

CHAPTER 3

Supranationalism in the African context: A critical look at past and present attempts at building supranational organisations in Africa

Experience seems to most of us to lead to conclusions, but empiricism has sworn never to draw from them.

George Santayana³⁰⁴

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³⁰⁴ Available at http://www.brainyquote.com/quotes/authors/g/george_santayana.html (Accessed 20 March 2009).

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3.1 Introduction

Ever since the colonial era, attempts have been made, throughout the various regions of Africa, at building supranational³⁰⁵ units chiefly for both administrative and legal convenience. Examples of such attempts include the Federation of Rhodesia and Nyasaland, the East African High Commission and the Federations in former French West and Equatorial Africa, which were all attempts at forging a supranational nation state.

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

³⁰⁵ See Chapter 2, section 2.2.2 for a discussion on the concept of supranationalism.

It is against this background that this chapter aims at investigating past and present attempts at supranationalism on the continent, the successes and failures of such experiments and the lessons to be learnt from them. As Africa embarks on the journey of solidifying its unity through the establishment of leviathan continental institutions, efforts should be geared towards building on the experiences of past and present experiments at the sub-regional level. Such experiments offer instructive lessons as they are rooted in similar historical and social contexts.

Thus, this chapter begins with an explanatory analysis of the methodology employed in identifying supranationalism in Africa. It is then followed by an outline of supranational attempts within Africa. It concludes by discussing some of the common challenges, as evident in the foregoing analysis, facing (supranationalism) integration in Africa.

3.2 Methodology employed to identifying elements of supranationalism in Africa

The approach that will be adopted in the identification and analysis of supranational elements in Africa is based on the features identified in the previous chapter. As already indicated, supranationalism is a politico-legal concept, which embodies, but is not limited to, the following core elements: decisional autonomy (in particular, majority voting rule) and the binding effect of organisation laws.³⁰⁶

The terminal point or ultimate objective of an integration process is either expressly stipulated in a constitutive treaty or implied by the nature of powers conferred on such an organisation by its member states.³⁰⁷ As previously highlighted, traditional international law regards states as the primary structure of global architecture. Therefore, any organisation created by states must

³⁰⁶ Weiler (1981) 271; Hay (1966) 69; Pescatore (1974) 51-52.

³⁰⁷ Even where such powers are not clearly stipulated, express or implied, at the outset, there may be an evolutionary process, albeit with the consent of member states.

operate within the ambit of state or national influence. This, however, does not impinge on the legal personality of such organisation.

Legal personality is the concept which defines ‘the actual attribution of rights and/or duties (of international organisations) on the international plane’.³⁰⁸ As noted above, such attributes are expressly or tacitly stipulated in the constituent treaty.³⁰⁹ The constituent treaty will for example indicate the procedural capacity of an international organisation to make treaties, enforce its decisions and enter into agreements with other entities.³¹⁰ Similarly, such powers could be inferred from the powers and objectives of the particular organisation.

The *Reparation for Injuries Suffered in the Service of the United Nations* case is the *locus classicus* in this regard. In this case, the International Court of Justice (ICJ) had to decide whether the UN possesses the capacity to bring an international claim for reparation against a responsible government for injuries suffered by the organisation or its staff.³¹¹ After examining the UN Charter, especially the provisions of Articles 104 and 105³¹² the Court held that the functions entrusted to the organisation is an indication that the UN has the competence and autonomy to fulfil such tasks.³¹³ It is important to note that the extent of the functions of a particular organisation determines the level of its legal personality. For example, an organisation such as the EU has a more extensive legal personality than the UN or the AU. This is because the EU, unlike the latter, has moved from the minimal threshold of inter-state cooperation to the creation of institutions parallel to, and/or superseding the

³⁰⁸ Shaw M, *International law*. Cambridge: Cambridge University Press (1997) 194.

³⁰⁹ Ibid, 909.

³¹⁰ Ibid, 191.

³¹¹ International Court of Justice Report, 1949, 174.

³¹² Article 104 states that ‘[The UN] shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes’. Article 105(1) provides that ‘the organization shall enjoy in the territory of each of its member such privileges and immunities that are necessary for the fulfilment of its purposes’.

³¹³ I.C.J Rep, 179, 185.

jurisdiction of its member states in relation to agreed matters of common interests.

It must, however, be emphasised that the discourse on supranationalism should not begin from an ‘all-or-nothing’ perspective. Any enquiry into the presence, or lack thereof, of supranational elements should not only be directed at identifying overarching supranational features but in addition, engage in highlighting the hybridity or juxtaposition of elements – intergovernmental and supranational.

