

## Chapter 1

### Introduction

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### 1.1 Background

The 1960s was an epochal phase in the political history of Africa. Emerging from the throes of colonialism and oppression, independence elites set out to show the world that Africa was capable of giant strides. Such optimism was fuelled by the economic boom of the 1940s to the 1960s - the consequence of a steep increase in the prices of commodities such as cocoa, coffee and mineral resources.<sup>1</sup> Compared to Asian economies, African countries in the 1960s showed better prospects and potential.<sup>2</sup> In addition to this, many of the African leaders who took over the reign of government from the colonialists had received western education and as such were considered intellectually capable of steering the administration of their countries.<sup>3</sup> True to expectations, ideologues such as Kwame Nkrumah and Julius Nyerere came up with blueprints aimed at re-enacting a romantic pre-colonial African society, devoid of socio-economic inequalities.

However, underlining this optimism were a number of stark realities. The Berlin Conference of 1884/85 made Africa the most fragmented continent in the world.

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<sup>1</sup> Meredith M, *The state of Africa: A history of fifty years of independence*. Johannesburg: Jonathan Ball Publishers (2005) 142.

<sup>2</sup> See e.g. Roemer M, 'Could Asian policies propel Africa's growth?' Available at <http://www.cid.harvard.edu/hiid/543.pdf> (Accessed 10 November 2009).

<sup>3</sup> See e.g. Dowden R, *Africa: Altered states, ordinary miracles*. London: Portobello Books (2008) 66-68.

A number of post-colonial African countries were landlocked, had small populations and were not economically viable.<sup>4</sup> The nature of colonial administration in Africa contributed a great deal to the disarticulated economies and underdevelopment of most post-colonial African states. As Ake remarks, unlike colonial experiences in the Americas, Europe and Asia, colonialism in Africa was 'statist'.<sup>5</sup> Ake employs the term 'statist' to describe the arbitrary colonial governance framework, which ensured the redistribution of land, forced labour, restriction of economic activities by Africans and the suppression of dissensions.<sup>6</sup> Infrastructure was developed not as a means of improving the lives of the people but simply as of a way of facilitating the collection and distribution of commodities.<sup>7</sup> Thus, the task of newly independent African states was the restructuring the colonial economic structures into a viable machinery of growth and development.

It was against this backdrop that the idea of regional integration was elevated to a topical discourse. Together with domestic policies, regional integration was seen as a tool for enhancing unity and meaningful socio-economic advancement. According to post-independence elites like Nkrumah, regional integration was the panacea for underdevelopment and prevention of hegemonic threats.<sup>8</sup> As such, the establishment of regional organisations was regarded as utmost priority. Apart from pan-Africanism,<sup>9</sup> another factor which significantly influenced regional integration was the post-1945 worldwide proliferation of regional integration initiatives. The integration efforts in Europe

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<sup>4</sup> African states, according to Agyeman, are 'plagued by the deficiency trilogy of smallness, unnaturalness and illegitimacy'. Agyeman O, *Pan Africanist - federalism*, Center for Economic Research on Africa, Montclair University, New Jersey (1990) 6. Available at <http://www.alpha.montclair.edu/~lebelp/CERAFRM035Agyeman1991.pdf> (Accessed 20 March 2008).

<sup>5</sup> See Ake C, *Democracy and development in Africa*. Washington DC: The Brookings Institution (1996) 1-2.

<sup>6</sup> Ibid, 2-3; see also Ake C, *A political economy of Africa*. New York: Longman (1981).

<sup>7</sup> Ake (1996) 2; Ake (1981) 44-45.

<sup>8</sup> See generally, Nkrumah K, *Africa must unite*. New York: Praeger (1963).

<sup>9</sup> As will be discussed in subsequent chapters, pan-Africanism is an ideal that encapsulates both the racial and geographical oneness of Africans.

and the successful federal arrangement in the United States of America provided a reference framework for proponents of a *United States of Africa*.<sup>10</sup>

In addition to the existing sub-regional integration initiatives, the Organisation of African Unity (OAU) was created in 1963. The formation of the OAU was thus a culmination of a pan-Africanism agenda of encouraging close collaboration among African states, albeit it fell short of the political union envisaged by Nkrumah. Owing to its minimal design as a framework for interaction, the OAU could not provide the necessary fillip for a continental economic development. As such, the 1960s and the 1970s witnessed the establishment of sub-regional integration schemes as viable alternatives for enhancing regional development.<sup>11</sup> The idea was that these Regional Economic Communities (RECs) would act as the building block for the eventual establishment of a continental economic union.<sup>12</sup> These RECs were primarily concerned with issues of economic integration.<sup>13</sup>

Matters relating to good governance and democratic norms were considered by African leaders as ‘high politics’ – which are better handled within the domestic sphere. The enshrined principle of non-interference in the affairs of member states ensured that the OAU simply played a spectator role amidst widespread violations of human rights and the rule of law by a majority of its member states. Ouguergouz notes that the increasing importance of human rights on the international stage, especially the stiff international opposition to serious abuses by some African dictators added impetus to the need for a continental

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<sup>10</sup> See e.g. Nkrumah (1963); see also e.g. Asante S, *Regionalism and Africa's development*. London: Macmillan (1997) 2-3.

<sup>11</sup> See e.g. Asante S, *African development: Adebayo Adedeji's alternative strategies*. London: Hans Zell Publishers (1991) 94.

<sup>12</sup> *Ibid*, 96.

<sup>13</sup> Other political concerns of the OAU were the fight against apartheid, resolution of conflicts and the protection of refugees.

framework for the protection of human rights.<sup>14</sup> The African Charter on Human and Peoples' Rights (ACHPR) was eventually adopted in 1981.

The disappointing record of human rights violations since the adoption of the ACHPR indicates the little regard attached to the consideration of democratic norms as an indispensable component of regional integration in Africa. The inability to entrench good governance and democratic norms is better understood within the peculiar trajectory of political development in post-colonial Africa. Post-colonial Africa is in a number of ways, an embodiment of contradictions and ironies. Having made a substantial sacrifice in eliminating colonialism and actualising basic human rights, the euphoria of independence quickly dissolved into a rather traumatic experience. Post-independence leaders adopted arbitrary laws reminiscent of the colonial era, which they had previously criticised, in suppressing all forms of dissent and consolidating their new earned powers.<sup>15</sup> Instead of improving the lives of the citizenry, coercive policies were put in place to ensure utmost conformity and obedience. Like a contagion, military coups, corruption and one-party system became the norm. The promise of show-casing how traditional African values can influence governance and economic development gradually derailed amidst the rampant assault on fundamental norms and values.<sup>16</sup>

Unlike the situation in parts of Asia, where the centralisation of power was also used in enhancing economic development, African leaders' obsession with power resulted in the absence of concerted and meaningful development policies.<sup>17</sup> Although development was a dominant theme in the speeches of African leaders, Ake views this more as a strategy of consolidating power than a

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<sup>14</sup> Ouguerouz F, *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable development in Africa*. The Hague: Martinus Nijhoff (2003) 36-40.

<sup>15</sup> Ake (1996) 3.

<sup>16</sup> As noted above, ideology-driven post-colonial elites such as Nyerere and Kenyatta designed policies aimed at providing governance with a distinct, Afro-centric feel. These include *Ujamaa* in Tanzania and *Harambee* in Kenya.

<sup>17</sup> Ake (1996) 7. Also the transfer of powers to regional institutions was inconceivable as this would result in the diminution of their territorial influence.

framework for economic transformation.<sup>18</sup> Underdevelopment and good governance deficit further exposed African countries to internal conflicts and acts of destabilisation.

It is within the above-described milieu that regional integration continues to operate. The transformation of the OAU into the African Union (AU) should have provided the opportunity for a re-evaluation of the integration process; instead it has contributed to the entrenchment of the malaise. While espousing the EU and the USA as ideal models, African leaders continue to engage in practices which negate the principles that have made such institutions a success story. In spite of the renewed attempt to include human rights and democratic norms as part of regional integration framework, the situation on the ground shows that the continent is still a long way from entrenching democratic standards. Unlike the OAU, the AU and other RECs expressly espouse democratic norms as part of their institutional framework. In addition, the constitutive instruments of these bodies have created seemingly supranational legislative and (quasi) judicial institutions. Given the prevalent erosion of democratic values and norms across the continent, it is no wonder that these institutions have largely remained ineffectual.

The conceptualisation of regional integration and democratic values as being mutually exclusive requires some serious evaluation. The cumulative consequence(s) of such a conception have been largely negative. At the national level, good governance and human rights deficits has resulted in a dire state of affairs, where such states have degenerated into corrupt, repressive and conflict-ridden entities. With weak institutions and vaguely structured development strategies, these states remain key obstacles to the regional integration agenda. If the effectiveness of regional organisations depends on

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<sup>18</sup> African leaders narrowly construed development as a project that would require utmost obedience and conformity. To them, political opposition was an unnecessary distraction and impediment to the attainment of effective and sustainable development. As such, the suppression of dissensions was a necessary component of the march towards developmental state. See Ibid, 9.

the existence of strong national institutions, a position which is absent in Africa, then the state of integration in Africa requires utmost reconsideration. As such, the task should be centred on re-evaluating the position of the present state of regional institutions so that they not only embody ideals of democracy but also become a major driver of entrenching fundamental values across the continent.

While the attachment to state sovereignty is a common problem in all integration initiatives, it is more ingrained in Africa mainly because repressive regimes owe their survival to the accumulation and retention of the state's coercive instruments. Sharing sovereign power with regional institutions would likely raise questions about such regime's claim to legitimacy. To prevent this, the institutional framework of regional organisations is either deliberately designed by political elites to be weak or institutional decisions are routinely disregarded.

The foregoing exposition thus raises some fundamental questions. The first challenges the seriousness of regional integration in Africa.<sup>19</sup> In light of the deficiency of political will among member states to create the necessary operational environment at both the national and regional spheres, for the success of regional integration, it needs to be asked whether there is a conscious effort by the political elites to realise qualitative integration. Conscious effort should, however, not be confused with grand speeches or dictatorial zeal to impose a *United States of Africa*. This is because such calls are made against the backdrop of debilitating factors such as the absence of good governance, weak economic structures and dysfunctional institutional frameworks. In this sense, there needs to be a nexus between democratic ideals and the attempts at instituting integration initiatives.

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<sup>19</sup> See e.g. Udombana J, 'A harmony or a cacophony? The music of integration in the African Union treaty and the New Partnership for Africa's Development'. *Indiana International and Comparative Law Review*. 13 (2002), 202.

This leads to the second question, namely whether a new path should be carved for the realisation of a qualitative and viable integration process. Simply put, is there a need for a paradigm shift in the conceptualisation of African integration, from a narrowly construed idea to one which adopts democratic norms as an indispensable prerequisite? In order to answer these questions, one needs to consider salient issues such as:

- the functioning of sub-regional and continental institutions
- the state of national institutions
- cultivation of shared democratic norms and values
- the design of suitable national and regional development strategies

While regional integration is by no means the sole elixir to Africa's problems, it is a useful development strategy for addressing some of Africa's challenges. Africa's peripheral position, economically and politically, on the global stage requires a strategy that encompasses the pooling of resources and efforts. The strengthening of linkages among African countries is thus essential for both national and regional economic development. As indicated above, such cooperation should be underpinned by adherence to democratic norms.

It is against this background that this study intends to engage in an investigation of the feasibility of charting a nuanced course for continental integration. Considering the challenges and failures of African integration to date, it is pertinent to embark on a comprehensive and detailed study on how to reverse the prevalent political context. In this regard, this thesis will focus on how the AU can be re-positioned to address the numerous continental challenges.

## 1.2 Problem statement and objectives

The core problem which this study intends to investigate is two-fold: a) whether a supranational AU<sup>20</sup> is feasible and b) if this is possible, what should the nature of its institutional framework be?

In addressing these, an attempt will be made to provide answers to the following pertinent questions:

- Can the AU supranationalise under the prevailing circumstances or framework?
- If such possibility is remote, what are the obstacles and possible remedial actions?
- What lessons can be learnt from previous and present supranational attempts in Africa and Europe?
- Is there an existing framework for setting the AU on a supranational path or should a new one be designed?
- If a new framework is designed, would such framework fit under the prevailing structure or would it stand as an independent framework?
- To what extent can democratic values shape the institutional framework of a future supranational AU?

Cumulatively, these questions seek to provide the answer to the ultimate challenge of translating pan-Africanism or the idea of 'Africa' into a transformative agenda. The premise of such exercise is the contextualisation of the discourse on supranationalism, as a means of establishing its relevance to African realities. Specifically, the hypothesis borders on the extent to which supranationalism, through the AU, can help address the peculiar developmental, political and economic, challenges of the African continent. To what extent can traditional African values, which ensure broad-based

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<sup>20</sup> A supranational AU, as will be discussed later, envisages an organisation that is autonomous from its member states through its capacity to issue binding directives to its member states.

community participation in matters which affect the common good, and universal standards provide the democratic framework for deepening regional integration and unity? The success of European supranationalism is instructive as it presents the nexus between commitment to democratic ideals and the proper articulation and implementation of supranational policies. The twin sanctity of democratic institutions in member states and the autonomy of the European Union (EU) are at the core of the (supranational) institutional development of the EU. If any lesson needs to be drawn from the European experience, it is essentially the imperative of infusing and clothing the trajectory of regional integration with democratic ethos.

The task of this study is, therefore, to examine the politico-legal feasibility of carving an integration path strictly based on adherence to democratic norms and values. Against the backdrop of an ingrained philosophy of including all African states in the integration process, coupled with the prevalent paucity of good governance, this study seeks to formulate a nuanced methodology of achieving a democratic supranational AU.

### **1.3 Research methodology**

The methodology adopted by this study is primarily desk and library research. The literature review included both primary and secondary sources. The primary sources consulted comprise treaties, case laws and official documents of the AU and other regional institutions. Secondary sources relied upon are books, journals, newspaper articles, conference papers, working papers and relevant internet sources.

In addition to the desk and library research, field visits were made to the Pan-African Parliament (PAP) Secretariat and the United Nations Headquarters. The visit to PAP Secretariat was aimed at collecting relevant documents and attending a session of the PAP. The PAP session was useful for the understanding and assessment of the functioning and relevance of the

institution. With funding provided by the University of Pretoria, this two months, June 1 – July 31 2009, were spent at the UN Office of Legal Affairs in New York. The visit provided an opportunity to gain valuable insight into the operations of an intergovernmental institution especially the compliance level of member states and the development of international law.

The study applied a descriptive analysis in order to provide a detailed foundation and framework. In this regard, the various theories underpinning the core elements of the thesis are illustrated. In terms of formulating the methodology of attaining supranationalism, including recommendations, the study employs a prescriptive analysis. The comparative method is also used to enrich the discussion on institutional development.

## **1.4 Delimitation and limitations of research study**

### **1.4.1 Delimitation**

Before outlining the limitations of this study, it is important to explain the underlying logic of the broad approaches adopted by this study.

*Continental approach:* The discourse of supranationalism in this thesis is restricted to continental integration. While the findings of this study are also relevant to RECs, the AU has been selected for the following notable reasons. Firstly, as a result of its continental reach, a supranational AU has a better potential of making a meaningful impact on the integration trajectory. Secondly, the fact that certain RECs are making appreciable advances, better than the AU in some cases, towards supranationalism may result in a situation where these institutions find it politically unwise to surrender their powers to the AU. It is thus essential to establish a continental framework that makes the transferral of power easy and beneficial to all parties.

*Democratic approach:* The overriding hypothesis of this study is the consideration of democratic requisites as the primary determinant of a

successful integration process. In this sense, adherence to democratic standards is adopted as a 'political filter' for determining the membership of a supranational AU. The fact that the prevalent ideology of limiting democratic values to a secondary component of the integration process has not resulted in any significant improvement, makes this approach an attractive and pertinent alternative.

#### **1.4.2 Limitations of study**

There are a number of limitations to this study. Although literature is replete with issues affecting African integration, there is a dearth of scholarly materials on how unconditional membership impacts on African integration. Available studies highlight the importance of democracy and good governance without necessarily linking unconditional membership to the absence of shared norms and values.

The study of regional integration is extensive and covers all facets of human endeavours. Even within the adopted politico-legal approach of the study, there is a wide-range of issues which shape the theories and practicalities of the integration process. This study has, however, been restricted to how democratic standards can influence supranational institutional development. The motivation behind this is that the development of a qualitative supranational institution can provide the requisite impetus for addressing the multiple issues under the umbrella of integration.

Another limitation of this study is that as a result of resource constraints, comprehensive research trips to the European Union (EU) and AU Secretariats in Brussels and Addis Ababa respectively could not be undertaken. Interviews with key officials and access to important documents would have provided useful insights into the dynamics of the relationship between member states and international institutions. Consequently, such field visits would have mitigated the effect of the dearth of scholarly writings on this subject.

In terms of the temporal scope of this study, the cut-off time is 31 December 2009. Regional integration, nay African integration is at an interesting phase, with changes occurring rapidly. Important events and documents published post cut-off date, especially impacting on the subject-matter, may render recommendations made either obsolete or confirmed by subsequent events.

### **1.5 Itinerary**

The introductory chapter sets out the background to the study, identifies the problem that the study intends to investigate, the adopted methodology and the limitations of the study.

Chapter two provides a conceptual framework of the study. It presents a theoretical discussion of regional integration and supranationalism. It further examines the theoretical dimensions of African integration, including the factors that will impact on the integration process.

