SACU	Southern Africa Customs Union
UDEAC	Customs and Economic Union of Central Africa
UN	United Nations
WAEMU/UEMOA	West African Economic and Monetary Union
WAMZ	West African Monetary Zone
YEL	Yearbook of European Law