The reality is that even when an organisation possesses all the elements of supranationalism, there are still some embedded features of intergovernmentalism. The EU, for example is designated as a supranational organisation, however, one of its primary decision making organs, the Council of European Union, consists of national ministers, who primarily champion the agenda of their governments.³¹⁴ The Council remains the apex decision-making body on matters relating to foreign policy, justice and home affairs.³¹⁵ Also, the UN, an archetypal intergovernmental organisation, exercises supranational powers especially in relation to voting rules in the General Assembly and sometimes in the Security Council.³¹⁶

Although most integration bodies in Africa operate on an intergovernmental level, this chapter will adopt a methodological approach of identifying and analysing supranational elements embedded in some of these organisations.

³¹⁴ Dashwood A, ‘States in the European Union’. *European Law Review*. 23 (1998) 205-206.

³¹⁵ Ibid.

³¹⁶ Weiler (1981) 305.

3.3 Overview of selected supranational attempts in Africa

3.3.1 Economic Community of West African States (ECOWAS)

As mentioned in the previous chapter, the earliest manifestation of pan-African integration can be traced to West Africa.³¹⁷ Intertwined with the nationalist struggle against colonialism, activists from (British) West Africa, as early as the mid-nineteenth century, advocated for regional cooperation through either a federal arrangement or the establishment of common institutions such as the Court of Appeal and a university.³¹⁸

Decolonisation in the early 1960s further intensified efforts at integration mainly by political elite, a marked shift from the previous advocacy by non-state actors.³¹⁹ Concrete attempts to transform the 'idea' of West Africa into an institutional form started in 1972 when the leaders of Nigeria and Togo, Generals Gowon and Eyadema respectively, signed a bilateral Treaty aimed as a launch pad for wider sub-regional cooperation.³²⁰ On 28 May 1975, fifteen West African states converged in Lagos to sign the Treaty establishing ECOWAS.³²¹ The economic focus of the 1975 Treaty can be gleaned from some of its objectives which include the elimination of customs duties, free movement of persons, capital, and services, and the harmonisation of agricultural and industrial policies.³²²

³¹⁷ Thompson (1969) 28; Kufuor K, *The institutional transformation of the Economic Community of West African States*. London: Ashgate (2006) 19-21; Asante S, *The Political economy of regionalism in Africa: A decade of the Economic Community of West African States (ECOWAS)*. New York: Praeger (1986) 45-47.

³¹⁸ Thompson (1969) 28; Kufuor (2006) 19-20; Asante (1986) 45-47.

³¹⁹ Kufuor (2006) 20-21.

³²⁰ Asante (1986) 55.

³²¹ These states include Benin, Burkina Faso (formerly Upper Volta), Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. Cape Verde acceded to the ECOWAS Treaty in 1977. In 1999/2000, Mauritania withdrew its membership from ECOWAS.

³²² The 1975 ECOWAS Treaty, Art. 2

The stark reality of a fast-changing global political and economic order,³²³ especially the realisation that the 1975 Treaty proved inadequate at deepening regional integration led to the establishment, in May 1990, of a Committee of Eminent Persons to review the 1975 Treaty.³²⁴ Part of the recommendation of the Committee was the need to place more emphasis on supranationalism within ECOWAS, especially the vesting of more powers on the organs of the community.³²⁵ The Committee's report thus formed the basis of the 1993 revised Treaty of ECOWAS.

The revised Treaty made provision for the following institutions:³²⁶

- Authority of Heads of State and Government (Authority)
- Council of Ministers
- Community Parliament
- Economic and Social Council
- Community Court of Justice
- Executive Secretariat
- Fund for Cooperation, Compensation and Development and
- Specialised Technical Commissions

To underscore its mission of institutional transformation, the Authority, in June 2006, approved the transformation of the Executive Secretariat into a nine-

³²³ Kufuor identify the following as part of the factors that necessitated the move towards supranationalism in ECOWAS:

- the need for institutional efficiency
- search for political legitimacy by ECOWAS leaders
- ideological change within West Africa
- stronger regional security architecture and
- the need to be a major player in international trade.

See Kufuor (2006) 40-46.

³²⁴ See generally *Review of the ECOWAS Treaty: Final Report of the Committee of Eminent Persons* in Kufuor (2006) 132-170.

³²⁵ *Ibid*, 146.

³²⁶ The 1993 revised ECOWAS Treaty, art. 6.

member Commission with a President, a Vice-President and seven Commissioners.³²⁷

Having experienced some of Africa's worst armed conflicts, ECOWAS found it important to put in place a supranational security mechanism.³²⁸ In this regard, the security architecture of ECOWAS has been adjudged as one of the best on the continent.³²⁹ The ECOWAS has successfully intervened in hot-spots such as Liberia, Sierra Leone, and Guinea Bissau.³³⁰ Learning from the past mistakes of its interventions across the sub-region, ECOWAS has established an overarching, all-inclusive security mechanism which consists of Mediation and Security Council, Defence and Security Commission, and a Council of Elders.³³¹ The Mediation and Security Council is made up of ten members, and decisions are made by a two-thirds majority of six members.³³² In addition, civil society is encouraged to contribute to the organisation's early warning system mechanism.³³³

3.3.2 Southern Africa Customs Union (SACU)

SACU³³⁴ was established in 1910, thus making it the world's oldest Customs Union.³³⁵ Its origins dates back to the 1889 Customs Union Convention entered into between the British Colony of Cape of Good Hope and the Orange Free State Boer Republic.³³⁶ The 1910 agreement extended membership of the organisation to British High Commission Territories (HCT) of Basutoland (now

³²⁷ See the ECOWAS Newsletter, issue 1 of October 2006.