Chapter three provides a critical analysis of supranational attempts in Africa. It starts by examining the institutional structures of selected sub-regional institutions. In order to answer the question on why supranational attempts in Africa have being unsatisfactory, this chapter explores the common politico-legal and economic problems facing African integration.

Chapter four attempts to answer the research question of this thesis by examining the feasibility of a supranational AU. It begins with a theoretical meaning of international organisation and how it fits into the global governance structure. It further provides an analysis of the AU, especially concerning its establishment and the question on whether it can be described as a supranational entity. It finally considers the essential pre-conditions for the attainment of supranationalism.

Chapter five builds on the points identified in chapter four by considering how they can be channelled into the institutional transformation of the AU. It examines the theories of (supranational) institution building and the different perspectives on the quest for AU transformation. Furthermore, this chapter attempts to present a detailed analysis of the institutional design of a future supranational AU.

Finally, chapter six summarises the main findings, discusses further recommendations and the significance of this study.



## Chapter 2

### Conceptual and theoretical framework of regional integration:

#### A politico-legal observation

Coming together is a beginning; keeping together is progress; working together is success –

Henry Ford<sup>21</sup>

#### 2.1 Introduction

#### 2.2 Regional integration: Different theoretical perspectives

##### 2.2.1 Definitional focus

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#### 2.4 Summary

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<sup>21</sup> Cited in Covey S, *Everyday Greatness*. Nashville: Thomas Nelson (2006) 299.

## 2.1 Introduction

The increasing powers and relevance of the EU in global *realpolitik* has evoked a special interest in regional integration. Not only has the European experiment in integration stimulated a significant global trend;<sup>22</sup> it has also engendered a multi-disciplinary focus on its phenomenal evolution into an organisation that defies the traditional logic of public international law. While the EU remains an international organisation, it functions like nation-states in respect of some policies such as monetary, agriculture and trade. It is this distinctive quality that sets the EU apart from other international organisations and also gives impetus to the study of regional integration, especially supranationalism.

It is against this background that this chapter attempts to engage in a theoretical excursion into this phenomenon and its impact on the global order. This chapter is divided into two parts. In an attempt to put the integration narrative in perspective, the first part will explore the definition of integration, its theoretical manifestations - both political and legal - and lastly, the nagging question on the compatibility of integration and sovereignty. To situate integration within an African context, which forms the focus of the research, the second part begins with the philosophical origins of African integration. It is then followed by an exposition of the various theoretical perspectives on African integration. Next, the inherent advantage(s) of integration in Africa are also discussed. Finally, the possibility of African integration, the question that sets the tone for the subsequent chapters, is considered.

## 2.2 Regional Integration: Different theoretical perspectives

In the past five decades, regional integration has benefited a great deal from multi-disciplinary research and the empirical outputs of international

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<sup>22</sup> Regional integration has been implemented in other parts of the globe – North America through the North America Free Trade Agreement (NAFTA); Latin America through the Southern Common Market (MERCUSOR); Africa through the African Union (AU) and the various Regional Economic Communities (RECs); South East Asia through the Association of South East Asian Nations (ASEAN); Asia Pacific through the Asian Pacific Economic Cooperation (APEC); and the Caribbean through the Caribbean Community and Common Market (CARICOM).

organisations. Like any other field of human endeavour, the study of regional integration lends itself to both abstraction and empiricism, either based on theoretical suppositions or the resultant effect of inter-state cooperation vis-à-vis granting powers to international organisations. In light of this, the various manifestations of regional integration will be considered. It starts with an attempt to define the concept of regional integration, then moves on to discuss the theories of integration and lastly, considers the relationship between national sovereignty and regional integration.

### 2.2.1 Definitional focus

Integration must be understood as part of the dynamics of post-World War II international relations between states. Although the concept of integration is not novel,<sup>23</sup> the post-war *realpolitik* necessitated practical and more organised connectedness between and among states. The realisation that certain functions are transcendental and too multifaceted to be handled by nation states has lent credence to the need for a global governance framework that includes non-state actors.<sup>24</sup> Lindseth explains this phenomenon in the following words:

[T]he extensive delegation of normative power to the executive and technocratic sphere after 1945 [was] reflective of a conscious effort by major political actors to reinforce the nation-state by making it a more effective agent in the promotion of public welfare, by insulating decision-making from the parliamentary interference and factionalism and thereby pre-committing the state to a stream of purportedly welfare-enhancing future policy choices.<sup>25</sup>

However, before defining regional integration, it is pertinent that a distinction is made between the often confused concepts: 'integration' and 'cooperation'. While integration denotes a formal arrangement involving voluntary association

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<sup>23</sup> Hay P, *Federalism and supranational organisation: Patterns of new legal structure*. Urbana: University of Illinois Press (1966) 1-2.

<sup>24</sup> Rosamond B, *Theories of European integration*. London: McMillan (2000) 33.

<sup>25</sup> Lindseth P, 'The contradictions of supranationalism: Administrative governance and constitutionalisation in European integration since the 1950s'. *Loyola of Los Angeles Law Review*. 37/2 (2003) 382.

between states in order to lose the factual attributes of sovereignty, cooperation describes steps on the way to integration.<sup>26</sup> In other words, cooperation precedes integration and may not necessarily lead to formal integration between states; it is rather a phase in the process of integration.<sup>27</sup>

Definitional problems of the concept of regional integration stem from the varying intentions of theorists in respect of its purpose or termination point. The termination point of a regional integration process will determine whether it is political, economic, social or cultural. As Hay indicates, it is a political process with varying applications and scope.<sup>28</sup> Based on the study of the European experiment at integration, Haas defines political integration as:

[T]he process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states. The end result of a process of political integration is a new political community, super imposed over the pre-existing ones.<sup>29</sup>

Although Haas sees the end result of the process of integration as ‘a new political community, superimposed over the pre-existing ones’,<sup>30</sup> he equally notes that the shifting of loyalties does not necessarily imply the repudiation of national state or government; rather individuals may exercise multiple loyalties based on the functional advantages to be derived from the ‘new centre’ or nation states.<sup>31</sup> This analysis reinforces the durability of nation states in the face of changing dynamics of inter-states relations. This is further exemplified by the

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<sup>26</sup> Haas E, ‘The study of regional integration: Reflections on the joy and anguish of pretheorising’. *International Organisation*. 24/4 (1970) 610.

<sup>27</sup> Ibid.

<sup>28</sup> Hay (1966) 1. Since nation-states remain the dominant participant in international relations, the success or failure of integration process largely depend on the political will and enthusiasm of nation-states. A case in point is the relative success of the EU which has been attributed to the willingness, not at all times, of the member states to relinquish parts of their national sovereignty.

<sup>29</sup> Haas E, *The uniting of Europe: Political, social and economic forces 1950-1957*. Stanford: Stanford University Press (1958) 16.

<sup>30</sup> Ibid, 16.

<sup>31</sup> Ibid, 14.

assertion that integration is primarily driven by public officials (and also interest groups) of member states.<sup>32</sup>

Hay describes integration as ‘the amalgamation of two or more units or of some of their functions’.<sup>33</sup> Cantori & Spiegel view integration as ‘the process of political unification’ based on a ‘degree of similarity or complementarity’ between the political entities involved.<sup>34</sup> Integration in this sense presupposes an element of sameness in tradition, economic ideology and political goals. From an economics perspective, Venables notes that regional integration ‘occurs when countries come together to form free trade areas or customs union, offering members preferential trade access to each other’s markets’.<sup>35</sup> Deutsch et al define integration as:

the attainment, within a territory, of a sense of community and of institutions and practices strong enough and widespread enough to assure, for a long time, dependable expectations of peaceful change among its population.<sup>36</sup>

The above-mentioned definition views integration as an arrangement which excludes conflict as a means of settling disputes among participating states.<sup>37</sup> The emergence of the European Coal and Steel Community (ECSC) in 1951 after a bitter and destructive continental war and the fact that there has not been a recurrence of that tragic incident (at least among EU member states) lends credence to the security-conception of integration.<sup>38</sup>

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<sup>32</sup> Ibid, 17.

<sup>33</sup> Hay (1966) 1.

<sup>34</sup> Cantori L & Spiegel S, *The international politics of regions – A comparative approach*. Englewood Cliffs: New Jersey: Prentice-Hall (1970) 10-11.

<sup>35</sup> Venables A, ‘International trade: Regional economic integration’. *International Encyclopaedia of Social and Behavioural Sciences* (2000) 1. Available at <http://www.econ.ox.ac.uk/members/tony.venables/regenc2.pdf> (Accessed 25 November 2008).

<sup>36</sup> Deutsch k, *Political community and the north Atlantic area*. New York: Greenwood Press (1957) 5

<sup>37</sup> Ibid.

<sup>38</sup> See e.g. O’Neill M, *The politics of European integration*. London: Routledge (1996) 10.

Integration should however not be seen as a ‘big-bang’ occurrence, rather it should be understood as a multi-layered process which happens over a length of time. The length of time over which integration has persisted plays a significant part in its consolidation.<sup>39</sup> The trajectory of integration thus involves crossing a minimalist threshold of political commitment of political actors to a maximalist outcome, which entails the creation of a new political union.<sup>40</sup> A ‘maximalist outcome’ or termination point of the regional integration process is not necessarily dependant on the initial objectives of political actors, but on variable factors influencing every step of the integration process. Therefore, to view integration as a straight-forward, linear process - excluding the vagaries of (sub) national political and economic forces - is not only unsound but also ignores the realities of a state-centric global framework.

**Table 2.1: Forms/stages of regional integration**

<b><i>Preferential trade area</i></b>	An arrangement in which members apply lower tariffs to imports produced by other members than to imports produced by non-members. Members can determine tariffs on imports from non-members.
<b><i>Free trade area</i></b>	A preferential trade area with no tariffs on imports from other members. As in preferential trade areas, members can determine tariffs on import from non-members.
<b><i>Customs union</i></b>	A free trade area in which members impose common tariffs on non-members. Members may also cede sovereignty to a single custom administration.
<b><i>Common Market</i></b>	A customs union that allows free movement of the factors of production (such as capital and labour) across the national borders within the integration area.
<b><i>Economic union</i></b>	A common market with unified monetary and fiscal

<sup>39</sup> Deutsch et al (1957) 6.

<sup>40</sup> O’Neill (1996) 12

	policies including common currency.
<b>Political union</b>	The ultimate stage of integration, in which members become one nation. National governments cede sovereignty over economic and social policies to a supranational authority, establishing common institutions and judicial and legislative processes – including a common parliament

Source: Economic Commission for Africa, *Assessing Regional Integration in Africa*. Addis Ababa: Economic Commission for Africa (2004) 10. [Hereinafter referred to as ECA (2004) ]

Writing on the stages or forms of regional integration, Caproso & Choi note that ‘at best we have a set of labels that may be useful for categorising the path of members undergoing regional integration, rather than a natural sequence through which all integrating states must pass’.<sup>41</sup> In this sense, member states may decide to start with a customs union and move right ahead to forming a political union, without necessarily going through all the stages outlined above. Ultimately, it is the degree of political will among member states that will determine the pace of the integration process.

### **2.2.2 Theories of regional integration: A politico-legal concept**

The European experiment in integration provided a fertile ground for a multi-disciplinary study of the theories of regional integration. Every step of the integration process inspired the propounding of new theoretical assumptions and confirmed or refuted existing theories. Although integration is multi-disciplinary, the works of theorists such as Haas, Mitrany, Moravcsik and Waltz all present a political science/international relations narrative of integration. This is understandable considering the highly political process that brings about the process of integration. However, of equal importance is the legal implication of integration. While political theorists have done extensive work on the theoretical foundation of integration, it is the legal theorists who engage in explaining the

<sup>41</sup> See Caproso & Choi in Carlsnaes et al (2002) 483.

evolutionary nature of integration and also the consequences of the integration process on national and international politico-legal framework. It is against this backdrop that this section will discuss the theories of integration under two rubrics: legal and political.

### **a) Legal theories of integration**

As Weiler puts it, any regional integration process is a creation of the law.<sup>42</sup> After the political negotiations and compromises, member states kick-start the process by agreeing on legal instruments such as Treaties, which clearly spell out the rights and obligations of parties involved and also the programmes of action.<sup>43</sup> Making a distinction between the juridical and political theories of integration, Weiler avers that:

Political theories of ... integration [are] largely wedded to a certain notion about the outcome of the process and embodied a certain predictive element about continued progress. In addition, political theory laid great emphasis on the social, political and economic substantive achievements and less emphasis on the ways and means.<sup>44</sup>

Rather than focus on theoretical assumptions and conclusions, legal analysts investigate the evolution and step-by-step implication(s) of integration arrangements on member states. Legal theories of integration are thus based on a 'continuous progress of integration',<sup>45</sup> an analysis which is more concerned with the interpretation and efficacy of treaty provisions dealing with integration, the position of regional bodies in international law and the effects of laws emanating from such regional bodies in member states.<sup>46</sup>

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<sup>42</sup> Weiler J, *The Constitution of Europe: Do the new clothes have an emperor? And other essays on European integration*. Cambridge: Cambridge University Press (1999) 221.

<sup>43</sup> Ibid.

<sup>44</sup> Weiler J, 'The community system: The dual character of supranationalism'. *Yearbook of European Law*. 1 (1981) 270.

<sup>45</sup> Ibid.

<sup>46</sup> Hay (1966) 6-8.

A key implication of regional integration is what international lawyers refer to as the ‘internationalisation of constitutional law’ or ‘constitutionalisation of international law’.<sup>47</sup> Although these two concepts have different meanings, they both have similar results. While the former denotes the emergence of international parallel constitutions as a result of transfer of functions to regional institutions, the latter explains the transformation of treaties into domestic-like constitutions.<sup>48</sup> These concepts jointly highlight the growing influence of international organisations and the possibility (or existence) of an overarching framework by which domestic constitutions should be measured.<sup>49</sup> An (un)intended consequence of an inter-state arrangement is a regulatory framework or a semblance of national constitutional mechanism, which more or less operates on familiar constitutional terminologies.<sup>50</sup> In the context of international organisations, ‘international constitutionalism’ or constitutionalism provides a framework for uniform actions, attribution of powers and implementation of shared values.<sup>51</sup> (This will be discussed in detail in subsequent chapters)

Another important element of the legal theory of integration, which draws significantly from constitutionalism, is the concept of ‘conservatory principles’. Based on the understanding that states remain the primary structure of international relations, the conservatory principles aim to strike a balance between the powers of states and international organisations.<sup>52</sup> Regional bodies are essentially a creation of states and derive their legitimacy from member

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<sup>47</sup> Cottier T & Hertig M, ‘The prospect of 21st century constitutionalism’. *Max Planck Yearbook of United Nations Law*. 7 (2003) 269-70.

<sup>48</sup> *Ibid*, 270-271.

<sup>49</sup> See e.g. Werner W, ‘Constitutionalisation, fragmentation, politicisation, the constitutionalisation of international law as a janus-faced phenomenon’, *Griffen’s View*. 8/2 (2007)19-22.

<sup>50</sup> As Cottier & Hertig highlights, some organisations such as FAO and UNESCO explicitly refer to their founding treaties as ‘constitutions’ and the European Court of Justice termed EU founding treaties as ‘the constitutional Charter of a Community based on the rule of law’. See Cottier & Hertig (2003) 277.

<sup>51</sup> Werner (2007) 22; Weiler (1999) 221; Cottier & Hertig (2003) 271-272.

<sup>52</sup> Dashwood A, Wyatt D, Arnall A & Ross M, *European Union law*. London: Sweet & Maxwell (2000) 151.

states, so it is crucial that legal mechanisms are put in place to safeguard their national interests.

The conservatory principles are further divided into four:<sup>53</sup> subsidiarity, attribution of powers, proportionality and flexibility. The subsidiarity principle highlights the complementary role of international organisations by prescribing that only matters which cannot be effectively dealt with at the national level should be allocated to international organisations.<sup>54</sup> The principle of attribution of powers simply provides that regional organisations only have powers explicitly or impliedly conferred on it.<sup>55</sup> The principle of proportionality is an enquiry into whether the means employed by regional bodies are suitable and necessary for the attainment of the desired objectives.<sup>56</sup> Lastly, the flexibility principle denotes a legal arrangement under which some member states may decide to pursue shared interest outside of the institutional framework.<sup>57</sup>

At this juncture, it is imperative to discuss the central thrust of this thesis: supranationalism. Although supranationalism has been described as a ‘political-descriptive’ concept,<sup>58</sup> its operation is essentially composed of legal components. What then are the (legal) requirements which define supranationalism? Although this will be elaborated upon in subsequent chapters, it is sufficient to flesh out these points. The following points can be distilled from Hay’s analysis as the elements of supranationalism:<sup>59</sup>

- institutional autonomy of an organisation from member states
- ability of an organisation to bind its member states by a majority or weighted majority vote

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<sup>53</sup> Ibid, 153-168.

<sup>54</sup> Ibid, 156-62; see also Lenaerts K & Van Nuffel P, *Constitutional law of the European Union*. London: Sweet & Maxwell (2004) 100-1.

<sup>55</sup> Dashwood et al (2000) 153; Lenaerts & Van Nuffel (2004) 90.

<sup>56</sup> Dashwood et al (2000) 162.

<sup>57</sup> Ibid, 164.

<sup>58</sup> Hay (1966) 69.

<sup>59</sup> Ibid.

