A politico-legal framework for integration in Africa: Exploring
the attainability of a supranational African Union

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Prepared at the Department of Public Law, Faculty of Law, University of
Pretoria, under the supervision of Professor Michele Olivier

April 2010

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I, Babatunde Olaitan Fagbayibo hereby declare that this thesis is my original work and it has not been previously submitted for the award of a degree at any other university.

Signed: ..................................................................................................................

Date: .....................................................................................................................

Place: ....................................................................................................................
Dedicated to all Africans, who not only desire but deserve to live in an open and democratic society.
ACKNOWLEDGEMENTS

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Abstract

The emergence of the African Union (AU) is seen as an effort to reposition Africa for the challenges of contemporary global realpolitik and, in particular, it provides a road map towards the attainment of a political union. The institutional architecture of the AU, modelled after the European Union (EU), indicates an intention on the part of the architects of the AU to endow the organisation with supranational attributes. However, none of its institutions has as yet started to exercise supranational powers.

It is against this background that this thesis explores the feasibility of transforming the AU from a mere intergovernmental organisation into a supranational entity. In the course of the investigation, it was found that a major obstacle to realising this is the absence of shared democratic norms and standards, a consequence of the unconditional membership ideology of the AU. This thesis argues that the starting point of closer integration in Africa should be the cultivation and adoption of shared norms and values. To address this, the study proposes that the AU design an institutional mechanism for regulating its membership. Using the African Peer Review Mechanism (APRM) as a case study, this study shows that it is possible to establish a regulatory regime based on strict adherence to shared fundamental norms and values.

A major recommendation is the transformation of the APRM into a legally binding instrument for setting continental democratic standards, assessing whether member states fulfil these standards and ultimately determining which member states are qualified, based on objective standards, to be part of a democratic AU.

Keywords: Africa - African Union - Regional integration - Supranationalism - Nucleus AU - Regional Economic Communities - International organisations - Institution building - African Peer Review Mechanism - Democratic principles
Integration, in Africa as elsewhere, is intended to promote unity and enhance development. Over the past four decades, various continental and sub-regional initiatives have been implemented to buttress these twin ideals. At the continental level, the founding of the Organisation of African Unity (OAU) in 1963, and its eventual transmutation into the African Union (AU) helped formalise the pan-Africanism vision of continental integration. Such formalism has however only been limited to the setting up of intergovernmental institutions, with little or no powers to set and regulate common standards. Even the initial euphoria about the supranational intentions of the architects of the AU, evident from the supposed nature and functions of some of its institutions, has diminished mainly as a result of the inability to match rhetoric with actions. Simply put, there has been little or no difference between the *modus operandi* of the OAU and the AU.

It is against this background that this study attempts to investigate the primary obstacle to supranationalism in Africa, especially at the continental level. Situating African integration within the supranationalism discourse, this study considers some of the peculiar challenges confronting the move towards concretising African unity. It was found that at the root of these obstacles is the inability to create standard and uniform application of democratic values across the continent. Although these standards are espoused in the various AU and sub-regional instruments, practise shows an entrenched culture of their breach. Thus, the question is not so much the enactment of treaties stipulating these values as it is the establishment of an effective regulatory regime that ensures adherence to these shared norms.

Using the African Peer Review Mechanism (APRM) as a case study, and also touching on the EU Copenhagen requirements for membership, this study attempts to demonstrate the feasibility of regulating the membership of the AU.
Without diminishing the importance of pan-Africanism, as an important foundation of integration, this study argues that strict adherence to democratic norms and principles should also form the primary basis of cooperation. As such, this study designs a politico-legal framework for ensuring that membership of a future supranational AU will be anchored to uniformity in the understanding and application of fundamental norms and values.
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*Amministrazione delle Finanze v Simmenthal* (Case 106/77) [1978] ECR 629

*CILFIT v Ministry of Health* [1982] ECR 3415

*Commission v Council* (Case 22/70) [1971] ECR 263

*Commission v Finland* (Case 469/98) [2002] ECR 1-9627

*Flamino Costa v Enel* (Case 6/64) [1964] ECR 585

*Reyners v Belgium* (Case 2/74) [1974] ECR 631

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**International Court of Justice**

*Frontier Dispute case (Burkina Faso v Mali)* 1986 ICJ Rep 554

*Reparation for Injuries Suffered in the Service of the United Nations* case 1949

ICJ Rep
List of treaties and international documents

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European Community Treaty, 1957