³²⁸ According to Adebajo, the three civil conflicts in Liberia, Sierra Leone and Guinea Bissau claimed over 250,000 lives and over 1.2 million refugees. See Adebajo A, 'The curse of Berlin: Africa's security dilemmas'. *IPG* Vol.4 (2005) 90.

³²⁹ Ibid; See also Cilliers J, *The African standby force: An update on progress*. Pretoria: Institute of Security Studies Paper 160 (2008) 13-14.

³³⁰ <http://www.sec.ecowas.int/sitecedeado/english/peace.htm> (Accessed 20 January 2009).

³³¹ Adebajo (2005) 90; see also <http://www.sec.ecowas.int/sitecedeado/english/peace.htm> (Accessed 20 May 2009).

³³² Ibid.

³³³ Ibid.

³³⁴ It consists of Botswana, Lesotho, Namibia, Swaziland and South Africa. The member states except for South Africa are commonly referred to as the BLNS states.

³³⁵ See <http://www.sacu.int> (Accessed 30 November 2008)

³³⁶ Ibid.

Lesotho), Bechuanaland (now Botswana) and Swaziland. Namibia (then South West Africa) was a *de facto* member because it was then administered by South Africa.³³⁷ The underlying idea behind this arrangement was to incorporate the HCTs into South Africa.³³⁸

The 1910 agreement tasked SACU with supranational duties by providing for the free movement of manufactured products, a common external tariff on all goods imported into the Union and a revenue sharing formula for the distribution of customs and excise.³³⁹ Under this agreement, South Africa was to receive 98.7% of the joint revenue, Bechuanaland (0.27%), Basutoland (0.88%) and Swaziland (0.15%).³⁴⁰ Another feature of SACU is the 1974 Rand Monetary Agreement (RMA), which made the rand the only legal tender within SACU.³⁴¹ However, Botswana pulled out of the arrangement in 1975. To address the concerns of other member states, especially in relation to independent monetary control, the agreement was amended in 1986 by giving more autonomy to Lesotho and Swaziland.³⁴²

Growing concerns about certain policies emanating from South Africa, which largely resulted in trade diversion³⁴³ and subsequent negative impact on the GDP of other member states, led to the replacement of the 1910 agreement by the 1969 agreement.³⁴⁴ The 1969 agreement attempted to address the major source of contention, namely a revenue sharing formula,³⁴⁵ by making provision

³³⁷ Ibid.

³³⁸ The electoral victory of the National Party in South Africa in 1948 signalled the impossibility of such move. See Gibb R, 'Regional integration in post-Apartheid Southern Africa: The case of renegotiating the Southern African Customs Union'. *Journal of Southern African Studies*. 23/1 (1997) 75-76.

³³⁹ Ibid, see also Gibb (1997) 75.

³⁴⁰ Gibb (1997) 75.

³⁴¹ AU & ECA (2008) 185.

³⁴² Ibid.

³⁴³ According to Gibb, trade diversion 'occurs when a customs union adopts a protectionist external trade regime forcing member states to displace imports of efficiently produced goods from countries outside the trading arrangement with more expensive imports from partner countries'. See Ibid, 78.

³⁴⁴ Ibid, 75.

³⁴⁵ The revenue derived from SACU's common external tariff represents a significant source of economic development in the BLNS countries. According Ngwenya, it makes up approximately 50% of Swaziland's

for the inclusion of excise duties in the common revenue pool.³⁴⁶ This revenue pool is divided among the member states according to annual imports, production and consumption of dutiable goods.³⁴⁷ Based on this arrangement, the revenue share of member states, except for South Africa, is further enhanced by an annual 42% compensation allowance.³⁴⁸

These measures did little to change the *status quo* mainly because South Africa still retained the sole decision-making power over policies affecting the customs union arrangement.³⁴⁹ South Africa's transition to democratic governance and the independence of Namibia set the tone for a renewed engagement on SACU policies.³⁵⁰ These negotiations gave birth to the 2002 SACU Agreement. To highlight the importance of joint decision-making, the new agreement created an independent administrative body (the Secretariat) to oversee SACU.³⁵¹ Other independent institutions include the SACU Council of Ministers, the Commission, National Bodies, Tariff Board, Technical Liaison Committees and a Tribunal.³⁵² On the contentious issue of revenue sharing, the new agreement provided for a revised formula, which consists of customs, excise and development components.³⁵³

Compared to other sub-regional entities, SACU has achieved far-reaching and substantial achievements such as the harmonisation of policies on competition, investment and intellectual property rights.³⁵⁴ In addition, the organisation also

and Lesotho's budget revenues, and 30% and 17% of the budget revenues of Namibia and Botswana. See Ngwenya S, 'Fair deal: The new SACU draft agreement', *Sisebenze Sonke*. 4 (2002) 26.