- direct binding effect of law emanating from the organisation on natural and legal persons
- attribution of powers which differs markedly from powers bestowed on other organisations

Building on Hay's analysis, Weiler makes a distinction between normative and decisional supranationalism.<sup>60</sup> According to his analysis, normative supranationalism implies that the laws of an organisation:<sup>61</sup>

- have direct effect in member states
- are superior to the laws of member states
- member states are pre-empted from enacting contradictory legislation

On the other hand, decisional supranationalism 'relates to the institutional framework and decision-making processes by which Community policies and measures are, in the first place, initiated, debated and formulated, then promulgated and finally executed.'<sup>62</sup> Pescatore<sup>63</sup> also identified three elements of supranationalism as: the recognition of common values and interests; the creation of an effective power and the autonomy of these powers. The absence of the aforementioned elements within an institutional framework simply means that such organisation is an intergovernmental organisation.<sup>64</sup> (See table 2.2 below).

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<sup>60</sup> Weiler (1981) 271.

<sup>61</sup> Ibid, 273-280.

<sup>62</sup> Weiler (1981) 271.

<sup>63</sup> See Pescatore P, *The Law of integration*. Leiden: Sijthoff (1974) 51-52.

<sup>64</sup> Ibid; see also Weiler (1981) 305.

**Table 2.2: Differences between supranational and intergovernmental organisations**

<i>Arena</i>	<i>International (Intergovernmental)</i>	<i>Supranational</i>
<i>Disciplinary background of observers</i>	International relations	Law (typically public law)
<i>Typical issue of governance</i>	Fundamental system rules; issues with immediate political and electoral resonance; international 'high politics'; issues <i>dehors</i> Treaty	The primary legislative agenda of the community; enabling legislation; principal harmonisation measures
<i>Principal players</i>	Member states	Community and Member states
<i>Principal actors</i>	Governments (cabinets; executive branch)	Governments, Community institutions: Commission, Council, Parliament
<i>Level of institutionalisation</i>	Low to medium	High
<i>Mode of political process</i>	Diplomatic negotiation	Legislative process bargaining
<i>Type/style of intercourse</i>	Informal procedures; low level of process rules	Formal procedures; high level of process rules
<i>Visibility/transparency</i>	High actor and event visibility; low transparency of process	Medium to low actor and event visibility; low transparency of process

Source: Adapted from Weiler (1999) 275.

The table above highlights the major procedural differences between intergovernmentalism and supranationalism. Under the former, national elites and their institutions play a central role in the formulation of policies and initiatives while the latter shows the important part played by transnational institutions. It also reveals that supranationalism is not a unipolar process; rather it thrives on the interplay between member states and transnational institutions.

## **b. Political science theories of integration**

The political science theories of integration can be classified under two broad headings: intergovernmentalism and supranationalism. The supranationalist school of thought questions the logic of nation state, especially after the chaotic consequences of the two world wars.<sup>65</sup> At the core of supranationalist theory is the assignment of sovereign powers to a neutral, transnational entity, devoid of the foibles of nation states.<sup>66</sup>

At the other end of the spectrum is the intergovernmental or state-centric school of thought. Advocates of this ideology posit that nation states remain the dominant players in global or regional affairs.<sup>67</sup> Even when transnational entities are set up, intergovernmentalists point to the fact that the representatives of nation states are the primary decision makers and essentially drive the process.<sup>68</sup> Below is a full analysis of the paradigms of political science.

### **i) Functionalism**

Buoyed by the disastrous aftermath of the Second World War (economic meltdown and absence of peace), the protagonists of this approach advocated for the creation of technocratic institutions to handle transnational socio-economic problems.<sup>69</sup> Functionalists display an unyielding belief in the ability of technocratic institutions to manage transnational human needs, peace and public welfare.<sup>70</sup> As Mitrany highlights, these functional bodies will differ from traditional international organisations in the sense that they would be 'executive agencies with autonomous tasks and powers'.<sup>71</sup> This approach presents an alternative to global governance framework, an attempt to dislocate nation

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<sup>65</sup> O'Neil (1996) 21.

<sup>66</sup> Ibid, 21-23.

<sup>67</sup> Ibid, 54-57.

<sup>68</sup> Ibid, 56; see also Blokker N & Schermers H, *International institutional law: Unity within diversity*. The Hague: Martinus Nijhoff (1995) 40.

<sup>69</sup> Mitrany D, *The Functional theory of politics*. London School of Economics and Political Science (1975) 126; see also Rosamond B, *Theories of European integration*. London: McMillan (2000) 33.

<sup>70</sup> For a detailed analysis of the functionalist theory, see generally, Mitrany D, *A working peace system*. Chicago: Quadrangle Books (1966) 25-99.

<sup>71</sup> Mitrany (1975) 125.

states from matters that border on common (transnational) interests.<sup>72</sup> Furthermore, this idea predicts that the efficient performance of responsibilities by transnational functional agencies would lead to the transfer of loyalty from nation state to these agencies (attitudinal change).<sup>73</sup>

Functionalism pessimists argue that this idea ignores the highly political nature of international relations. Mitrany's advocacy of detached and unaffiliated technocratic agencies disregards the state-centric posture of global politics. According to critics, a project which excluded this reality lacked scientific and empirical basis.<sup>74</sup> They also questioned the functionalist assumption of human attitudinal change by arguing that this line of thinking falls within the scope of morality rather than politics.<sup>75</sup> The pervasive and deep-rooted attachment to nationality not only by political actors but individuals essentially rendered the 'attitudinal change' theory impractical.

## ii) Neo-functionalism

Neo-functionalism was a reaction to the perceived inadequacies of functionalism. Neo-functionalists regarded integration as a more complex process than the apolitical method or 'technocratic automaticity' prescribed by functionalism.<sup>76</sup> Neo-functionalism, like its theoretical precursor, highlights the irrelevance of nation states and their inability to maintain peace and security.<sup>77</sup> It, however, acknowledged the primacy of nation states and its political elites (including political parties and interest groups) in the integration process.<sup>78</sup> Thus, this established the empirical foundation of neo-functionalism.

At the core of neo-functionalist agenda is the concept of 'spillover'. This concept refers to situations where integration in one economic sector would lead to

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<sup>72</sup> See generally, Mitrany (1966).

<sup>73</sup> Rosamond (2000) 33.

<sup>74</sup> O'Neil (1996) 34.

<sup>75</sup> Ibid, 33.

<sup>76</sup> Rosamond (2000) 55.

<sup>77</sup> O'Neil (1996) 37.

<sup>78</sup> Haas (1958) 17; Rosamond (2000) 55.

further economic integration within and beyond such sector.<sup>79</sup> The logic behind spillover is that once nation states agree to place the control of a certain sector in the hands of a supranational authority, with success in such sector and with the passage of time, there would be pressures to extend control to other related policy areas. Supranational institutions rather than nation states are seen as the drivers of this process.

Moravcsik, however, argued that spillover into related sectors has not been as consistent as expected.<sup>80</sup> He further notes that neo-functionalism fails to offer an explanation for the domestic dynamics that shapes supranational decisions.<sup>81</sup> Neo-functionalism suffered its greatest setback when the then French president, Charles de Gaulle, altered the trajectory of European integration.<sup>82</sup> In sharp contrast to the postulations of functionalist theorists, de Gaulle rejected the European Commission's (EC) modest attempt to reduce the powers of nation states within the community.<sup>83</sup> In reaction to the growing influence of the EC, de Gaulle, in 1965, remarked that only existing European states 'had the rights to give orders and power to be obeyed'.<sup>84</sup> This singular event exposed the empirical limitations and the rigidities of this approach. It brought to the fore the influence of nation states in the integration process.

### iii) Realism and neo-realism

At the nucleus of the realist theory is the idea that international politics is about the interaction of states in an essentially anarchic universe.<sup>85</sup> States are engaged in a game of survival-of-the-fittest and the quest for security lead to

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<sup>79</sup> This is called 'functional spillover'. See Rosamond (2000) 60.

<sup>80</sup> Moravcsik A, 'Preferences and power in the European Community: A liberal intergovernmentalist approach', *Journal of Common Market Studies*. 31/4 (1993) 476.

<sup>81</sup> *Ibid*, 477.

<sup>82</sup> *Ibid*, 476.

<sup>83</sup> O'Neill (1996) 45.

<sup>84</sup> Cited in Agyemen (1990) 19.

<sup>85</sup> The term 'anarchic' implies that international politics is a system without government or a centralised authority to forestall the threat of violence and the recurrent use of force. See Waltz K, *Theories of international politics*. New York: McGraw-Hill (1979) 88, 102-3.

interstate cooperation.<sup>86</sup> In the pursuit of national interests (security) and survival, states collaborate with other states which have comparative military and economic advantages. To the realists, nation-states remain the principal actors and the only source of legitimate authority; any attempt to replace the nation state with supranational institutions is deemed unnatural and misguided.<sup>87</sup>

Neo-realism builds on the theoretical foundation of realism. It shares a focus on the anarchic nature of international system and the primacy of states in international relations with the realism school of thought. It, however, differs on the emphasis realism places on the inherent properties of states.<sup>88</sup> Neo-realists argued that the international system should be seen as a structure, composed of units (states) with functional similarity but with varied capabilities.<sup>89</sup> The primary difference between states is their capabilities to perform similar tasks - this determines the distribution of capabilities across units.<sup>90</sup> States engage in maximising the possibilities of survival by protecting themselves against others.<sup>91</sup> The pursuit of mutual gain is seen as the catalyst for cooperation among states.<sup>92</sup> The prospect of a skewed gain, therefore, brings about a condition of insecurity and works against cooperation.<sup>93</sup>

Critics argue that the dynamics of European integration over the years have rendered (neo) realism obsolete. A case in point is the increasing allocation of powers to the community institutions. According to critics, this proves that the

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<sup>86</sup> Rosamond (2000) 132. Huntington, however, argues that different types of states define their interests in different ways. Such interest may include similarities in cultural values, ideologies and (democratic) institutions. See Huntington S, *The clash of civilization and the remaking of world order*. The Free Press (2002) 34.

<sup>87</sup> Ibid; see also Godwin G, 'The erosion of external sovereignty?' *Government and Opposition*. 9/1 (1974) 63-64.

<sup>88</sup> Ibid, 132.

<sup>89</sup> Waltz (1979) 96-97.

<sup>90</sup> Ibid, 97.

<sup>91</sup> Ibid, 105; see also Rosamond (2000) 132.

<sup>92</sup> Waltz (1979) 105.

<sup>93</sup> Ibid.

structural attribute of international politics is not necessarily static and anarchic.<sup>94</sup>

#### iv) Liberal intergovernmental approach

Liberal intergovernmentalism builds on Putnam's idea of integration as a metaphorical two-level game played by member states.<sup>95</sup> According to Putnam, office holders build coalitions among domestic groups at the national level.<sup>96</sup> At the international level, the same actors bargain in ways that enhance their position at the domestic level by meeting the demands of key domestic groups.<sup>97</sup>

Moravcsik articulates this approach by evaluating the European integration as a two-stage approach. The first stage, called the demand side, entails the formulation of national preferences through the influence and coordination of various actors, such as social interest groups, within the domestic political space.<sup>98</sup> The second stage, called the supply side, involves interstate bargaining of policies formulated at national level.<sup>99</sup> The outcomes of bargaining between states are determined by factors such as threats of exclusion, unilateral policy alternatives and compromise agreements.<sup>100</sup> This approach differs from both realism and neo-realism in its assertion that domestic politics are not insulated from international politics and vice-versa.<sup>101</sup> Unlike realism and neo-realism which treat states as entities with fixed preferences for wealth and security, liberal intergovernmentalism highlights the adaptive and multifarious nature of inter-state relations in the international arena.<sup>102</sup>

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<sup>94</sup> Rosamond (2000) 134.

<sup>95</sup> Ibid, 136.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Moravcsik (1993) 481.

<sup>99</sup> Ibid.

<sup>100</sup> Moravcsik A, 'Liberal intergovernmentalism and integration: A rejoinder'. *Journal of Common Market Studies*. 33/4 (1995) 612.

<sup>101</sup> Rosamond (2000) 135.

<sup>102</sup> Moravcsik (1993) 481.

Wincott criticises liberal intergovernmentalism for being an approach rather than a theory because it fails to state conditions under which it can be empirically refuted.<sup>103</sup> He further argues that liberal intergovernmentalism fails to take into account the influence of day-to-day policy decisions of the community institutions, rather than that of member states, on the laws of the EU.<sup>104</sup>

As shown in the foregoing discussion, none of the above-described theories solely provides a complete picture or dynamics of the integration process. As such, the appropriate tool of analysis should be a synthesis of ideas. In this regard, this thesis adopts a methodology that seeks to increase the powers of the AU without necessarily discounting the relevance of member states and also sub-regional structures. On one hand, functionalism will serve as a useful tool in explaining the rationale behind having autonomous institutions. On the other hand, realism and liberal intergovernmentalism provides a framework for understanding the motivation behind cooperation and the importance of member states, especially the *regional hegemons*, and civil society.

### **2.2.3 Regional integration and sovereignty: Is the two mutually exclusive?**

Haas' reference to 'a new centre', Mitrany's 'technocratic automaticity' and Deutsch's assertion that '... integration requires ... some kind of organisation'<sup>105</sup> all denote the existence of a non-state actor which possesses powers akin to that of nation state. The implication of this is a tension between the age-long conception of state sovereignty and the place of non-state actors within the architecture of the international system. Traditional public international law is premised on the theory that nation states remain the basic structure of international order. Therefore, any assertion that non-state actors should also share state-centric features seeks to expand the conceptual focus of the nature of international law nay international relations. At the same time, the increasing

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<sup>103</sup> Wincott D, 'Institutional interaction and European integration: Towards an everyday critique of liberal intergovernmentalism'. *Journal of Common Market Studies*. 33 (1995) 599-600.

<sup>104</sup> Ibid, 605; see also Caproso J & Choi Y, 'Comparative regional integration' in Carlsnaes W, Resse T & Simmons B (eds), *Handbook of International Relations*. London: Sage (2002) 488.

<sup>105</sup> Deutsch et al (1957) 6.

clout of non-state actors such as international organisations is indicative of a paradigm shift in the conceptualisation of sovereignty.

What then is this 'intoxicant' which emboldens states to act with impunity within and outside their territorial entities? As Geldenhuys puts it, 'sovereignty is the final sanctuary of the autocrat in contemporary world politics'.<sup>106</sup> In the name of sovereignty, leaders continue to subjugate their citizens, mismanage state economies and frustrate all forms of meaningful intervention (Zimbabwe, Myanmar and North Korea spring to mind here).

Contemporary state sovereignty has its roots in the 1648 agreement to end the discord between feuding European powers.<sup>107</sup> The 1648 Treaty of Westphalia, amongst other provisions, principally laid the foundation for the territorial integrity of nation states.<sup>108</sup> The traditional form of sovereignty can be divided into two: internal and external sovereignty. Internal sovereignty connotes the 'exercise of supreme authority by states within their individual territories'<sup>109</sup> or what Bodin described as the exclusive right 'to give lawes unto all and everie one of its ... subjects and to receive none from them'.<sup>110</sup> According to James, a state's claim of internal sovereignty is dependent on constitutional independence.<sup>111</sup> Thus, a state under colonial rule cannot lay any claim to sovereignty because such right lies with the colonial administration. External sovereignty on the other hand implies the legal independence of a sovereign state - which can only be limited by international law - from other states.<sup>112</sup> It therefore implies the equality of nation states, regardless of differences in

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<sup>106</sup> Geldenhuys D, 'Brothers as keepers: Africa's new sovereignty regime', *Strategic Review For Southern Africa*. XXVIII/1 (2006) 1.

<sup>107</sup> The full text of the 'Treaty of Westphalia' is available at <http://www.yale.edu/lawweb/avalon/westphal.htm> (Accessed 21 October 2007).

<sup>108</sup> Ibid.

<sup>109</sup> Goodwin (1974) 61.

<sup>110</sup> Ibid.

<sup>111</sup> James A, *Sovereignty statehood: The basis of international society*. London: Allen & Unwin (1986) 24-25.

<sup>112</sup> Kelsen H, 'The principle of sovereign equality of states as a basis for international organisation'. *Yale Law Journal*. 53/2 (1944) 208.

capacities, in the international community. The inclusion of the term 'sovereign equality'<sup>113</sup> in the United Nations Charter further reinforced the sanctity of statehood in international law.<sup>114</sup>

The rise of international organisations in a post-1945 global order has, however, spurred a re-conceptualisation of sovereignty.<sup>115</sup> The corollary of establishing these organisations is the transfer of sovereignty or powers necessary for the fulfilment of tasks. While states continue to hang on to sovereignty, there is also a realisation of the need to boost the functional abilities of these organisations. The emphasis on the protection of human rights and global peace has raised a general consensus that interference in the domestic affairs of a state is justifiable under certain circumstances.<sup>116</sup> Also, the realisation that certain socio-economic needs requires a transcendental, global approach has contributed significantly to the limitation of absolute sovereignty.

When the discourse of sovereignty is located within a regional integration process, the question that arises is whether or not sovereignty is divisible. As mentioned earlier, the effective operation of regional organisation is dependent on the transfer of sovereignty by member states. The degree of such transfer determines the level of integration.<sup>117</sup> If regional integration is understood as a process that sets in motion some form of transnational governance framework or multi-level governance, then the notion of divisibility of sovereignty becomes inevitable. To address the issue of divisibility, parallels have been drawn between the devolution of powers under a federal system of government and

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<sup>113</sup> According to the Friendly Relations Declaration of the United Nations General Assembly, the term 'sovereign equality', amongst other provisions, implies the jurisdictional exclusivity of states, equal rights and duties of states and political independence of states. See GA 2625 (XXV) 1970.