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<tr>
<td>ACDEG</td>
<td>African Charter on Democracy, Elections and Governance</td>
</tr>
<tr>
<td>ACJ</td>
<td>African Court of Justice</td>
</tr>
<tr>
<td>ACJ&amp;HR</td>
<td>African Court of Justice and Human Rights</td>
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<tr>
<td>AEC</td>
<td>African Economic Community</td>
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<tr>
<td>AEC</td>
<td>African Electoral Commission</td>
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<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>AfCHPR</td>
<td>African Court on Human and Peoples’ Rights</td>
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<tr>
<td>AIDA</td>
<td>Africa Infrastructure Development Agency</td>
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<tr>
<td>AIS</td>
<td>African Information Service</td>
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<tr>
<td>ANRA</td>
<td>Africa Natural Resources Agency</td>
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<td>APRM</td>
<td>African peer Review Mechanism</td>
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<tr>
<td>APSA</td>
<td>African Union Peace and Security Architecture</td>
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<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>AUCIL</td>
<td>African Union Commission on International Law</td>
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<tr>
<td>AU PRC</td>
<td>African Union Permanent Representative Committee</td>
</tr>
<tr>
<td>AU PSC</td>
<td>African Union Peace and Security Council</td>
</tr>
<tr>
<td>AU SC</td>
<td>African Union Service Commission</td>
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<tr>
<td>BCEAO</td>
<td>Central Bank of the States of West Africa</td>
</tr>
<tr>
<td>BEAC</td>
<td>Bank of Central African States</td>
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<tr>
<td>CADSP</td>
<td>Common African Defense and Security Policy</td>
</tr>
<tr>
<td>CAP</td>
<td>Common Agricultural Policy</td>
</tr>
<tr>
<td>CCJA</td>
<td>Common Court of Justice and Arbitration</td>
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<tr>
<td>CEEC</td>
<td>Central and Eastern European Countries</td>
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<tr>
<td>CEMAC</td>
<td>Central African Economic and Monetary Community</td>
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<tr>
<td>CSOs</td>
<td>Civil Society Organisations</td>
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<tr>
<td>CSSDCA</td>
<td>Conference on Security, Stability, Development and Cooperation in Africa</td>
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<tr>
<td>EAAC</td>
<td>East African Highway Cooperation</td>
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<td>Abbreviation</td>
<td>Full Name</td>
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<tr>
<td>EAC</td>
<td>East African Community</td>
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<td>EAHC</td>
<td>East African Harbours Cooperation</td>
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<tr>
<td>EAHC</td>
<td>East African High Commission</td>
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<td>EADB</td>
<td>East African Development Bank</td>
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<td>EACSO</td>
<td>East African Common Services Organisation</td>
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<td>EAP&amp;TC</td>
<td>East African Posts and Telecommunications Cooperation</td>
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<td>EARC</td>
<td>East African Railway Cooperation</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ECA</td>
<td>Economic Commission for Africa</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>ECOSOCC</td>
<td>Economic, Social and Cultural Council</td>
</tr>
<tr>
<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<tr>
<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
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<tr>
<td>ERSUMA</td>
<td><em>Ecole Regionale Superieure de la Magistrature</em></td>
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<tr>
<td>ETI</td>
<td>Ecobank Transnational Incorporated</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>G8</td>
<td>Group of eight</td>
</tr>
<tr>
<td>GNU</td>
<td>Government of National Unity</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MIP</td>
<td>Minimum Integration Programme</td>
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<tr>
<td>MRU</td>
<td>Mano River Union</td>
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<tr>
<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<tr>
<td>NGC</td>
<td>National Governing Council</td>
</tr>
<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
</tr>
<tr>
<td>ODA</td>
<td>Overseas Development Assistance</td>
</tr>
<tr>
<td>OHADA</td>
<td><em>Organisation pour l'Harmonisation en Afrique des</em></td>
</tr>
</tbody>
</table>
Droit des Affaires

OSCI  Objectives, Standards, Criteria and Indicators

Documents

PAP  Pan-African Parliament

PCRD  Post-Conflict Reconstruction and Development

RECs  Regional Economic Communities

RMA  Rand Monetary Agreement

SACU  Southern African Customs Union

SADC  Southern African Development Community

UAM  Union Africaine et Maghreb

UEMOA  Union Economique et Monetaire Ouest Africaine

UN  United Nations

UNCTAD  United Nations Conference on Trade and Development

TCAF  Traditional and Cultural Affairs Forum

WAEMU  West African Economic and Monetary Union

WAMZ  West African Monetary Zone
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