³⁴⁶ Gibb (1997) 77; see also <http://www.sacu.int>

³⁴⁷ Gibb (1997) 77.

³⁴⁸ Ibid; <http://www.sacu.int>

³⁴⁹ <http://www.sacu.int>

³⁵⁰ Ibid, see also Alden C & Soko M, 'South Africa's economic relations with Africa: Hegemony and its discontents'. *Journal of Modern African Studies*. 43/3 (2005) 370-371

³⁵¹ 2002 SACU Agreement, art. 3.

³⁵² Ibid, art. 7.

³⁵³ <http://www.sacu.int>

³⁵⁴ Draper P et al, 'SACU, regional integration and the overlap issue in southern Africa: From spaghetti to cannelloni'. *Trade Policy Report No. 15*. South African Institute of International Affairs (2007) 18.

has a relatively successful framework for engaging with external parties such as the EU and the United States of America.³⁵⁵

3.3.3 The Senegambia Confederation

The inclusion of the Senegambia Confederation in a discussion on supranationalism is instructive, considering the fact that it was the only political union between an independent French (Senegal) and English (The Gambia) speaking African country.³⁵⁶ This bold experiment attempted to move beyond the oft-prescribed idea of regionalism by reverting to a pre-colonial format.

The Gambia serves as a prime example and permanent landmark of the arbitrary demarcation of African boundaries, as it is almost surrounded by its much larger neighbour, Senegal except on its seaward margin.³⁵⁷ The question of arbitrary delineation of African boundaries led to the adoption of the *Uti possidetis* principle by the OAU. This principle simply implies that colonial boundaries should remain unchanged.³⁵⁸ This was a pragmatic approach aimed at preventing chaos. However, it failed to stem the tide of border conflicts between African states.³⁵⁹

Unlike other parts of Africa where disputes over colonial boundaries resulted in bloody skirmishes, both Senegal and Gambia jointly resolved to de-emphasise their colonial boundaries by creating a Confederation. While the abortive 1981 coup in The Gambia could be identified as the immediate reason for its establishment, the origins of the Confederation dates back to the colonial era.³⁶⁰

³⁵⁵ Ibid.

³⁵⁶ Hughes A & Lewis J, 'Beyond francophonie? The Senegambia Confederation in retrospect' in Bach D & Kirk-Greene ed. *State and society in francophone Africa since independence*. Oxford: St. Martin (1995) 228.

³⁵⁷ Robson P, 'The problem of Senegambia'. *The Journal of Modern African Studies*. 3/3 (1965) 395.

³⁵⁸ In the border case between Mali and Burkina Faso, the ICJ held that the *uti possidetis* rule freezes the territorial title and only allows self-determination within the colonial boundaries. See *Frontier Dispute* case 1986 ICJ Rep 554.

³⁵⁹ See e.g. Oyeboode (2003) 24-25.

³⁶⁰ Richmond E, 'Senegambia and confederation: History, expectations and disillusion.' *Journal of Third World Studies*. 10/2 (1993) 176.

Senegambia was the name given to the political unit created by an agreement between the colonial British and French authorities in the 18th century.³⁶¹

The twilight of colonialism brought about a revival of discussions on closer cooperation between the two nations. Robson³⁶² identified the three main reasons for the resurgence of talks between both countries: strong doubts about Gambia's economic viability; the disadvantageous economic frontiers between both countries; and political (security) reasons. Series of discussions were held in order to iron out the modalities of establishing closer ties between both countries. Recommendations ranged from the establishing of a loose federation (confederation), functional cooperation and the so-called 'Treaty of Association'. The Treaty of Association led to the creation of a Senegalo-Gambian Secretariat (1967) and the Gambian River Basin Development Organisation (1978).³⁶³

As a result of the abortive coup of July 1981 in The Gambia which was quelled by Senegalese army,³⁶⁴ coupled with the need to address internal security and external aggression, the leaders of both countries, Dawda Jawara (The Gambia) and Abdou Diouf (Senegal), decided to form the Senegambia Confederation in 1982.

Although the treaty of the confederation reaffirmed the absolute sovereignty of both countries,³⁶⁵ attempts were made to establish institutions which had some authority over the member states.

³⁶¹ Ibid.

³⁶² Robson (1965)395.

³⁶³ Hughes & Lewis (1995) 229.

³⁶⁴ This intervention was based on the 1965 defense pact signed at Gambian independence. See Hughes & Lewis (1995) 231.