<sup>114</sup> See UN Charter, article 2(1). Article 2(7) of the Charter prohibits the UN from intervening in matters within the domestic jurisdiction of member states.

<sup>115</sup> Franck views the emergence of transnational institutions as one of the greatest innovations of international law in the 20<sup>th</sup> Century. See Franck T, 'Three major innovations of international law in the twentieth century', *Quinnipiac Law Review*. 17/1 (1997) 139.

<sup>116</sup> See e.g. Cassese A, *International law*. Oxford: Oxford University Press (2005) 59; see also Brownlie I, *Principles of public international law*. Oxford: Oxford University Press (2003) 293.

<sup>117</sup> Hay (1966) 68.

the transfer of powers to regional organisations. As Hay indicates, a state owns the totality of sovereign powers (bundle of rights) and has the prerogative to share it with other states or institutions.<sup>118</sup> Hay's formulation regards external sovereignty as a direct function of internal sovereignty.<sup>119</sup> What this means is that when a state transfers part of its internal sovereignty or jurisdiction, for example in relation to making immigration laws, to an international organisation, there is also a corollary understanding that the organisation will have the powers to represent such state(s) on the particular subject when dealing with third states.<sup>120</sup>

Lauterpacht agrees that the nation states possess plenitude of powers but that such powers terminate where international obligation begins.<sup>121</sup> The implication of this is that states have powers to exercise national sovereignty, for example the enactment of legislations, as long as it does not conflict with their obligations to the international community.<sup>122</sup> Mitrany views that 'it would indeed be sounder and wiser to speak not of surrender but of a sharing of sovereignty'.<sup>123</sup> This requires the pooling of sovereign authority for the joint performance of a particular task.<sup>124</sup> Mitrany sees sovereignty as a functional concept, that is, the transferral of sovereign powers should be based on the need to execute certain task or function.<sup>125</sup> MacCormick's conception of sovereignty is rather different. He remarks that:

We must not envisage sovereignty as the object of some kind of zero sum game, such that the moment X loses it, Y necessarily has it. Let us think of it rather more as of virginity, which can in at least some circumstances be lost to the general satisfaction without anybody else gaining it.<sup>126</sup>

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<sup>118</sup> Hay (1966) 70.

<sup>119</sup> Ibid, 71.

<sup>120</sup> Ibid, 70-74.

<sup>121</sup> Lauterpacht E, 'Sovereignty – myth or reality?' *International Affairs*. 73/1 (1997) 149.

<sup>122</sup> Ibid.

<sup>123</sup> Mitrany (1966) 31.

<sup>124</sup> Ibid 31-32.

<sup>125</sup> Ibid, 31.

<sup>126</sup> MacCormick N, 'Beyond the sovereign state'. *The Modern Law Review*. 56/1 (1993) 16.

There is no doubt that the concept of absolute sovereignty underwent radical reformulation over the years. The ‘global village’ narrative has ensured that states are continuously probed about the treatment of their citizens, natural resources and the environment. Even when states have not explicitly or impliedly limited their sovereign powers, their actions are increasingly being measured by a ‘universal or community values’<sup>127</sup> barometer. The increasing competence of the EU, the influence of the Bretton Wood institutions (International Monetary Fund and the World Bank) on the monetary and fiscal policies of developing countries, the UN’s and AU’s right to militarily intervene in member states clearly indicates that the evolution of sovereignty is yet to reach a terminal point.<sup>128</sup>

The end of the nation state is by no means near but the doctrine of sovereignty will continue to adapt to new realities by evolving into a space big enough to accommodate national concerns and transnational imperatives. In this era of globalisation and technological advancement, both sceptics and optimists will accept that the rules are changing, with no one being able to categorically identify the terminal point of sovereignty. The realities of the twentieth century helped to reshape the concept of sovereignty, who knows what the twenty-first century has in stock. As Carr pointedly puts it, ‘the concept of sovereignty is likely to become in future even more blurred and indistinct than it is at present’.<sup>129</sup>

### **2.3 Regional integration in Africa: A contextual analysis**

Since Africa does not exist in isolation, the trajectory of its integration process, either at the continental or sub-regional level, relates closely to the classical theories of regional integration discussed above. As in the case of Europe,

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<sup>127</sup> See e.g. Werner (2007) 17; see also Olivier M, ‘International and regional requirements for good governance and the rule of law’. *South African Yearbook of International Law*. 32 (2007) 52.

<sup>128</sup> As Jackson notes, ‘... there is no teleological terminus, no determinate and final destination, and no end of history in the evolution of sovereignty’. See Jackson R, *Sovereignty: Evolution of an idea*. New York: Polity (2007) 112.

<sup>129</sup> Carr E, *The twenty years crisis 1919-1939*. London: Macmillan (1978) 230-231.

theorists and politicians are divided on the best approach to African integration. This lack of unanimity continues to define the paradigms of African integration. This section will thus aim to place African integration in perspective by tracing its origins, theoretical contributions to the idea, the possible benefits of integration, and lastly, the feasibility of continental integration.

### 2.3.1 The idea of 'Africa': Tracing the philosophical underpinning of unity

You are not a country, Africa  
You are a concept  
Fashioned in the minds, each to each  
To hide our separate fears  
To dream our separate dreams

Abioseh Nicol<sup>130</sup>

The supreme irony, according to Mazrui, is that 'it took European colonialism to inform Africans that they were indeed Africans'.<sup>131</sup> The consciousness of being an 'African', as distinct from being an Ashanti or Yoruba or Zulu, was a reaction to external subjugation either in the form of colonialism or racial prejudice.<sup>132</sup> Nyerere captures this in the following words 'the Africans looked at themselves and knew that vis-à-vis the Europeans, they were one'.<sup>133</sup> Along with this racial consciousness was also an awareness of 'geographical contiguities', the realisation that Africans inhabit the same territorial space.<sup>134</sup> The geographic element of pan-Africanism should be understood as not only complementary to

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<sup>130</sup> Nicol A, 'The meaning of Africa' in Weaver R & Bruchac J (eds) *Aftermath: An anthology of poems in english from Africa, Asia, and the Caribbean*. New York: Greenfield Review Press (1977) 76.

<sup>131</sup> Mazrui A, 'Who are Africans: Identity in search of unity' in Falola T, Laremont R & Seghatolislami T (eds) *African redefined: Collected essays of Ali. A. Mazrui, Vol 1*. New Jersey: Africa World Press Incorporated (2002) 37.

<sup>132</sup> See e.g. Nyerere J, 'A United States of Africa'. *Journal of Modern African Studies*. 1/1 (1963) 1; see also Akinoyemi B, 'Nigerian foreign policy in the 21<sup>st</sup> century'. Lecture delivered at the National Institute of Public and Strategic Studies (NIPSS) Kuru, Nigeria (17 June 2003) 7-8. Available at <http://www.profbolajiakinyemi.com/Prof%20Bolaji%20Publications/NIPS%20FINAL%20LECTURE.doc> (Accessed 20 May 2008).

<sup>133</sup> Cited in Akinoyemi B, 'Kwame Nkrumah and pan-Africanism'. *Thisday* (Nigeria). Available at <http://www.thisdayonline.com/nview.php?id=125197> (Accessed 15 October 2008).

<sup>134</sup> Mazrui A, 'On the concept of "We are all Africans" *The American Political Science Review*. 57/1 (1963) 89-90.

the racial consciousness but also an attempt to include Africa North of the Sahara in the discourse on pan-Africanism.<sup>135</sup> Africa is much a geographic description as it is a racial entity.<sup>136</sup> As the saying goes, nations can choose their friends but not their neighbours; therefore, the geographic composition of the continent is an inescapable reality which informs the quest for unity. Moreover, Mazrui posits that age-long cultural ties between North and sub-Saharan Africa cannot be discounted.<sup>137</sup> This, he notes, is evident in the vocabulary of some of the most widely spoken languages on the continent.<sup>138</sup> It is noteworthy that the debate on the racial divide between North and sub-Saharan Africa has had little or no impact on programmes aimed at continental integration.<sup>139</sup> As will be argued later in this thesis, the basis of unity should rather be based on the existence of the shared norms of rule of law and democratic governance.

The chronological events in Africa's history – the existence of pre-colonial empires, slavery and the arbitrary balkanisation of its territories by European superpowers - thus proved to be an effective emotive tool for rallying 'Africans' both in the Diaspora and on the continent towards a common purpose.<sup>140</sup> As Legum points out, Pan-Africanism is essentially 'a movement of ideas and

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<sup>135</sup> For example, it is on record that ex-president Mobutu Sese Seko of Zaire (now Democratic Republic of Congo) advocated the establishment of an exclusive sub-Saharan (black) African organisation. See Mazrui (2002) 39; see also Akinyemi (2008). Also, Obafemi Awolowo, a prominent Nigerian nationalist, had this to say: 'The Sahara Desert is a natural line of demarcation between the Northern and Southern parts of Africa. It is my considered view that the countries of North Africa should, as a first step, constitute a Zone...other territories south of the Sahara...should constitute another Zone' Cited in Legum C, *Pan Africanism: A short political guide*. London: Pall Mall Press (1962) 270.

<sup>136</sup> For a detailed discussion on the geographical dynamics of the African continent, see Mazrui A, *The Africans: A triple heritage*. New York: Little, Brown & Company (1986) 23-38.

<sup>137</sup> Mazrui (2002) 39

<sup>138</sup> Ibid; Mazrui (1986) 243.

<sup>139</sup> According to Akinyemi, the following factors are responsible for the little impact of North Africa versus sub-Saharan Africa debate on African unity: the strong cooperation and friendship between Gamel Nasser of Egypt and Kwame Nkrumah of Ghana; the need to build a united front against a cold-war-ridden world and *Apartheid* in South Africa. He is, however, quick to add that these factors have receded into the background, with the resurgence of such debate among politicians and the intelligentsia alike. See Akinyemi (2008).

<sup>140</sup> See e.g. Thompson V, *Africa and unity: The evolution of pan-Africanism*. London: Longman (1969) 33. Nyerere remarks that Africa's pre-colonial history demanded that 'African unity must have priority over all other associations'. Cited in Mazrui (1963) 93.

emotions<sup>141</sup> which lends itself to various manifestations. For Africans in the Diaspora, it represented a bond to a disconnected past, a search for common identity and the restoration of freedom and dignity in an oppressed society.<sup>142</sup> Within the continent, Asante observes that pan-Africanism was ‘viewed both as an integrative force and as a movement of liberation’.<sup>143</sup>

The nationalist resistance to colonialism, however, highlighted a paradox: using the oft-derided colonial boundaries as a legitimate instrument of resistance. While this idea may be perceived as pragmatic, it was to set the tone for a post-colonial attachment to national sovereignty. Once African states ‘won’ their hard-earned independence, the next agenda was to consolidate nationalism rather than focus on integrative matters.<sup>144</sup> As Fanon rightly puts it, ‘African unity takes off the mask and crumbles into regionalism inside the hollow shell of nationality itself’.<sup>145</sup> In addition, colonial attachments (Francophone versus Anglophone), differing political ideologies and irredentist motives<sup>146</sup> ensured that efforts of continental integration are consigned to the back seat.<sup>147</sup>

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<sup>141</sup> Legum (1962) 14. Akinyemi calls Pan-Africanism an ‘experiential phenomenon (a phenomenon that arises as a reaction to an experience) ...’ See Akinyemi (2008); Murithi refers to it as ‘an invented idea’. See Murithi T, *The African Union: Pan-Africanism, peace-building and development*. Hampshire, England: Ashgate (2005) 35.

<sup>142</sup> Ibid, 14-23; see also Thompson (1969) 3-19.

<sup>143</sup> Asante (1997) 32; see also Legum (1962) 38.

<sup>144</sup> Mazrui refers to this attitude as ‘the nationalism that looks inwardly territorially’. See Mazrui (1963) 92. Ramutsindela rhetorically questioned whether post-colonial states ‘have been socialised into colonial spaces’. See Ramutsindela M, ‘Deterritorialisation and the African superstate: Do we need a second glass of sherry?’ in Maloka E (ed) *A United States of Africa?* Pretoria: African Institute of South Africa (2001) 100. The answer to this is neither yes nor no. If one was to answer this question in light of the various intra-state conflicts in places like DRC, Nigeria, Rwanda, Burundi, Sudan and Ethiopia, the answer will be a resounding ‘no’. However, in places like Tanzania and Zambia, one can argue that to some extent, these countries have been able to forge a national identity, superior to ethnic interests.

<sup>145</sup> Fanon F, *Wretched of the earth*. New York: Grove Press (1968) 159.

<sup>146</sup> In a bid to forestall fratricidal border struggles between post-colonial African states, the Organisation of African Unity (OAU) in 1964 adopted the *uti possidetis* rule, which mandated member states to respect existing frontiers. This, however, failed to stem the tide of border clashes between African states – Somalia and Kenya, Somalia and Ethiopia, Libya and Chad, Nigeria and Cameroon, Morocco and Western Sahara, just to mention a few. See e.g. Oyebo A, *International law and politics: An African perspective*. Lagos: Bolabay Publications (2003) 24-25.

<sup>147</sup> Asante (1997) 34-35.

The earliest manifestation of pan-Africanism as an 'integrative force' dates back to the 1920s.<sup>148</sup> At that time, a group of intellectuals from the four British dependencies of West Africa - Nigeria, Sierra Leone, Gambia and Gold Coast (later Ghana) - called for closer cooperation and integration of West Africa.<sup>149</sup> One of the principal initiators of this idea, Joseph Casely Hayford (Ghana), presented a demand to the colonial office in London, asking for the establishment of a West African Court of Appeal and a West African University.<sup>150</sup> Although this idea was dismissed by the colonial authorities as 'premature', it laid the foundation for the politically-charged activism of the 1940s, with Nkrumah as a principal player. This era witnessed a renewed focus and an attempt to include Francophone West Africa in the 'integrative' agenda.<sup>151</sup> The Nkrumah-led West African National Secretariat, an offshoot of the 1945 Fifth Pan-African congress in Manchester, resolved in 1946 to use the idea of 'a *West African Federation* as an indispensable lever for the ultimate achievement of a *United States of Africa*'.<sup>152</sup> From this point, the consciousness of continental integration became ingrained in the corpus of the pan-Africanism narrative. Ironically, it also laid the foundation for the idea of integrating Africa on a regional basis.<sup>153</sup>

The independence of Ghana in 1957 provided Nkrumah with the solid base to vigorously pursue the African unity project.<sup>154</sup> Nkrumah's assertion that Ghana's

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<sup>148</sup> Browne argues that the origins of pan-African integrative agenda can be traced back to the ancient kingdoms of West Africa. He writes that kingdoms such as Ghana, Mali and Songhai encompassed several ethnic groups and ecological zones. See Browne D, 'Pan-Africanism and the African Union'. Available at <http://www.siue.edu/~mafoly/JournalInfo/Vol-2/Issue%201%20revised.pdf> (Accessed 20 October 2009).

<sup>149</sup> See Thompson (1969) 28.

<sup>150</sup> Ibid.

<sup>151</sup> Nkrumah traveled to France in order to consult with Francophone West African intellectuals such as Lamin Gueye, Léopold Senghor, Sourou-Migan Apithy and Houphouët-Boigny. See Ibid, 90.

<sup>152</sup> Legum (1962) 32-33; Thompson (1969) 90-91; Ajala A, *Pan Africanism: Evolution, progress and prospects*. London: St. Martin Press (1973) 12.

<sup>153</sup> In 1942, Nkrumah remarked that all West African colonies 'must first unite and become a national unity, absolutely free from the encumbrances of foreign rule, before they can assume the aspect of international cooperation on a grand scale'. Cited in Asante (1997) 32.

<sup>154</sup> Nkrumah's critics, however, describe his pan-African project as a megalomaniac drive. Omari points out that 'Nkrumah sacrificed Ghana on the altar of pan-Africanism, and for his grandiose dreams of African leadership'. See Omari T, *Kwame Nkrumah: The anatomy of an African dictatorship*. London: C. Hurst & Company (1970) 2; see also Meredith (2005) 187. Mazrui also describe Nkrumah as 'a great African but

independence was incomplete without the total independence of other African states not only reinforced the solidarity message inherent in the pan-Africanist thought, it also demonstrated the readiness to give practical effect to the integrative agenda. Building on the momentum of the 1945 Fifth Pan-African congress in Manchester<sup>155</sup> and the 1946 West African National congress, Nkrumah convened the first conference of independent African states in 1958. The conference was attended by the eight already independent African states – Ethiopia, Libya, Liberia, Morocco, Sudan, Tunisia, the United Arab Republic and Ghana. The participating states agreed to establish a Joint Economic Research Committee, charged with the responsibility of promoting trade among African countries, coordinate economic planning and investigate the feasibility of an African common market.<sup>156</sup>

The Second Conference of Independent African States (CISA) was held in Addis Ababa in 1960. In addition to the eleven African states already independent,<sup>157</sup> invitations were sent to yet to be independent African states such as Nigeria, Mali Federation, Congo Kinshasa, Madagascar and Somalia.<sup>158</sup> The conference recommended, amongst other provisions, the establishment of a joint African Development Bank, a joint African Commercial Bank and a preferential trade area.<sup>159</sup> The Ghanaian delegation, supported by their Guinean counterpart, advocated a political union while the Nigerian (who had not yet become independent) and Liberian delegations felt such call was premature.<sup>160</sup> The resultant effect of this was the emergence of two groups -

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not a great Ghanaian'. See Mazrui A, *Nkrumah's legacy and Africa's triple heritage: Between globalisation and counter-terrorism*. Accra: Ghana University Press (2004) 4.

