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

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DECLARATION

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.

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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

Summary of thesis

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

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Protocol on the Statute of African Court of Justice and Human Rights, 2009

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (PAP), 2001

Revised Treaty of the Economic Community of West African Treaty, 1993

Union Economique et Monetaire Ouest Africaine (UEMOA) Treaty, 1994

Senegambia Confederation Treaty, 1982

United Nations Charter, 1945

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List of abbreviations

ACDEG	African Charter on Democracy, Elections and Governance
ACJ	African Court of Justice
ACJ&HR	African Court of Justice and Human Rights
AEC	African Economic Community
AEC	African Electoral Commission
ACHPR	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Court on Human and Peoples' Rights
AIDA	Africa Infrastructure Development Agency
AIS	African Information Service
ANRA	Africa Natural Resources Agency
APRM	African peer Review Mechanism
APSA	African Union Peace and Security Architecture
ASEAN	Association of South East Asian Nations
AU	African Union

AUCIL	African Union Commission on International Law
AU PRC	African Union Permanent Representative Committee
AU PSC	African Union Peace and Security Council
AU SC	African Union Service Commission
BCEAO	Central Bank of the States of West Africa
BEAC	Bank of Central African States
CADSP	Common African Defense and Security Policy
CAP	Common Agricultural Policy
CCJA	Common Court of Justice and Arbitration
CEEC	Central and Eastern European Countries
CEMAC	Central African Economic and Monetary Community
CSOs	Civil Society Organisations
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
EAAC	East African Highway Cooperation

EAC	East African Community
EAHC	East African Harbours Cooperation
EAHC	East African High Commission
EADB	East African Development Bank
EACSO	East African Common Services Organisation
EAP&TC	East African Posts and Telecommunications Cooperation
EARC	East African Railway Cooperation
EC	European Commission
ECA	Economic Commission for Africa
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECOSOCC	Economic, Social and Cultural Council
ECSC	European Coal and Steel Community
EITI	Extractive Industries Transparency Initiative
ERSUMA	*Ecole Regionale Superieure de la Magistrature*
ETI	Ecobank Transnational Incorporated

EU	European Union
FDI	Foreign Direct Investment
G8	Group of eight
GNU	Government of National Unity
ICJ	International Court of Justice
ICT	Information and Communication Technology
IMF	International Monetary Fund
MDGs	Millennium Development Goals
MIP	Minimum Integration Programme
MRU	Mano River Union
NEPAD	New Partnership for Africa's Development
NGC	National Governing Council
OAU	Organisation of African Unity
ODA	Overseas Development Assistance
OHADA	*Organisation pour l'Harmonisation en Afrique des*

	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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