³⁶⁵ See Clause 2 of the Confederation Treaty. It further outlined the objectives of the confederation. It include:

- The integration of the Armed and security forces of both nations.
- The development of an economic and monetary union.
- Coordination of policies in the field of external relations and communication.
- Creation of joint institutions

a. The executive arm

The treaty provided for the offices of the president and vice president.³⁶⁶ Under this arrangement, the Senegalese head of state was to be the president of the confederation and the Gambian president as the vice president. This decision was based on the fact that Senegal was the bigger partner. Decisions were to be made by agreement.³⁶⁷ National parliaments of both states were given extensive powers to determine and delegate relevant subjects to be discussed by the executive and the Assembly.

b. The judicial arm

Initially, the power to resolve disputes were in the hands of the Confederal head of state,³⁶⁸ in 1987, an ad-hoc Confederal Court of Appeal was established.³⁶⁹ It was to be presided over by a judge from a neutral country.³⁷⁰

c. The legislative arm

The 60-member Confederal parliament³⁷¹ (40 Senegalese and 20 Gambians) and the Council of Ministers³⁷² (5 Senegalese and 4 Gambians) met twice a year. The members of the parliament were elected indirectly by the national parliaments of both countries. In order to allay the concerns of Gambia, especially in respect of Senegal's domination of the Confederation, a mechanism was devised to ensure that a majority vote required at least five Gambians.³⁷³ In addition, a Gambian was made the speaker of the Assembly.

3.3.3.1 The rise and fall of the confederation

³⁶⁶ Ibid, Section 2.

³⁶⁷ Ibid, Clause 7.

³⁶⁸ Ibid, Clause 15.

³⁶⁹ Hugh & Lewis (1995) 235.

³⁷⁰ Ibid.

³⁷¹ Confederation Treaty, Section 4.

³⁷² Ibid, Section 3.

³⁷³ Hughes & Lewis (1995) 236.

If one were to analyse the confederation through the prism of security, which was one of the primary reasons behind the founding of the confederation, the final assessment will be unarguably positive. The confederation could be regarded as an answer to the numerous security threats bedeviling both countries. Senegal for example, had to deal with Islamic fundamentalists, ethnic secessionists from the lower Casamance region, and the alleged influences of Nkrumah, Sekou Toure and later Muammar Ghaddafi on anti-government elements.³⁷⁴ The Gambia on the other hand also had to contend with dissidents believed to be supported by Libya and Guinea Bissau.³⁷⁵

It was against this backdrop that defence protocols were ratified to create a 'Confederal Brigade'. The Confederal army battalion was stationed in the six security zones of the confederation. While this security arrangement was successful in stemming the activities of radical elements against both countries, some Gambians viewed the presence of Senegalese army as an occupation of The Gambia.³⁷⁶

On the economic front, both countries differed on the creation of a customs union. The Gambia reckoned that a customs union would deprive it of at least 25% of its total tax revenues.³⁷⁷ A way out of this would have been an agreement based on a specially negotiated allocation of revenue and the development of transport and industries in the Gambia.³⁷⁸ Both countries could, however, not arrive at a compromise arrangement as at the time of the dissolution of the confederation.³⁷⁹ In respect of creating a monetary union, The Gambia had in principle agreed to join the franc zone - a monetary arrangement which already included Senegal.³⁸⁰

³⁷⁴ Ibid, 230.

³⁷⁵ Ibid, 231.

³⁷⁶ Ibid.

³⁷⁷ Ibid, 237.

³⁷⁸ Robson P, 'Regional integration and the crisis in sub-saharan Africa'. *The Journal of Modern African Studies*. 23/4 (1985) 613.

³⁷⁹ Ibid.

³⁸⁰ Hugh & Lewis (1995) 238.

In relation to foreign policy, both countries were free to pursue individual foreign policies with the long-term intention of coordinating decisions on international issues.³⁸¹

The confederation was dissolved in 1989 by the then Senegalese president, Abdou Diouf admitting in hindsight that ‘privileged relationship’ rather than ‘full integration’ was the more feasible option.³⁸² This dissolution put a halt to what would have been a classical experiment and model of how Africa as a continent could tread the thorny path of regional integration. It could have for example attempted to address the questions about social, linguistic, economic and political divisions that exist on the African continent and within individual states.

Furthermore, it could have exposed the centrality of democratic values and norms in the process of regional integration. It would have been interesting to see how the Confederation would elect the members of the legislature, the influence of opposition parties, the durability of its democratic institutions, whether a bi-jural system would have evolved, the impact of the judgments of the Confederal Court of Appeal, the operations of the Confederal bilingual institutions and more importantly, how it will feed into the larger African framework.