<sup>155</sup> The Manchester conference marked a turning point in the history of Pan-Africanism because for the first time, Africans took a leading part in the deliberations and the resolutions that followed. See Ajala (1973) 10-1

<sup>156</sup> Final Communiqué of the Conference of Independent African States, 15 April to 22 April, 1958, in Thompson (1969) 348-9.

<sup>157</sup> Cameroon, Ethiopia, Ghana, Guinea, Liberia, Libya, Morocco, Sudan, Togo, Tunisia and the United Arab Republic.

<sup>158</sup> Ajala (1973) 25.

<sup>159</sup> Resolution of the Second Conference of Independent African States, June 15-24, 1960, in Legum (1962) 158.

<sup>160</sup> Ibid, 46-47.

Casablanca and Monrovia - with differing views on African integration. The Casablanca group was a juxtaposition of two elements: an immediate political union and functional cooperation.<sup>161</sup> As Nweke observes, the element of political union within this group gave birth to the 1961 Ghana-Guinea-Mali Union (Union of African States) while the functional element was reflected in the provisions of the Casablanca Charter.<sup>162</sup> On the other hand, the Monrovia group was united in their call for functional cooperation at regional levels as the best approach.<sup>163</sup> The creation of the Organisation of African Unity (OAU) in 1963 was the culmination of decades of efforts aimed at giving the debate on unity a practical effect. Although the OAU Charter represented a triumph of a state-centric, functional cooperation, it was able to unite the differing ideologies under the same banner.

Although the initiatives outlined above exposed the cleavage that existed, and still exists, in relation to the *modus operandi* of African integration, it helped in forging a template for the on-going debate on integration. The idea of 'Africa' might have started as a sentimental attachment to a common heritage; the setting up of institutions both at the regional and continental levels have all contributed to moving pan-Africanism from the realm of romanticism to a realistic and practical objective. Whether through the creation of a Pan-African Parliament (PAP) or the New Partnership on Africa's Development (NEPAD) or the African Peer Review Mechanism (APRM) or the African Charter on Human and Peoples' Rights (ACHPR), pan-Africanism continues to be expressed in nuanced and adaptive forms.

Like any other philosophical theme, pan-Africanism is susceptible to manipulation. When post-independent elites decided to entrench dictatorship, especially through one-party state ideology, African values of collectivism and

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<sup>161</sup> Nweke G, 'The Organisation of African Unity and intra-African functionalism'. *Annals of the American Academy of Political and Social Sciences*. 489 (1987) 136; see also Legum (1969) 56-7.

<sup>162</sup> Nweke (1987) 136.

<sup>163</sup> Legum (1969) 56

consensus were erroneously brandished.<sup>164</sup> When African dictators argue that pre-colonial Africa knew no form of party politics and that community decisions are arrived at through consensus, they cleverly leave out the methodology of how such consensus was arrived at and how dissensions were handled. Political elites conveniently ignore the traditional constitutional principle of checks and balances. As Elias observes, pre-colonial African societies employed some form of control over the paramount king.<sup>165</sup> Elias' analysis is worth quoting:

It is fair to say that the constitutional principle has long been established that, if a king or paramount chief abuses his power, subordinate chiefs have the right to either depose him or to secede from the kingdom with their own people...among the Yorubas, the King would in former times be requested by his chiefs to "open the calabash", that is, to commit suicide by voluntarily taking poison or to go into voluntary exile ... in chiefless societies, somewhat different principles apply: here, the chief of the chief-in-council is invariably replaced by a council of elders.<sup>166</sup>

He further quotes the observation of a former colonial administrator in Gold Coast (now Ghana):

The Gold Coast native is no fool...sovereignty in the Gold Coast tribe lies in the people themselves who elect their chiefs and can, if they desire so, deprive them of office. Each chief is, in fact, but the mouth-piece of his State (Oman) Council,

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<sup>164</sup> Mazrui (2004) 5-6. Robert Mugabe also used the 'traditional-Africa-logic' to justify the imposition of a one-party state in Zimbabwe in the mid-1980s:

You never have two chiefs in a given area. There is only one chief. And various people meet to express their views. Some views may be critical of the chief but at the end of the day, it is the generality of the people's desire which becomes either the rule or the way of life for that particular region.

Cited in Shaw W, 'Towards one party state in Zimbabwe.' *Journal of Modern African Studies*. 24/3 (1986) 377. The former Ivorian president, Houphouët-Boigny also famously proclaimed that African chief cannot know his successor. See Adebayo W, 'Now, the empire strikes back'. *Africa Today*. November 2009, 8; see also Meredith (2005) 167-170.

<sup>165</sup> Elias T, *Africa and the development of international law*. Leiden: Sijthoff (1972) 37-40; see also Elias T, *The nature of African customary law*. Manchester: Manchester University Press (1965) 8-36.

<sup>166</sup> Elias (1972) 38-39; see also Adaramola F, *Basic jurisprudence*. Lagos: Nayee Publishing (2002) 142-143.

without whose approval no chief can perform any executive or judicial act. Accordingly, when the Heads of Chiefs of a province are summoned to the Provincial Council in order, say, to elect representatives of their people as Members of the Legislative Council, each Chief carries with him instructions which he is to pursue and the manner in which he is to record his vote...in order to satisfy themselves that the Head Chief carries out his duties in the manner which the State Council has prescribed, he is accompanied by eight councillors who report the result of the mission on its return home. Could anything be more democratic or more representative of the wishes of a people?<sup>167</sup>

The foregoing exposition exposes the moral bankruptcy of post-colonial elites, who in an attempt to pursue an enlightened self interest, engineered a revision of Africa's history. Even if one was to accept that consensus form the bedrock of traditional African society, it is difficult to understand that people must be intimidated or coerced in order to arrive at some form of manipulated consensus.

The challenge, which is the main thrust of this thesis, is to translate pan-Africanism or the idea of 'Africa' into a transformative agenda. Africa, in the words of Mazrui, 'must stand ready to selectively borrow, adapt, and creatively formulate its strategies for planned development'.<sup>168</sup> The ability to adapt concepts such as regional integration and supranationalism to African realities and to also use them as developmental tools should be the key goal.<sup>169</sup> Beyond the rhetoric of pan-Africanism and the 'United States of Africa', efforts should be geared towards aligning the practicalities of regional cooperation with local specificities and the developmental needs of the African populace. It should draw from traditional African values, which ensures broad-based community participation in matters that affect the common good.

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<sup>167</sup> Ibid.

<sup>168</sup> Mazrui A, 'Africa must not just remain a learner'. *Daily Monitor* (Uganda). Available at [http://www.monitor.co.ug/artman/publish/opinions/Africa\\_must\\_not\\_just\\_remain\\_a\\_learner\\_71811.shtml](http://www.monitor.co.ug/artman/publish/opinions/Africa_must_not_just_remain_a_learner_71811.shtml) (Accessed 30 September 2008).

<sup>169</sup> This is discussed below.

### 2.3.2 Theoretical perspectives on African integration

To rule out a step by step progress towards African unity is to hope that the Almighty will one day say, 'Let there be unity in Africa', and there shall be unity; or to pray for a conqueror. But even a conqueror will have to proceed step by step.

Julius Nyerere<sup>170</sup>

Our objective is African Union now. There is no time to waste. We must unite now or perish.

Kwame Nkrumah<sup>171</sup>

One thing that African integration does not lack is a plethora of theoretical suppositions. Since the colonial era, African intellectuals have, depending on their ideological beliefs and location, offered their views on how to proceed with African integration. If colonialism was the catalyst for the quest for unity, the paradox of Africa's underdevelopment shaped, and continues to shape, the debate on African integration.<sup>172</sup> The unanimity of ideas in respect of unity does not, however, extend to the methodology of attaining such goal. Numerous sobriquets have been used to define the differing opinions on African integration.<sup>173</sup> Basically, theoretical perspectives on African integration can be classified under three schools of thought: idealists, realists and idealists-cum-reterritorialists. This categorisation is based on the philosophical approach of each group to the idea of African integration. While certain groups advocate the pursuance of African integration based on the realities on ground (inherited

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<sup>170</sup> Nyerere J, *Freedom and unity uhuru na umoja: A selection from writings and speeches 1952-1965*. Oxford: Oxford University Press (1966) 302.

<sup>171</sup> Nkrumah K, 'Address to the conference of African heads of state and government, 1963, in *Revolutionary path*. London: PANAF (1973) 233-234.

<sup>172</sup> Writing in 1963, Nkrumah outlines the abundance of natural resources on the continent and argues that only through 'a gigantic self-help programme' can Africa realise its potential. See Nkrumah (1963) 150-151; see also *New Partnership for Africa's Development* (2001) 3. The developmental feature of regional integration is discussed below.

<sup>173</sup> Agyeman for example use terms such as 'militant versus gradualist' and 'all-out Pan-Africanist versus the territorial Patriot-cum-Pan Africanist.' See generally, Agyeman O, *Nkrumah's Ghana and east Africa: Pan-Africanism and African interstate relations*. Rutherford: Fairleigh Dickinson University Press (1992) 78-95. Legum use terms like 'political union (or organic union)' and 'functional cooperation'. See Legum (1962) 57; Maluwa refers to 'absolute integrationists' versus 'minimal integrationists'. See Maluwa T, 'Fast-tracking African unity or making haste slowly? A note on the amendments to the constitutive act of the African Union'. *Netherlands International Law Review*. 51/2 (2004) 201.

colonial boundaries and understanding the differences that exists), others propound either conjuring an 'African leviathan' or a cartographic rearrangement of African boundaries. This section will thus chronicle selected thoughts of Africans on the issue of integration, along the lines of the above-mentioned schools of thought.

**a) *The idealists – Africa must unite now!***

The idealists hinge the development and relevance of Africa on the immediate establishment of a 'United States of Africa' or a 'Union Government for Africa'.<sup>174</sup> Using the United States of America as a referential framework,<sup>175</sup> this school of thought envisages a single, 'Cape-to-Cairo' administration, responsible for implementing coordinated and unified economic and political policies. The aim is to leapfrog the continent from the nadir of underdevelopment to a position of prosperity and relevance within the comity of nations.<sup>176</sup> Nkrumah avers that such union:

need not infringe the essential sovereignty of the African states. These states would continue to exercise independent authority, except in the fields defined and reserved for common action in the interest of the security and orderly development of the whole continent.<sup>177</sup>

He further recommends that such Union should pursue three objectives: overall economic planning on a continental basis; unified military and defence strategy;

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<sup>174</sup> See e.g. Nkrumah (1963) 163-164; see also Nkrumah (1973) 277-297.

<sup>175</sup> Nyerere points out that the fact that Nkrumah, the major proponent of this idea, went to school in the United States of America largely influenced his ideological position on African unity. He opines: 'Kwame [Nkrumah] went to Lincoln University, a black college in the US. He perceived things from a US history, where 13 colonies revolted against the British formed a union'. Cited in Mwakikagile G, *Nyerere and Africa: End of an era*. Las Vegas: Protea Publishing (2002) 300.

<sup>176</sup> Nkrumah (1963) 163-164.

<sup>177</sup> *Ibid*, 218. In line with this, Nkrumah ensured that the Ghanaian constitution stipulated the partial or wholesale surrendering of sovereignty as a contribution towards the attainment of continental unification. See Nkrumah K, *I speak of freedom*. New York: Praeger (1961) 221. Guinea, Mali, Tunisia and Egypt also provided for limitation of sovereignty in their constitutions. See Legum (1962) 66.

and a unified foreign policy and diplomacy.<sup>178</sup> On the institutional architecture of such Union, Nkrumah, in 1964, suggests:

This Union of Government shall consist of an Assembly of Heads of States and Governments headed by a President elected from among the Heads of State and Government of the Independent African States. The Executive of the Union Government will be a Cabinet or Council of Ministers with a Chancellor or Prime Minister as its head, and a Federal Housing consisting of two Chambers – The Senate and a House of Representatives.<sup>179</sup>

This school of thought rejects the regionalist or nationalist approach to African integration. According to Nkrumah:

The idea of regional federations in Africa is fraught with many dangers. There is the danger of the development of regional loyalties, fighting against each other. In effect, regional federations are a form of balkanisation on a grand scale...the best means...is to begin to create a larger and all-embracing loyalty which will hold Africa together as a united people with one government and one destiny.<sup>180</sup>

Ghaddafi, another proponent of a continental federation, highlights the impracticalities of regional federation. Some of the impediments include language barrier and wars and gross underdevelopment in Africa.<sup>181</sup> He (Ghaddafi) remarks:

The advocates of this theory [regional federations] suggest that we have to wait for Somalia to unite and then Eritrea and Ethiopia. We have to wait for Egypt, Libya, Tunisia, Algeria and Morocco (which is outside the African Union) and

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<sup>178</sup> Nkrumah (1963) 218-220.

<sup>179</sup> Nkrumah (1973) 295-296. In his address to African leaders at the 1965 OAU Summit in Accra, Nkrumah further proposed that in addition to a Union president, the Assembly should elect a number of Union Vice-Presidents. See Nkrumah (1973) 309.

<sup>180</sup> Nkrumah (1963) 214-215.

<sup>181</sup> Ghaddafi M, 'Address by the leader of the revolution at the opening session of the north African popular activists' forum' in Tripoli, Libya (21 June, 2007) 4-8. (On file with the author).

Mauritania, and Sahara to become one state...it is impossible for these regions to establish one state.<sup>182</sup>

Without offering any sound theoretical basis, he (Ghaddafi) leaps to assume that the existence of a continental federal executive authority will ensure that even countries in a state war will be forced to converge under the talismanic spell of 'African unity'.<sup>183</sup> It is this kind of reasoning that has made some commentators to conclude that Ghaddafi lacks the ideological coherence and political sophistication displayed by Nkrumah's thesis on the need for continental unification.<sup>184</sup>

One of the fundamental flaws of this ideology is its lack of a sound theoretical basis. Its adherents point to a shifting of loyalty without providing practicalities or methodology for such a shift. For example, no theoretical exposition is provided on how to measure the general acceptance of this idea by the African populace except for anchoring it on an emotional pan-Africanist ideology. Neither is this idea anchored to democratic values. Post-colonial African elites like Nkrumah and Sekou Toure simply assumed position of the essential alchemists, garbed with the superior intellectual prowess to dictate the course of African history.<sup>185</sup>

This line of reasoning stems from the domestic credentials of its major proponents. A roll call of the proponents of this ideology reveals a pattern of

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<sup>182</sup> Ibid, 5.

<sup>183</sup> Ibid, 6.

<sup>184</sup> Maluwa (2004) 6.

<sup>185</sup> Mazrui & Tidy put it aptly:

Paradoxically, however, Nkrumah became the main obstacle to unity in Africa. In his fanatical adherence to idea of Union Government of all Africa and his opposition to regional grouping ... he alienated other African heads of state in the early 1960s.

See Mazrui A & Tidy M, *Nationalism and new states in Africa*. London: Heinemann (1985) 63. At the 1964 OAU summit in Cairo, Nyerere denounced the approach of the federalists, of which Nkrumah was an arrowhead, as 'propaganda'. He notes 'Nothing could be more calculated to bring ridicule to the whole concept of a continental Government in Africa than this incessant and oft-repeated propaganda ...' See Nyerere (1966) 301.

personality cults, suppression of dissension, dogmatic ideologies and a tendency to personalise the unification discourse.<sup>186</sup> This is not to say that other African leaders who espouse different integration ideologies did (and do) not have personal agendas, nevertheless, the issue of continental unification is a sensitive matter that requires utmost exemplary qualities. When leaders operate repressive regimes and in the same breath advocate a 'United States of Africa', it is only natural that people express cynical views on how such leaders intend to either run or fit into the administrative structure of a continental union.<sup>187</sup>

Another flaw is that this paradigm makes the assumption that Africa is homogenous. In an attempt to present a common front, it glosses over the deep cleavages that exist on the continent. There are vast differences - sociological, political, economic and cultural - between countries and regions on the continent. Despite the prescriptions of regional instruments and international donors, democratic ideals are still an exception rather than the rule on the continent. The unevenness of democratic practise, which is evident in the fewer numbers of fair electoral process, the growing number of dictators and the suppression of opposition reveals the absence of shared norms and values. The question is whether a democratic South Africa or Mauritius would feel comfortable to enter into any federal union with a Libya or Zimbabwe? The impracticality of this lies in how administrative structures in the former will interface with the ones in the latter, where institutions are either ineffectual or non-existent.

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<sup>186</sup> One of the accusations often leveled against Nkrumah and Ghaddafi is their ambition to become the president of a 'United States of Africa'. See e.g. 'Qaddafi, ruler of Africa? *The Economist*, September 16-22 (2000) 51; see also Legum (1962) 54-55. For a critical assessment of post-colonial elites, see e.g. Meredith (2005); Omari (1970); Mazrui (2004).

<sup>187</sup> Mazrui surmised Nkrumah's legacy thus: 'His dream of trying to create "one-Africa by abolishing separate states" was an inspiration. His policy of trying to "create one Ghana by abolishing separate political parties" was usurpation'. See Mazrui (2004) 3; see also Mazrui & Tidy (1985) 60-62.