While various events have overtaken the dissolution of the Confederation - the 1994 coup in The Gambia, the election of the veteran opposition leader, Abdoulaye Wade in Senegal - it is instructive to closely scrutinise the elements that led to its dissolution (this will be done below). Moreover, Senegal these days has channelled its energies into promoting continental integration initiatives rather than reviving the Confederation while the Gambia has plunged into an authoritarian state. These developments have in more ways than one doused the flames of building a supranational entity between the two states.

³⁸¹ Ibid.

³⁸² Ibid.

3.3.4 The East African Community

What started as a colonial enterprise and later metamorphosed, in spite of numerous obstacles, into a modern day model of regional integration, the EAC is an archetypal example of building integration on similar linguistic, cultural and social pillars.³⁸³ The discussion on the East African integration will be divided into three phases: the colonial period (1947-1961); the post-colonial period until its dissolution in 1977; and finally, its revival (1999 -present).

3.3.4.1 As it was in the beginning (1947-1961)

As stated earlier, East African integration dates back to the attempt by the British colonial authority to build an economic bloc and at the same time secure greater political control over the region.³⁸⁴ Prior to the 1926 Governors' Conference, which laid a groundwork for future areas of cooperation, the region had witnessed the establishment of supranational institutions such as the Kenya-Uganda Railway,³⁸⁵ Court of Appeal for East Africa (1902), common currency (1905), a Postal Union (1917) and a customs Union (1917).³⁸⁶

After a series of recommendations and reports highlighting the feasibility of closer integration in the region,³⁸⁷ the East Africa High Commission (EAHC)³⁸⁸ was officially established in 1948. The headquarters of the EAHC was situated in Nairobi, Kenya. The Commission comprised the Governors of Kenya, Tangayika (later Tanzania) and Uganda, the administrator, a Commissioner for

³⁸³ See e.g. Mazzeo D, 'Problems of regional cooperation in east Africa' in Fredland R & Potholm C (eds) *Integration and disintegration in east Africa*. Lanham MD: University Press of America (1980) 82.

³⁸⁴ Ojeinda T, 'The East African Court of Justice in the re-established East African Community: Institutional structure and function in the integration process'. *East African Journal of Peace & Human Rights*. 11/2 (2005) 221-222.

³⁸⁵ The construction of this railway in 1894 is commonly regarded as the start of integration process in the region. See Odhiambo W, 'The East African Customs Union and its Implications' in Ajulu R (ed), *The Making of a Region: The revival of the East African Community*. Midrand, South Africa: Institute for Global Dialogue (2005) 214.

³⁸⁶ Ojeinda (2005) 222.

³⁸⁷ Delupis I, *The East African Community and common market*. London: Longman (1970) 19-26

³⁸⁸ Delupis observe that the EAHC was not an international organisation *strictu sensu* because its members were colonial entities. See Delupis (1970) 31.

Transport, a Postmaster General and a Legal Secretary. The Legislative Assembly, with the consent of the High Commission, had the power to enact laws for the three territories.³⁸⁹ The activities of the High Commission covered a whole range of fields such as aviation, telecommunications, income tax, custom and excise, science and research, defence and education.

3.3.4.2 The post-colonial adventure (1967-1977)

Being a colonial construct, the EAHC's legitimacy was largely questioned by the majority of East Africans. They, in particular the leading political elites in the three territories of the region, questioned the composition of the commission, the loyalty of its members and its detachment from the realities on the ground.³⁹⁰ The sharp disapproval of the EAHC was in addition fuelled by the quest for independence in the three territories. Political elites viewed the Commission as a vestige of the British Empire and were determined to wrest the control of both their territories and the organisation from the colonialists.

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

The EASCO differed from its predecessor in a number of ways. Apart from the fact that it was established by an agreement among the three East African governments, the constitution also provided that the executive will be responsible to the three East African governments.³⁹¹ Unlike its predecessor, the EASCO reflected an African outlook by ensuring that East Africans were

³⁸⁹ Some of the important Acts enacted by the Assembly include the Railways and Harbours Administration Act, Customs Management Act, Income Tax Management Act and Acts setting up institutions of higher learning in East Africa. See Banfield J, 'The structure and administration of the East African Common Services Organisation' in Leys C & Robson P (eds) *Federation in East Africa: Opportunities and problems*. Oxford: Oxford University Press (1965) 32.

³⁹⁰ Ibid, 34.