As will be shown below, the economies of most African countries are largely underdeveloped.<sup>188</sup> Suffice to add that since regional integration requires a uniform level of sound economic development across member states, the case for an immediate federal African state appears premature. In addition, the disintegrative tendencies within certain African states need to be properly addressed before any attempt to create a federal union. While it can be argued that these conflicts are a result of the arbitrary balkanisation of the continent by colonialists, there is no proof that replacing the fault lines of African states - with their internal contradictions - with a single government would obliterate these problems. Rather, African integration requires a more fundamental approach in the form of uniform adherence to democratic norms by member states. The evenness of democratic practise can help establish the basis for unity – shared norms and values. This point will be further elaborated upon in subsequent chapters.

The emotional and rhetorical appeal of a federalist ideology remains unassailable; however, the inherent contradictions explained above makes it hard to sell. The urgency of integration in Africa does not necessarily imply that we ignore the core fundamentals. In fact, it, the core fundamentals, should be the guiding philosophy of a federal African state.

### ***b) The realists - unity through the building blocks***

While the realists accept the principal goal of a 'United States of Africa' or 'Union Government for Africa', they differ with the idealists on the time frame or modus of achieving this objective.<sup>189</sup> The realists advocate a regional-functional approach. What this implies is that African unity should be conceptualised through the establishment of regional federations, which would then cede their sovereignty to a larger continental union. The process of attaining such regional

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<sup>188</sup> Mo Ibrahim, the Sudanese philanthropist, bluntly notes, 'the fact is a large number of African countries are not viable ... If they were companies, they would have been declared bankrupt. You switch off the light; you say bye-bye, it doesn't work'. Cited in *New African Magazine* (February 2010) 12.

<sup>189</sup> See e.g. Agyeman (1992) 78-95.

federation should thus be through the orthodox functional approach. Below is an analysis of the realist ideology.

The regional federalists are closer to the idealists in the sense that they propose the establishment of a federated union albeit on a (sub) regional basis. As Kenyatta succinctly puts it, 'I want to see first East Africa united and federated, then the whole of Africa as one'.<sup>190</sup> The rationale behind this thesis is based on the fact that it is easier for states that share similar cultural, administrative and linguistic identities to form a union rather than plunging the whole of Africa, with its internal contradictions and complexities, into a union. According to Nyerere, the advantage(s) of a regional federation lies in the fact that it would enable the area concerned, 'to achieve quickly at least the benefits of greater unity and great strength' and, also, reduce 'the number of states which have to sit down together and agree on the final forms of African unification'.<sup>191</sup> The relative successes of sub-regional organisations in Africa in areas such as monetary integration and the harmonisation of policies vindicate Nyerere's sentiments. Through regional federations, as Nyerere reckoned, the road to an ultimate continental union will be smoothed and made less cumbersome. Nkrumah, however, rejected this theory by arguing that regional federations will only amount to 'balkanisation on a grand scale'.<sup>192</sup> He also perceived this idea as a neo-imperialist agenda, aimed at creating division on the continent.<sup>193</sup>

Intra-African functionalism is an ideology primarily championed by regional federalists as a strategy for ensuring unity, first at the regional level and then at the continental level. Functionalism remains the dominant theme in intra-African integration. The trajectory of African integration has always been defined by the tension between the federalists and the functionalists.<sup>194</sup> The empirical basis of

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<sup>190</sup> Cited in Legum (1962) 65.

<sup>191</sup> Nyerere (1966) 347.

<sup>192</sup> Nkrumah (1963) 214-215.

<sup>193</sup> Agyeman (1992) 82. Nyerere responded to this assertion in the following words: 'To say that the step by step method was invented by the imperialists is to reach the limits of absurdity'. See Nyerere (1966) 302.

<sup>194</sup> Nye (1966) 13-17; Nweke (1987) 135-137.

the functionalist ideology lies in the successful experiments of colonial-inspired functional cooperation<sup>195</sup> that existed in Africa prior to the emergence of the OAU in 1963. The two major functional organisations were the British initiated - East African Common Services Organisation (EACSO)<sup>196</sup> and French inspired - *Union Africaine et Maghreb* (UAM).<sup>197</sup> Based on the prescriptions of orthodox functionalism, intra-African functionalists stress the assignment of functional tasks to transnational institution.<sup>198</sup> However, intra-African functionalism differs from orthodox functionalism in the sense that some of the functional institutions have little or no autonomy and resources (human and material) necessary for effective functioning.<sup>199</sup>

Functionalism has been criticised for being ill-suited to Africa. Since functionalism thrives on the assumption that co-operating states have a developed economy and a virile industrial base, critics argue that these conditions are absent in Africa thus making this theory irrelevant and unsuitable for Africa.<sup>200</sup> As Agyeman notes, the homogeneity of institutional and industrial development is a key feature of European functionalism.<sup>201</sup> Even if Europe is not culturally homogenous, Agyeman posits that similarities exist in ideological

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<sup>195</sup> Colonial administrations in Africa established a number of monetary cooperation arrangement in East Africa, the Federation Rhodesia and Nyasaland, Southern Africa (particularly South Africa, Lesotho, Botswana and Swaziland) and the Franc Zone in west and central Africa. These monetary arrangements were not necessarily to promote exchange rate management and fiscal policy rather they were designed as an expeditious mechanism for colonial administration, especially in relation to the facilitation of international trade and payments. See African Union & Economic Commission for Africa, *Assessing Regional Integration in Africa III: Towards Monetary and Financial Integration in Africa*. Addis Ababa: Economic Commission for Africa (2008)183-186.

<sup>196</sup> The EACSO had functional institutions such as East African Railways and Harbours (EAR&H), East African Posts and Telecommunications (EAP&T), and the East African Airways (EAA). See Nye J, *Pan-Africanism and east African integration*. Oxford: Oxford University Press (1966) 136.

<sup>197</sup> The UAM had functional institutions such as the *Union Africaine et Malgache de cooperation economique*, *Union Africaine et Malgache des postes et telecommunications* and *Air Afrique* (These are economic, postal and air services). As Nweke observes, the UAM contributed immensely to the charting of a continental functionalist trajectory. See Nweke (1987) 136-137.

<sup>198</sup> The contents and structures of regional organisations both at the continental and sub-regional levels all contain elements of functionalism, that is, institutions charged with the responsibility of implementing functional tasks like education, science and technology, transport and science. For an outline of functional organisations in Africa, see <http://www.issafrica.org> (Accessed 1 November 2008).

<sup>199</sup> Nweke (1987) 140-141.

<sup>200</sup> Mutua M, 'Why redraw the map of Africa: A Moral and Legal Enquiry'. *Michigan Journal of International Law*. 16 (1995) 1168.

<sup>201</sup> Agyeman (1990) 8.

leanings of political parties and programmes of interest groups across European frontiers.<sup>202</sup>

Another reason cited for the unsuitability of intra-African functionalism is the low level of intra-African trade and investment (see table 2.3 below).<sup>203</sup>

**Table 2.3: Intra-arrangement trade in Africa (Percent of total trade)**

	1970	1980	1990	1998	2003
<b>Exports</b>					
CEMAC	4.9	1.6	2.3	2.3	1.4
COMESA	9.7	9.1	8.1	8.9	8.6
ECOWAS	3.1	10.6	8.9	11.1	10.1
WAEMU	7.9	12.6	15.3	13.0	16.2
SADC	9.4	2.7	6.9	6.0	6.0
Africa	8.8	5.2	7.3	10.5	9.3
<b>Imports</b>					
CEMAC	5.0	3.7	3.6	3.9	2.9
COMESA	6.7	2.8	3.4	3.9	5.8
ECOWAS	3.3	10.2	14.9	12.9	11.5
WAEMU	6.4	7.6	14.8	9.8	13.3
SADC	4.9	3.8	6.0	6.1	6.3
Africa	7.4	5.1	7.9	9.2	10.2

Source: International Monetary Fund, *Direction of trade statistics*. Available at <http://www.imf.org/external/pubs/ft/wp/2005/wp0536.pdf> Accessed (23 June 2007).

The conventional theory of integration holds that if countries within a particular region remove tariffs (i.e. forming a free trade area or customs union), then

<sup>202</sup> Ibid, 8-9.

<sup>203</sup> According to statistics, only 5 countries (except for South Africa) dominate intra-African trade. These are Cote d'Ivoire, Nigeria, Kenya, Zimbabwe and Ghana. See Naude W & Krugell W, 'Global integration of Africa versus regional integration'. *South African Journal of Economic and Management Science*. 4/3 (2001) 498.

there will be an increment in the volume of trade among those countries (trade creation).<sup>204</sup> Placing this in an African context, analysts have argued that the fact that most African countries are primary producers in the same range of products,<sup>205</sup> thus making their products competitive rather than complementary, simply eliminates any prospect of trade creation.<sup>206</sup> The externalisation of external tariffs, that is the creation of a customs union, will result in a substantial loss of revenue, especially in countries where customs revenue forms a chunk of government revenue.<sup>207</sup> If African states decide to pursue functionalism, in spite of the above constraints, it is argued that lowest income countries within the union will suffer real income loss due to trade diversion.<sup>208</sup> Venables illustrates this point in the following words:

Membership in an FTA changes the sources from which products are supplied to member country markets, increasing supply from the partner countries as these receives preferential treatment, but possibly also reducing supply from domestic production and from the rest of the world. To the extent that overall supply is increased and lower cost of imports from the partner country replace higher cost (previously protected) domestic production.<sup>209</sup>

The Common Agricultural Policy (CAP) of the EU has been cited as an example of trade diversion.<sup>210</sup> As Fernandez & Portes observe, the CAP entails that certain European countries have to abandon buying cheaper agricultural products from other parts of the world and rather purchase them from high-cost

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<sup>204</sup> Agyeman (1990)10; see also Gambari I, *Political and comparative dimensions of regional integration: The case of Ecowas 2*. London: Humanities Press (1991) 7-8.

<sup>205</sup> Four non-manufacturing goods constitute 50% of intra-African trade: petroleum, cotton, maize and cocoa. See Naude & Krugell (2001) 498.

<sup>206</sup> Gambari (1991) 7-8; Agyeman (1990) 10-11.

<sup>207</sup> ECA (2004) 12. For example, study has shown that Zambia and Zimbabwe could loose substantial government revenue amounting to 5.6% and 9.8% respectively if free trade is introduced in the Southern African Development Community (SADC). See Venables A, 'Regional integration agreements: A force for convergence or divergence?' *World Bank Policy Research Working Paper no. 2260* (1999) 6.

<sup>208</sup> See e.g. *Ibid*, ii.

<sup>209</sup> *Ibid*, 3-4.

<sup>210</sup> See ECA (2004) 11-12; Fernandez R & Portes J, 'Returns to regionalism: An analysis of nontraditional gains from regional trade agreements'. *The World Bank Economic Review*. 12/2 (1998) 200-201.

European sources.<sup>211</sup> This results in domestic price increases for such products.<sup>212</sup>

As a result of the foregoing analysis, some have suggested that African countries should rather pursue a free trade agreement with higher income regions or specific higher income nations.<sup>213</sup> Others have also suggested either a federal arrangement<sup>214</sup> or, as will be discussed below, the outright reconfiguration of African boundaries.

### **c) The idealists-cum-reterritorialists – Let's redraw the map!**

The thesis of this school of thought is simple yet full of complications: tear down the colonial boundaries and replace them with pre-colonial, ethnic-sensitive frontiers.<sup>215</sup> The underlying veracity of this thought stems from the fragmentation of the continent by European powers at the 1884/85 Conference of Berlin.<sup>216</sup> The lines drawn by these European powers were insensitive<sup>217</sup> to

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<sup>211</sup> Fernandez & Portes (1998) 201.

<sup>212</sup> Ibid.

<sup>213</sup> Naude & Krugell (2001) 501.

<sup>214</sup> See Agyeman (1990) 27-8.

<sup>215</sup> See generally, Mutua (1995) 1113-1176; see also Bello A, 'The boundaries must change'. *West Africa*, April (1995) 546; Gakwandi A, 'Towards a new political map of Africa' in Abdul-Raheem T (ed) *Pan-Africanism: Politics, economy and social change in the 21<sup>st</sup> Century*. London: Pluto (1996) 87.

<sup>216</sup> According to Dowden, 'all but two of Africa's concocted countries combine several ethnic groups.' See Dowden (2008) 3.

<sup>217</sup> The statement by a British official who was involved in drawing boundary between Nigeria and Cameroon aptly captures the triviality and insensitive approach of the colonial experts. He remarks:

In those days, we just took a blue pencil and a rule, and we put down at Old Calabar, and drew that line to Yola...I recollect thinking when I was sitting having an audience with the Emir of Yola, surrounded by his tribe, that it was a very good thing that he did not know that I, with a blue pencil, had drawn a line through his territory.

Cited in Mutua (1995) 1135. Also, another colonial administrator, Lord Salisbury, sarcastically remarked;

We have been engaged in drawing lines upon maps where no white man's feet have ever trod; we have been giving away mountains and rivers and lakes to each other, only hindered by the small impediment that we never knew exactly where the mountains and rivers and lakes were.

Cited in Hargreaves J, 'The making of boundaries: Focus on west Africa' in Asiwaju A (ed) *Partitioned Africans: Ethnic relations across Africa's international boundaries 1884-1984*. Lagos: University of Lagos Press (1985) 22.

the extent that in some cases it separated communities that shared common ancestry, customs and socio political and economic institutions.<sup>218</sup> As Asiwaju observes:

In many instances, such as the Uganda-Sudan frontier through the Kakwa territory, the boundaries have separated communities of worshippers from age-old sacred groves and shrines. In other instances, well exemplified by the Somali, the water resources in a predominantly pastoral and nomadic culture area were located in one state while the pastures were in another.<sup>219</sup>

Much has been written about the (illegal) acquisition of African territories. In an attempt to bring the continent under the European sphere of influence, depraved and illegal methods were employed to dispossess Africans of their territories.<sup>220</sup> For example, the King of Lagos, Dosumu, and his chiefs were forced to sign a treaty of cession in 1861 which stipulates:

I, Docemo, do with the consent and advice of my Council, give transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors forever, the Port and Island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging, and as well the profits and revenues and direct, full and absolute dominion and sovereignty of the said port, island and premises, with all the royalties thereof, freely, fully, entirely and absolutely. I do also covenant and grant that the quiet and peaceable possession thereof shall, with all possible speed, be freely and effectually delivered to the Queen of Great Britain, or such persons as Her Majesty shall thereunto appoint, for her use in the performance of this grant; the inhabitants of the said island and territories, as the Queen's subjects, and under her

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<sup>218</sup> Asiwaju A, 'The Conceptual Framework', in Asiwaju A (1985) 2-3. For a detailed tabulated list of partitioned ethnic groups in Africa, see Asiwaju (1985) 256-258. Brownlie, however, argues that the European powers did not always ignore ethnological considerations when delimiting African frontiers. See Brownlie I, *African boundaries: A legal and diplomatic encyclopaedia*. Berkeley: University of California Press (1979) 6.

<sup>219</sup> Ibid, 3. For example, the United Kingdom and Ethiopia entered into an agreement in 1954 that nomadic Somali would be allowed to graze their animals across the border (in Ethiopia) but upon the independence of British Somaliland in 1960, Ethiopia decided not to honour the agreement. See Oyeboode (2003) 23.

<sup>220</sup> The British used Treaties as a pretext for acquiring territories. In most cases, the content of such treaties were either misinterpreted to African chiefs or coercive measures were employed to make them sign. There is no gainsaying that these measures are blatantly in violation of the principles international law, especially rules relating to the validity of treaties. See e.g. Ibid, 90-100; Mutua (1995) 1130-1134.

sovereignty, crown, jurisdiction, and government, being still suffered to live there.<sup>221</sup>

Such was the fate of the continent under what is aptly termed ‘the scramble for Africa’. Although some argue that partitioning is not peculiar to Africa,<sup>222</sup> the resultant effect of this colonial adventure is the designation of Africa as the world’s most fragmented region.<sup>223</sup> The presence of 15 landlocked states in Africa, some of which are not economically viable, is evidence of the arbitrariness of African frontiers.<sup>224</sup>

It is against this backdrop that calls have been made that ‘we should sit down with square-rule and compass and re-design the boundaries of African nations’.<sup>225</sup> Mutua questions the moral and legal legitimacy of ‘colonial’ states by arguing for a compression of the 54 states in Africa into 14 large entities.<sup>226</sup> According to Mutua, the criteria of such cartographic exercise include factors such as historical circumstances; population density; resources and economic viability and ethnic, cultural and geographic variables.<sup>227</sup> In the same vein, Bello views that the states trapped within colonial frontiers have failed.<sup>228</sup> Citing the example of the collapse of the Soviet Union, Bello calls for the redrawing of Africa’s boundaries on ‘a rational and logical basis to take cognisance of the linguistic, cultural and ethnic diversities as is the case with most successful

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<sup>221</sup> Oyebode (2003) 90-1.

<sup>222</sup> Asiwaju notes that the boundaries of African countries such as Nigeria, Senegal and Mozambique are older than the boundaries of countries like Austria, Hungary, Poland, Greece and Finland. See Asiwaju A, ‘The Global Perspective and Border Management Policy Options’ in Asiwaju (1985) 233, 248.

<sup>223</sup> Akonnor notes that Africa has 165 demarcated borders. See Akonnor K, ‘Stuffing old wine in new bottles: The case of the African Union’ in Mazama A (ed.) *Africa in the 21<sup>st</sup> Century: Toward a new future*, London: Routledge (2007) 200.

<sup>224</sup> Englebert A, Tarango S & Carter M, *Dismemberment and suffocation: A contribution to the debate on AfricanbBoundaries*. Pomona College (2001) 4. Available at [http://www.politics.pomona.edu/penglebert/borders\\_FINAL.pdf](http://www.politics.pomona.edu/penglebert/borders_FINAL.pdf) (Accessed 1 November 2008). African states, according to Agyeman, are ‘plagued by the deficiency trilogy of smallness, unnaturalness and illegitimacy’. See Agyeman (1990) 6.

<sup>225</sup> This statement is credited to the Nigerian Nobel laureate, Wole Soyinka. Cited in Ramutsindela (2001) 96.

<sup>226</sup> Mutua (1995) 1117-8.

<sup>227</sup> Ibid.

<sup>228</sup> Bello (1995) 546.

nations all over the world.<sup>229</sup> Gakwandi also suggests the redrawing of the political map of Africa into seven states.<sup>230</sup> The rationale, according to Gakwandi, behind this includes the elimination of border disputes, easing of ethnic tensions, solid economic development and the emergence of politically and economically viable states.<sup>231</sup>

Critics have however questioned the feasibility of redrawing the boundaries of African states. As Ramutsindela puts it, '[This] exhibits serious defects, not least because they replicate the Berlin territorial fiasco and also reflects the vicious circle of territorial trap'.<sup>232</sup> A question that stands out is whether the regrouping of African states along ethnic lines is an antidote to conflicts or underdevelopment. If one was to consider the example of Somalia, a mono-ethnic state, which nevertheless slipped into large-scale chaos, then the answer might not necessarily lie in the reconfiguration of Africa's boundaries. As it has been argued, arbitrary boundaries are not the sole source of conflicts on the continent.<sup>233</sup> As Englebert et al note, the partitioning of homogenous groups only leads to conflict if such groups share strong political identities and nomadic lifestyles.<sup>234</sup> Even where they share such a bond, the process of nation-building in some African states has tempered claims for ethnic unification.<sup>235</sup>

Apart from the apparent logistical nightmare, the redrawing of Africa's map remains impossible due to the fact that African elites will never reach a consensus on the *modus vivendi* of such exercise. The pragmatic approach will be to de-emphasise the importance of these arbitrary borders by turning them

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<sup>229</sup> Ibid.

<sup>230</sup> Gakwandi (1996) 87.

<sup>231</sup> Ibid.

<sup>232</sup> Ramutsindela (2001) 98.

<sup>233</sup> Ibid; Englebert et al (2001) 5-7; Brownlie (1979) 14-15.

<sup>234</sup> Englebert et al (2001) 6.

<sup>235</sup> Before independence, the Masai ethnic grouping in Kenya and Tanzania petitioned the Colonial authorities for reunification but after independence, this claim has evaporated largely because they have reconciled themselves to the reality of their 'new' homes. See e.g. Ibid. Another factor that reduces the call for border revision is agreements which allowed frontier populations to pursue their everyday economic and social activities without restrictions. See Brownlie (1979) 171, 246, 401, 1051-61.

into a productive and positive ‘theatre of operations’.<sup>236</sup> Asiwaju identifies the three ways of doing this:

(1) Development programmes with specific reference to border areas; (2) border areas within the wider context of bilateral relations and co-operation between the states concerned; and (3) border areas in the still wider context of functional international organisations aimed at regional grouping or integration of the several states in geographically contiguous areas.<sup>237</sup>

Of main concern to this discourse is the third recommendation, which stresses the integrative agenda of Africa’s boundaries. Like Europe, with similar concerns of (arbitrary) partitioning,<sup>238</sup> concerted efforts should be made at obliterating the scars of partitioning through the establishment of regional and continental customs union and common market. An arrangement which allows a Somali to, without any bureaucratic encumbrance, cross the Kenya frontier to either pay courtesy visit to relatives or trade, can only encourage harmonious neighbourliness. As it has been rightly argued, friendly relations between and among African states should start from cultivating conditions for development and respect for customary laws in partitioned communities.<sup>239</sup> As Barkindo admonishes:

[W]e should explore the areas which unite us as Africans and one of the best ways of achieving this must be to study and encourage cultural links across political boundaries – which should be emphasised as points of contact and not of separation.<sup>240</sup>

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<sup>236</sup> Ramutsindela (2001) 100; Asiwaju (1985) 243-245.

<sup>237</sup> Asiwaju (1985) 243-244.

<sup>238</sup> See *Ibid*, 233-6; see also Asiwaju A, ‘Borderlands in Africa: A comparative research perspective with particular reference to Western Europe’ in Asiwaju A & Nugent P (eds), *African boundaries: Barriers, conduits and opportunities*. London: Pinter (1996) 254-9.

<sup>239</sup> See e.g. Phiri S, ‘National integration, Rural development and frontier communities: The case of the Chewa and the Ngoni astride Zambian boundaries with Malawi and Mozambique’ in Asiwaju (1985) 121-4; Barkindo B ‘The Mandara astride the Nigeria-Cameroon boundary’ in Asiwaju (1985) 46; see also Asiwaju (1996) 260.

<sup>240</sup> Barkindo (1985) 46.

### 2.3.3 Searching for an elixir: Is regional integration beneficial to Africa?

A post-integrative era of socio-political and economic upliftment witnessed in Europe is an empirical proof of the development feature of integration. Apart from the old guard (EU-15),<sup>241</sup> new entrants into the EU,<sup>242</sup> especially the Central and East European Countries (CEEC) have recorded significant economic growth. This economic effect is measured based on variables such as the Gross Domestic Product (GDP) per capita growth, investment inflow (factor mobility effect), single market effect and trade effects.<sup>243</sup> Breuss observes that the impact of elimination of trade (export) tariffs on the real GDP of CEECs, over the period 2001-2010, was around 4.5 percent.<sup>244</sup> Trade between the EU-15 and the CEECs (EU-10) rose from 56% in 1993 to 62% in 1995.<sup>245</sup> In addition, CEECs have recorded substantial FDI inflow from EU-15. FDI flows to the EU-10 account for about 40% of GDP.<sup>246</sup> These empirical factors are largely responsible for the EU's designation as a successful regional integration initiative.

Having outlined the foregoing, the question is this: what benefits can Africa derive from integration? The benefits to be derived from regional integration can be classified into two: traditional and non-traditional gains.<sup>247</sup>

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<sup>241</sup> The EU-15 include: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

<sup>242</sup> In 2004, 10 member states from CEEC, also known as the EU-10, joined the EU. They are Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia. In 2007, two more member states from the CEEC joined the organisation: Bulgaria and Romania.

<sup>243</sup> Borota T & Kutan A, 'Regional integration and economic growth: The case of the European Union'. *The Journal of International Trade and Diplomacy*. 2/1 (2008) 94; see also Breuss F, *Macroeconomic effects of EU enlargement for old and new members*. (2001) 4. Available at <http://fritz.breuss.wifo.ac.at/Breuss.PDF> (Accessed 30 November 2008); see also Breintenfellner A, Cuaresmer J, Mooslechner P & Ritzberger-Grunwald D, 'The impact of EU enlargement in 2004 and 2007 on FDI and migration flows: Gravity analysis of factor mobility'. *Monetary Policy and the Economy*. Quarter 2 (2008) 102. Available at [http://www.oenb.at/en/img/mop\\_2008\\_2\\_analyses\\_5\\_tcm16-88559.pdf](http://www.oenb.at/en/img/mop_2008_2_analyses_5_tcm16-88559.pdf) (Accessed 30 November 2008).

<sup>244</sup> Breuss (2001) 6.

<sup>245</sup> European Commission, 'Enlargement, two years after: An economic evaluation'. *Occasional Paper No 24* (2006). Available at [http://ec.europa.eu/enlargement/archives/press\\_corner/newsletter/110506\\_en.htm](http://ec.europa.eu/enlargement/archives/press_corner/newsletter/110506_en.htm) (Accessed 1 December 2008).

<sup>246</sup> Ibid.

<sup>247</sup> See e.g. Fernandez & Portes (1998).

At the core of traditional gains from regional integration is the concept of trade creation.<sup>248</sup> The classical underlying logic of regional integration is that the reduction of trade barriers between countries would enable citizens and firms to obtain goods and services from the cheapest source of supply, thereby, ensuring that production is located based on comparative advantage.<sup>249</sup> To put it simply, trade creation displaces higher cost domestic production in state A with lower cost production from partner state B because tariffs have either been reduced or completely eliminated.<sup>250</sup> The result of this would be an improvement of terms of trade among member states because the removal of tariffs will make goods originating from an integration area less expensive than those from non-member states.<sup>251</sup> As earlier pointed out, this same advantage could also lead to a welfare loss<sup>252</sup> especially for economically weak countries which depend heavily on tariff revenues. For example, analysts have pointed out that the introduction of a free trade area in the Southern Africa Development Community (SADC) would lead to substantial revenue loss for Zambia (5.6%) and Zimbabwe (9.8%).<sup>253</sup> It, has, however been argued that this situation could also provide a stimulus for finding alternative ways of raising funds in such countries.<sup>254</sup>

Another traditional benefit, which is of crucial significance in the African context, is that regional integration brings about an increased market size.<sup>255</sup> The

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<sup>248</sup> Ibid, 200; Venables (2000) 3.

<sup>249</sup> Venables (2000) 3.

<sup>250</sup> Ibid; see also ECA (2004) 11.

<sup>251</sup> Fernandez & Portes (1998) 221.

<sup>252</sup> As Casella postulates

If economics of scale imply that firms located in large countries enjoy lower costs, then the gains from enlarging the bloc will fall disproportionately on small countries, because the entrance of new members diminishes the importance of the domestic market and improves the small countries' relative competitiveness.

Casella A, 'Large countries, small countries and the enlargement of trade blocks'. *European Economic Review*. Vol. 40/2 (1996) 389.

<sup>253</sup> Venables (2000) 6.

<sup>254</sup> ECA (2004) 11. Venables observes that Cambodia introduced value added tax (VAT) after it lost substantial tariff revenues (56%) upon its entry into ASEAN. Venables (2000) 6.

<sup>255</sup> Venables (2000) 7; Fernandez & Portes (1998) 201-2.

balkanisation of Africa, highlighted above, gave birth to mini-states, with small populations and economies. Only five African countries - DRC, Ethiopia, Egypt, Nigeria and South Africa - have a population of more than 30 million.<sup>256</sup> It is thus important that the continent fashion a strategy of combining its markets in order to stimulate investment flows by domestic and foreign investors. For example, the creation of a customs union can serve as incentive to foreign investors to engage in tariff jumping – that is, invest in a member country in order to trade freely with other members.<sup>257</sup> Such investment can spur knowledge and technology transfers and spillovers.<sup>258</sup>

In addition to traditional benefits, there are a number of non-traditional benefits that flow from regional integration. An important benefit in this regard is the existence of a commitment mechanism, either in form of treaties or protocols, which binds member states to minimum standards.<sup>259</sup> By adhering to these standards, member states are in some cases bound to ensure continuity in political and economic reforms, with deviation leading to swift retaliation by partner countries.<sup>260</sup> The condition attached to accession to EU (e.g. democratic reforms) is claimed to be responsible for the consolidation of democracy in former authoritarian regimes in Greece, Spain, Portugal and the CEECs.<sup>261</sup> Where foreign investors know that a certain country is bound by commitment

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<sup>256</sup> Asante (1997) 29.

<sup>257</sup> Fenandez & Portes (1998) 202. Research has shown that integration initiatives such as NAFTA substantially increased FDI in Mexico, and MERCUSOR did the same in Argentina and Brazil. See ECA (2004) 13.

<sup>258</sup> AU & ECA (2006) 81.

<sup>259</sup> Fenandez & Portes (1998) 204-205.

<sup>260</sup> Ibid, 205; Venables (2000) 10. Schmidt highlights that European integration was responsible for major economic reforms in France from the 1960s through to the 1980s. See Schmidt V, *The untold story: The impact of European integration on France in the Mitterrand-Chirac era (1981-1997)*. Paper prepared for delivery at the European Community Studies Association Fifth Biennial International Conference (Seattle, WA, May 29-June 1 1997) 1-2. Available at <http://biblioteca.universa.net/ficha.do?id=13753042-31k> (Accessed 30 November, 2008).

<sup>261</sup> For example, the threat of economic and diplomatic isolation by MERCUSOR was responsible for the prevention of a coup d'état in Paraguay in 1996. See Fenandez & Portes (1998) 208. Ram also observes that European integration was the impetus for large scale political reforms witnessed in Romania in the 1990s. See generally, Ram M, *Romania's reforms through European integration: The domestic effects of European Union law*. 1-23. Available at <http://www.hks.harvard.edu/kokkalis/GSW1/GSW1/20%20Ram.pdf> (Accessed 30 November 2008)

mechanisms, they are likely to invest in such country.<sup>262</sup> Illustratively, where country A, widely known to be a command economy joins a regional organisation that espouses liberal policies, such action will signal to potential investors that country A has adopted liberal policies and thus open for investment.<sup>263</sup>

Regional integration arrangements also enhance bargaining power of member countries in international fora.<sup>264</sup> When countries articulate a common agenda through negotiation as a group, there is the possibility that countries could obtain significant gains. Africa's ambition to be a relevant part of global architecture can only be achieved through multilateral negotiations, not only as a continent but also partnering with other developing nations in the international arena. An entity that represents over 800 million people will definitely carry more weight than one that represents only 20 million people.

Regional integration can also promote cooperation among member states. Regular interfacing among policy makers and other groups bolsters trust, and can in turn minimise the incidence of conflict and instability.<sup>265</sup> In addition, such an arrangement provides a framework for cooperation on sharing of resources (natural and human) and also common problems like pollution and poverty.<sup>266</sup>

The foregoing analysis shows that enhanced cooperation is a useful development strategy. However, the next question is not so much the beneficial nature of regional integration to Africa as it is a question of how the continent can utilise it for its development objectives. Studies have shown both the positive attitude of African countries to regional integration initiatives and also the cost-benefit of regionalism to member states. According to a 2004 research conducted by the Economic Commission for Africa (ECA), over 50% of

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<sup>262</sup> Venables (2000) 10.

<sup>263</sup> Fenandez & Portes (1998) 208-9.

<sup>264</sup> Ibid, 211.

<sup>265</sup> ECA (2004) 14-15; AU & ECA (2006) 84.

<sup>266</sup> ECA (2004) 14-15.

countries involved in regional integration initiatives reported that coordinated macro-economic policies helped control inflation, almost the same number highlighted that it helped reduce budget deficit and about 44% held that it increased the volume of investment.<sup>267</sup> A breakdown of the sectoral impact of regional integration reveals that 50% of member states have benefited from trade and market integration initiatives, 47% from transport, 39% from macro-economic policy convergence, 28% from agricultural and food policy and 26% from energy.<sup>268</sup>

In spite of the foregoing analysis, regional integration by no means represents a singular antidote to Africa's plights. It should rather be viewed as part of an overall development strategy.<sup>269</sup> The benefits highlighted above would not come about as a result of an elitist political resolution to conjure integration; rather it would emerge from concerted efforts to strengthen domestic institutions (political and economic). Only through this can any form of convergence be achieved. Reaping the fruits of integration requires radical and focused decisions. Over and above these sentiments, architects of African integration, sub-regional or continental, should clearly spell out realisable goals and objectives, condition of membership, entrance levels for new members, enforceability mechanisms, and common standards.

#### **2.3.4 Is African integration possible?**

The question posed above strikes at the heart of the issues raised earlier: the appropriate methodology of integrating Africa. Should there be a federal union of African states or an EU type of integration or rather should Africans revert to a pre-colonial frontier configuration? This question also provides the framework for tackling subsequent chapters of this thesis. While this section is not aimed at fully exploring this question, it will only attempt to tease out some of the salient points to be considered later in the thesis. In order to determine the feasibility of

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<sup>267</sup> AU & ECA (2006) 82.

<sup>268</sup> Ibid.

<sup>269</sup> ECA (2004) 22.

African integration, one must consider both internal and external factors that will influence African integration.

*a) Social imperative*

On the internal factors, it is pertinent to consider the sociological implication of the integration narrative. As mentioned earlier, the term 'Africans' is a constructed idea, an idea which is antedated by ethnic affiliations. Ethnic affiliations are so strong that in some cases they transcends national citizenship.<sup>270</sup> Therefore, any attempt to 'impose'<sup>271</sup> an African identity, without paying adequate attention to ethnic complexities and values and how these can inform and nourish the integration debate, can only be disadvantageous.<sup>272</sup> Dowden's observation about Africa's identity is worth quoting in full:

Who would dare make generalisations about Asia based on Bangladesh? Or about Europe based on Greece? ... Even if you divide Africa in three; Africa north of the Sahara, South Africa and its orbit, and the zone in between, there are few common factors within these regions ... Africa's social systems, beliefs and culture are as diverse as its peoples and as disparate as its climates. West Africa feels quite different from East Africa, and even within West Africa you could never mistake Nigeria for Senegal. And neither of them seems on the

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<sup>270</sup> Citing the example of the Chewa and the Ngoni of Zambia, Mozambique and Malawi, Phiri notes that the behavioural pattern of these ethnic groups shows an overriding attachment to cultural ties as opposed to their national domain. See Phiri in Asiwaju (1985) 105-25, 245.

<sup>271</sup> I use this word only to refer to how some post-colonial elites skilfully gloss over ethnic cleavages in an attempt to create a façade of unity and cohesion. As Nye aptly notes:

The choice between them - between tribalism and Pan-Africanism - was not made by any popular plebiscite, but by the educated elite, who have generally opted for Pan-Africanism because of their views about size and power in world politics. They believe that tribal nations would be divided and ruled from outside, whereas a Pan-African nation would mean world power and dignity.