³⁹¹ Ibid.

placed in leadership positions. The Central Legislative Assembly for example, had more East Africans among its membership.³⁹²

The EASCO served as a veritable platform for enhancing cooperation among the territories. The political elites of the territories viewed the independence of their respective territories as the first step, followed by the creation of a Federal East African state. In 1963, the political leaders of the East African states - Jomo Kenyatta (Kenya), Julius Nyerere (Tangayika)³⁹³ and Milton Obote (Uganda) - signed a declaration of federation.³⁹⁴ The declaration, amongst other provisions, aimed at establishing a Federation of East Africa.³⁹⁵

Pursuant to endowing the organisation with more powers and based on the recommendations of the Phillip Commission, the East African Community Treaty was signed in Kampala, Uganda on 6 June 1967 and was inaugurated in Arusha on 1 December, 1967. The East African Community (EAC) incorporated the EASCO. In terms of the institutional machinery, there was a major change in terms of the appointment of the members of the Legislative Assembly. Unlike the EASCO, where members of the Legislative Assembly were elected through a system of direct election by state legislatures, member states were now given the authority to select members of the Assembly.³⁹⁶ This act stifled the performance of the Assembly since the new members' loyalties lied with the national powers and thus prevented them from being critical of the national authorities.³⁹⁷ The Common Market Tribunal, the Court of Appeal for East Africa and the East African Industrial Court jointly held the judicial powers.³⁹⁸

³⁹² Banfield (1965) 36-7; see also Springer A, 'Community chronology' in Fredland & Potholm (1980) 15.

³⁹³ In 1964, Tangayika and Zanzibar united to form Tanzania.

³⁹⁴ See 'The Federation Declaration' of 5 June, 1963.

³⁹⁵ As a result of Uganda's stiff resistance to surrendering sovereignty in respect of citizenship and foreign affairs, the idea of a political union was deemed no longer feasible. A major consequence of this was the 1965 decision to dismantle the East African Currency Board thus introducing separate currencies in the three member states. See Delupis (1970) 49-50, 53.

³⁹⁶ Springer (1980) 22.

³⁹⁷ Ibid.

³⁹⁸ The Tribunal had the power to hear cases relating to the alleged violations of the Common Market and also giving advisory opinion to the Common Market Council. The Industrial Court could only rule on

If the signing of the Declaration of Federation marked a watershed moment, the inauguration of the EAC was largely seen as the concretisation of the historical cooperation among the three regions.³⁹⁹

The EAC inherited the organisational structure of the EASCO. It functioned through its organs:⁴⁰⁰ the East African Authority; the East African Legislative Assembly; the East African Ministers; the Tribunals and the East African Development Bank. The EAC also operated the following Common Services: the East African Highway Cooperation (EAAC), the East African Posts and Telecommunications Cooperation (EAP&TC), the East African Railways Cooperation (EARC) and the East African Harbours Cooperation (EAHC).

Alongside the European Community, it was widely acclaimed as one of the best experiments in regional cooperation. One would have expected that the shared values of the member states should be sufficient to hold the organisation together. As Mazzeo rightly pointed out, a multiplicity of factors (political and economic) contributed directly and indirectly to the dissolution of the community.⁴⁰¹ The disbanding of the East African Currency Board, a year after the signing of the EAC, was seen as the first ominous development in the long road towards the eventual dissolution of the community.⁴⁰² This particular act ensured that the member states effectively removed the idea of a monetary union from the radar screen of the community.⁴⁰³

3.3.4.3 A twenty-first century attempt (1999 - present)

disputes of industrial nature while the jurisdictional competence of the Court of Appeal was determined by the national laws. See *Ibid*, 23.

³⁹⁹ Delupis (1970) 52.

⁴⁰⁰ Treaty for East African Cooperation (1967), art. 3.

⁴⁰¹ Mazzeo D, 'The experience of the East African Community: Implications for the theory and practice of regional cooperation in Africa'. In Mazzeo D (ed) *African regional organisations*. Cambridge: Cambridge University Press (1984) 151.

⁴⁰² Mugomba A, 'Regional organisations and African underdevelopment: The Collapse of the East African Community'. *The Journal of Modern African Studies*. Vol.16/2 (1978) 264; see also Odhiambo (2005) 215

⁴⁰³ Odhiambo (2005) 215

The revival of the EAC, after its demise in 1977, has its origin in article 14.02 of the Mediation Agreement of 1984. In terms of this agreement, three heads of state (Kenya, Tanzania and Uganda) agreed to 'explore areas of future co-operation and to make concrete arrangement for such co-operation'.⁴⁰⁴ The preparatory work for the re-establishment of the EAC began in 1993, when the three heads of state signed the Agreement for the Establishment of the Permanent Tripartite Commission for East African Co-operation. The Treaty establishing the East African Community was signed in Arusha on 30 November 1999. The Treaty entered into force in 2000. Article 9 of the EAC Treaty outlines the following as the institutions of the community: the Summit, the Council, the East African Court of Justice, the East African Legislative Assembly, the Secretariat, the Sectoral Committees and the Coordination Committees.⁴⁰⁵ In a milestone development, Burundi and Rwanda became members of the EAC on 1 July 2007.

In order to prevent the pitfalls of the past, the preamble of the Treaty identified the following as the reasons for the dissolution of the old EAC:⁴⁰⁶ lack of strong political will; lack of private sector and civil society participation; disproportionate sharing of benefits among partner states and the inability to address this. The objectives of the EAC are, amongst other provisions:⁴⁰⁷

- To establish a Customs Union (this was launched in 2005)
- a Common Market (expected to be operational by 2010)
- a Monetary Union (2012)
- And ultimately, a Political Federation.