See Nye (1966) 9.

<sup>272</sup> This is not to deny the existence of an attachment to a sense of similarity in values and race among Africans, an attachment that often goes beyond national identity. However, this attachment is only emotional and is yet to be shaped into something concrete. The deplorable state of political leadership and gross underdevelopment on the continent are factors that militate against such goal. Being an African should thus move beyond abstracts and should be defined by socio political and economic upliftment of the African populace.

same planet as Mali. Every time you say 'Africa is ...' the words crumble and break. For every generalisation you must exclude at least five countries.<sup>273</sup>

As Asiwaju tellingly points out, 'partitioned Africans ... should be regarded as ... the basis for extremely valuable ethnological, social and cultural links on which to build surer traditions of international relations on the continent.'<sup>274</sup> Europe's ability to forge unity amidst multiple nationalities and cultural identities should serve as a useful lesson to Africa. As Fontaine observes, the EU has been able to promote economic growth based on 'regional specialities and the rich diversity of traditions and cultures'.<sup>275</sup> The reality of ethnic pluralism on the continent should be channelled into an integrative agenda which promotes diversity, celebrates the values embedded in African culture and promoting programmes which accentuates inclusion. In respect of Association of South-East Asian Nations (ASEAN), Narine observes that the so-called 'ASEAN way' of diplomacy stems from the Malay cultural practices of *musjawarah* and *mufukat*.<sup>276</sup> He further explains:

*Musjawarah* means 'that a leader should not act arbitrarily or impose his will, but rather make gentle suggestions of the path a community should follow, being careful always to consult all other participants fully and to take their views and feelings into consideration before delivering his synthesis conclusions.' *Mufukat* means consensus and is the goal toward which *musjawarah* is directed.<sup>277</sup>

While the EU might appear appealing as a referential framework on a theoretical plane, the reality is that Africa will have to fashion its own approach. Africa's search for lessons must transcend the adoption of EU's institutional architecture and policies. As Olivier & Olivier points out, 'authentic integration in Africa seems possible, but according to architecture still to be discovered and

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<sup>273</sup> Dowden (2008) 10.

<sup>274</sup> Asiwaju (1985) 245-246.

<sup>275</sup> Fontaine P, *Europe in 12 lessons*. Brussels: European Commission (2006) 6.

<sup>276</sup> Narine S, *Explaining ASEAN: Regionalism in south-east Asia*. Boulder Colorado: Lynne Rienner (2002) 31.

<sup>277</sup> Ibid.

designed'.<sup>278</sup> Such 'architecture' should be autochthonous and sensitive to local specificities. Nevertheless, it should also include elements that have been responsible for the success of other integration initiatives. These include variables like peace and security, good governance and human rights.

*b) Democratic imperative*

Be it at the sub-regional or continental levels, architects of African integration should make concerted efforts at fashioning a consensus on democratic values. As Dare rhetorically intones,

As the world struggles to build new structures ... isn't it time also to reconsider a system that subjects fragile developing countries to violent spasms every four or five years, keeps them in suspended animation in between, and yet solves nothing and settle nothing?<sup>279</sup>

While it is not suggested that Africa should devise a system that encourages the ubiquitous 'sit-tight syndrome',<sup>280</sup> African democracy should be adapted to reflect what Ake calls 'socio-cultural realities'.<sup>281</sup> Without sacrificing the inherent values and principles of democracy, Ake argues that the starting point of democracy in Africa should be an emphasis on the communal over the individual – a system which prioritises social welfare and common good.<sup>282</sup> He, however, admits that a unique African democracy will not emerge from a rational blueprint but rather, from 'practical experience and improvisation in the course of a hard struggle'.<sup>283</sup> The reality is that Africa cannot afford to pursue concrete unity without some form of common *grundnorm*. Africa's tapestry of rich cultural traditions is an adequate reference point for developing such basic

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<sup>278</sup> Olivier G & Olivier M, 'Models of regional integration: The European Union and the African Union', *SA Public Law*. 19/1 (2004) 362.

<sup>279</sup> Dare O, 'Up from misbegotten orthodoxies'. *The Nation* (Nigeria) 4, November, 2008. Available at <http://www.thenationonline.com/dynamicpage.asp?id=68527> (Accessed 4 November, 2008).

<sup>280</sup> This phrase is used to describe African leaders who have decided to rule perpetually.

<sup>281</sup> Ake C, 'The unique case of African democracy' *International Affairs*. 69/2 (1993) 242.

<sup>282</sup> *Ibid*, 242-4. Nyerere defines African democracy as 'government by discussion'. See Nyerere (1966) 104.

<sup>283</sup> *Ibid*, 244.

norms. The challenge is thus to devise a framework for achieving this. (This point will be fully elaborated upon in subsequent chapters).

*c) Technology imperative*

Envisaging an integrated Africa in the 21<sup>st</sup> century without adequate consideration of the development of Information and Communication Technology (ICT) simply amounts, at the very best, to a pipe dream. Africa can safely be classified as what De Wet refers to as a ‘technology colony’.<sup>284</sup> He observes that although many developing countries have gained political independence, they are yet to achieve technology independence, that is, the technological know-how necessary for economic development.<sup>285</sup> To put it simply, Africa operates at the periphery of global technological innovation. Painting the dire state of technology on the continent, a NEPAD report views:

African economic integration and participation in the global economy is constrained by factors such as the high cost of access for end-users to foreign-owned satellite telecommunication providers for cross-border regional and international telecommunication traffic. In addition, high Internet access cost, low bandwidth, poor ICT infrastructure and often unreliable communication facilities further exacerbate the challenges the African countries face.<sup>286</sup>

The impact of technology in fostering regional integration cannot be overstated. As Cappellin notes, technology can further integration in two ways: improve cohesion and enhance economic development in less developed regions.<sup>287</sup> More than political rhetoric, technology has the capacity of creating a borderless African community. The availability of technology, especially ICT, will ease the

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<sup>284</sup> De Wet G, *Emerging from the technology colony: A view from the South*. University of Pretoria (1999) 1-2.

<sup>285</sup> Ibid.

<sup>286</sup> ‘NEPAD ICT infrastructure programme’. Available at [http://event-africa-networking.web.cern.ch/event-africa-networking/cdrom/NEPAD/NEPAD\\_ICT\\_Infrastructure\\_Brochure\\_Sept05.pdf](http://event-africa-networking.web.cern.ch/event-africa-networking/cdrom/NEPAD/NEPAD_ICT_Infrastructure_Brochure_Sept05.pdf). (Accessed 10 November, 2008). [Hereinafter referred to as NEPAD ICT Document]. Africa is the region with the lowest internet penetration in the world. Africa’s share of global internet penetration stands at 5.3%. Available at <http://www.internetworldstats.com/stats1.htm> (Accessed 10 November, 2008).

<sup>287</sup> Cappellin R, ‘International knowledge and integration networks for European integration, cohesion and enlargement’. *International Social Science Journal*. 56/180 (2004) 207.

process of collaboration on academic, leisure and business projects across the continent. Since integration also requires cooperation of interest and voluntary groups across frontiers, technology will help create a platform for enhancing such initiatives. These points are not lost on architects of African integration, hence the initiative to establish a submarine optic fibre ring around Africa coastline.<sup>288</sup>

The various submarine fibre-optic cable initiatives, aimed at improving internet connection speed and lowering phone call tariffs, have immense potentials.<sup>289</sup> In addition to this is the so-called 'African-style communication revolution', which reduces or eliminates roaming charges on mobile calls across specific African countries.<sup>290</sup> If given the necessary political backing, these private sector initiatives are capable of translating integration objectives into realities. For instance, the borderless network initiative, apart from being a convenient measure, gives full meaning to the idea of free movement of persons. Cheap and fast communication will also ease the process of business interactions across the continent. This will further stimulate cross-border trade and investment. In terms of economic development, the telecommunication sector in Africa has proved to be a major magnet of FDI. The meteoric rise of mobile phone usage has attracted major companies from Europe, Asia, Middle East and pan-African operators.<sup>291</sup> The huge investments made by these companies have contributed significantly to the economy of African countries.

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<sup>288</sup> See NEPAD ICT Document; see also 'East African Submarine Optic Fibre Project'. Available at [http://www.icglr.org/common/docs/docs\\_repository/3310eassy.pdf](http://www.icglr.org/common/docs/docs_repository/3310eassy.pdf) (Accessed 30 October 2008).

<sup>289</sup> The following are examples of such initiatives: SAT-3/SAFE; GLO-1; AWCC; SEACOM; EASSy; and TEAMS. See African Economic Outlook (2009) 90-93; see also 'Banding together'. BBC Focus on Africa (April-June 2009) 44-46.

<sup>290</sup> African Economic Outlook (2009) 101; see also <http://www.zain.com/muse/obj/lang.default/portal.view/content/About%20us/Worldwide%20Presence/Africa-13%20countries> (Accessed 25 November 2008).

<sup>291</sup> See African Economic Outlook (2009) 93-95. Between 2000 and 2007, record shows that private investment in African telecommunication rose from USD5.4 billion to USD13.5 billion. See Ibid, 96. According to the Secretary General of the International Telecommunications Union (ITU), about USD8 billion was invested in the development of ICT in Africa in 2008. Available at <http://allafrica.com/stories/200909140463.html> (Accessed 1 November 2009).

However, for ICT to efficiently play a significant role in shaping the integration process, more needs to be done. While the harmonisation of ICT policies in Africa remains the ultimate objective, it is essential to consider some preliminary measures. In order to guarantee the confidence of potential and current investors, it is essential that African governments grant more powers and autonomy to national regulatory agencies.<sup>292</sup> As Gasmi et al note, the independence of regulatory institutions should not be considered in isolation but rather as part of a broader strategy of good governance.<sup>293</sup> The independence of regulatory institutions cannot be gauged by merely observing a change in structure; instead the general environment within which they operate must conform to democratic ideals and standards.<sup>294</sup>

It is crucial that sub-regional and continental organisations partner with ICT companies on programmes which directly impact on regional integration. Cross-border initiatives such as the submarine optic fibre cables and borderless networks should bear the imprints of the aspirations of African integration. In this regard, further details should be worked out on how relevant continental and sub-regional institutions will be brought on board as partners on these projects. The partnership referred to here is not so much financial as it is a political statement which confirms technology as an indispensable driver of African integration.

While political elites and academics continue to debate endlessly on the modalities of integrating Africa, technology, particularly the initiatives highlighted above, will play a central role in creating a multi-layered and functional African community, built on innovation and effective communication.

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<sup>292</sup> See African Economic Outlook (2009) 95-96.

<sup>293</sup> Gasmi F, Noumba Um P, Recuero Vito P, 'Political accountability and regulatory performance in infrastructure industries: An empirical analysis'. *World Bank Economic Review* (2009) 20.

<sup>294</sup> Ibid.

d) *External imperatives*

The external dimension or influence on integration cannot be understated. For example, the European integration came about as a result of a geo-political reaction to what De Gaulle referred to as the 'two hegemonies': the Soviet Union and the United States of America.<sup>295</sup> In the same vein, the US provided the financial assistance for the economic reconstruction of Europe, a move which provided a much needed fillip for the integration experiment.<sup>296</sup> As Africa grapples with integrative issues in the 21<sup>st</sup> century, the influence of external actors and conditions will play a huge role in shaping this discourse. The shift in global balance of power, or what Cilliers refers to as the 'rise of the rest',<sup>297</sup> will no doubt impact on Africa. Also, the increasing relevance of the EU, especially as a model and as a global force, will provide useful and sober parallels for integration initiatives across the continent.

The (economic) rise of countries like India, China and Brazil, especially in relation to their quest for Africa's natural resources, has key implications not

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<sup>295</sup> See Hoffmann S, 'Obstinate or obsolete? The fate of the nation-states and the case of Western Europe' in Cantori & Spiegel (1970) 81.

<sup>296</sup> The Marshall Plan (known officially as the European Recovery Programme), an initiative named after US Secretary of State George Marshall, was a post World War II economic recovery plan for Europe. As Hogan puts it:

The strategic assumption behind this policy held that an integrated economic order, particularly one headed by supranational institutions, would help control German nationalism, reconcile Germany's recovery with France's economic and security concerns, and thus create a balance of power in the West sufficient to contain Soviet power in the East. The economic assumptions grew fundamentally out of the American experience at home, where a large internal economy integrated by free-market forces and central institutions of coordination and control seemed to have laid a ground work for a new era of economic and social stability. An economic United States of Europe would bring similar benefits...and in the process would realise all of their goals on the continent.

See Hogan M, *The marshall plan: America, Britain, and the reconstruction of Western Europe, 1947-1952*. Cambridge: Cambridge University Press (1987) 27.

<sup>297</sup> See Cilliers J, *Africa in the new world: How global and domestic developments will impact by 2025*. Pretoria: Institute of Security Studies (2008) 18. See also Zakariah F, *The post-American world*. New York: W.W Norton (2009). This reality is poignantly painted in a report published by the US National Intelligence Council (2008) titled - *Global trends 2025: A transformed world – The national intelligence council's 2025 project*. The report, amongst other provisions, predicts that the rules of the international system and global architecture would change as a result of the emergence of new players like Brazil, India, Russia and China. Available at [http://www.dni.gov/nic/PDF\\_2025/2025\\_Global\\_Trends\\_Final\\_Report.pdf](http://www.dni.gov/nic/PDF_2025/2025_Global_Trends_Final_Report.pdf) (Accessed 25 November 2008).

only for individual African countries but also for the continent as a whole. The volume of investment by the so-called ‘non-traditional financiers’, of which China and India are key role players, illuminates the potential for infrastructure development necessary for regional integration.<sup>298</sup> According to a World Bank report (2008), the sizeable investments of these Asian giants in infrastructural projects, helps to fill the gap of annual infrastructure deficit estimated at US\$22 billion.<sup>299</sup> Analysts have viewed that this changing investment landscape portends a replacement of the (in) famous ‘Washington consensus’ with an equally suspicious ‘Beijing consensus’.<sup>300</sup> While the former hinges the deployment of aid to democratic governance, the latter accentuates non-interference in the domestic affairs of states.<sup>301</sup> In a continent where democratic governance is an exception rather than the norm, the ‘Beijing consensus’ represents not only a boost for autocrats but also a de-emphasis of the centrality of democracy and rule of law in the integration process.

#### *e) Other imperatives*

As stated previously, the foregoing discussion is not an exhaustive outline of African integration issues, since more will be discussed in subsequent chapters; however, it represents some of the fundamental issues that will shape this discourse. African integration draws a lot of scepticism, notably as a result of issues such as absence of democratic practise, levels of intra-African trade and the smallness of African markets. The experiences of past and present experiments should serve as a useful navigation tool (This will be discussed in the next chapter). Obsession with theories, including debates over their practicability in the African context, has in a way eclipsed the focus on devising other strategies for integrating the continent. As Schoeman, for example

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<sup>298</sup> China’s investment in Africa peaked at USD8 billion in 2006, an amount four times that of India, and dropped to USD5 billion in 2007. See Foster V, Butterfield W, Chen C & Pushak N, *Building bridges: China’s role as infrastructure financier for Africa*. World Bank (2008) 52. Available at [http://siteresources.worldbank.org/INTAFRICA/Resources/Building\\_Bridges\\_Master\\_Version\\_wo-Embg\\_with\\_cover.pdf](http://siteresources.worldbank.org/INTAFRICA/Resources/Building_Bridges_Master_Version_wo-Embg_with_cover.pdf) (Accessed 20 November 2008); see also Cilliers (2008) 24-25.

<sup>299</sup> Foster et al (2008) 23.

<sup>300</sup> Alden C, ‘China in Africa’. *African Security Review*. 17/1 (2008) 122.

<sup>301</sup> Ibid; see also Foster et al (2008) 6.

observes, the emphasis should shift from the volume of intra-African transactions (quantity) to the beneficial value of such transaction (quality).<sup>302</sup> Illustratively, the emphasis could be on strengthening the position of Africa in international forums by articulating a common agenda on issues concerning the welfare of the continent.<sup>303</sup> Also, regional powers can play an important role in the field of human resources by sending experts to countries in shortage of necessary skills. Such cooperation will help foster cooperation between African states.

## 2.4 Summary

The search for alternatives to guarantee continental peace and economic prosperity in Europe after the Second World War gave birth to regional integration and its different theories. At the core of regional integration - be it in the developed or the developing world - lies the need for peace, security and meaningful development. The developmental feature of regional integration, as experienced in Europe, provides a concrete proof for its adoption.

This chapter provides a critical analysis of regional integration through a theoretical, multi-disciplinary perspective. Apart from considering the political theories of integration, this chapter also highlights the legal theories of integration, especially their central role in the integration process. Also, the compatibility of sovereignty and regional integration is considered. It was observed that the two are not mutually exclusive because the need for addressing transnational imperatives will require some sort of balancing and adaptation.

Furthermore, this chapter explores integration through the lens of African politics and history. The pan-Africanism root of integration is discussed, including how it shaped the different theoretical perspectives on the *modus*

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<sup>302</sup> Schoeman M, 'Imagining a community – The African Union as an emerging security community'. *Strategic Review for Southern Africa*. XXIV/1 (2002) 13.

<sup>303</sup> *Ibid*, 14.

*operandi* of integration in Africa. Lastly, this chapter argues that in spite of the utilitarian feature of integration, the continent should chart its own integration trajectory, based on experiences and peculiarities. The next chapter will examine some of the experiments of supranationalism within the African context.