⁴⁰⁴ Available at <http://www.eac.int/history.htm> (Accessed on the 12 March 2008).

⁴⁰⁵ See the East African Community Treaty – 1999. Available <http://www.eac.int/documents/EAC%20Treaty.pdf> (Accessed 12 March 2008).

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid, art. 5 of the EAC Treaty.

In line with the goal of establishing a political federation, a three-year revolving presidency shall be established by 2011, followed by the election of a president for the entire federation by 2013.⁴⁰⁸

Unlike the situation in the old EAC, where there was an ideological polarisation, all the countries in the new EAC - including the two new members - have similar economic policies. The IMF/World Bank driven Structural Adjustment Programme (SAP) not only placed member states on the path of economic liberalisation, it also fostered improvements in the economy of member states.⁴⁰⁹

In order to avert the mistakes of the past vis-à-vis the skewed benefits in favour of Kenya, the Customs Union Protocol provides for duty free movement of all exports from Tanzania and Uganda into Kenya.⁴¹⁰ Goods from Kenya into Uganda and Tanzania are classified into two categories: Category A qualifies for immediate duty free treatment while the goods in Category B would be subjected to gradual tariff reduction over a period of 5 years.⁴¹¹

The plan to establish a political federation by 2011 is an issue which requires a pragmatic and cautious approach. Apart from the factors surrounding the futile attempt of the past, the EAC is faced with a whole range of complex dynamics. The security situation in Northern Uganda, Burundi, Southern Sudan and Somalia could have a negative impact on the stability of the proposed

⁴⁰⁸ Draper et al (2007) 14. Doubts have been expressed about the possibility of a single government by 2012. Opinion survey indicates that while 30% of Kenyans favour the establishment of a monetary union, 36% are opposed to it. See *The East African* newspaper (Kenya) April 20-26, 2009, 10.

⁴⁰⁹ According to World Bank statistics, Uganda recorded an average growth rate of 6.7% a year between 1992 and 1999. The average per capita income also rose from USD200 in 1990 to USD359 in 2002. Similarly, GDP growth in Tanzania increased from 3.7% in 1998 to 6.3% in 2002. Per capita income also increased from USD184 in 1998 to USD207 in 2002. See e.g. The World Bank, *African development indicators*. Washington DC: The World Bank (2004).

⁴¹⁰ Protocol on the Establishment of the East African Customs Union, art. 11.

⁴¹¹ *Ibid*, art. 11(3).

federation.⁴¹² Political instability, resulting from electoral fraud and absence of genuine democratisation process, as recently witnessed in Kenya and Uganda makes the attainability of a political federation a doubtful exercise. In a situation where citizens remain sceptical and disillusioned about constitutional developments in their states, it is highly unlikely that such citizens would place their confidence and trust in a large-scale regional federation. This is also applicable to African integration in general.

The consolidation of democratic governance, human rights and public participation are essential ingredients necessary for the success of the political federation. Unlike the old EAC which was built around the relationship among the three post-independence elites, the new EAC should endeavour to include the people of East Africa in the integration process. As Kamanyi suggests, 'the ultimate decision of when and how to federate must be put to East Africans in a referendum to endorse or reject a widely negotiated federal constitution'.⁴¹³ It is also important that member states transfer the requisite sovereign powers to the institutions of the new EAC. As evident in the EU, independent and autonomous institutions are crucial for the progress of the integration process.

The new EAC seems to be set on an irreversible path of regional integration.⁴¹⁴ It is expected that it would put in place adequate measures for preventing the mistakes of the past and also the promotion of mechanisms for the strengthening of integration initiatives. In a similar vein, it will be interesting to

⁴¹² See e.g. Mfanga M, 'African integration can't skip its five powerhouses'. Available at <http://www.ippmedia.com/ipp/guardian/200705/18/90734.html> (Accessed on 25 March 2009).

⁴¹³ Kamanyi J, *The East African political federation: Progress, challenges and prospect for constitutional development*. Paper presented at the Annual Sir Udo Udoma Symposium, Makerere University, Kampala (2006) 7. Available at <http://www.kituoachakatiba.co.ug/staffppr1.pdf> (Accessed 10 March 2008).

⁴¹⁴ Tanzania is singled out as stalling the fast-tracking of regional integration mainly due to its opposition to issues such as access to land, use of national identity cards for travelling within the region and permanent residency. Another source of concern is the dispute between Kenya and Uganda over Mizingo Island. See generally, *The East African* (2009).

see how the future East African political federation will fit into the matrix of a continental integration.⁴¹⁵

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

The OHADA (in English, Organisation for the Harmonisation of Business Law in Africa) remains one of the boldest attempts at supranationalism on the continent. The character of the OHADA Treaty, which was adopted on 17 October 1993, is essentially pro-development and business inclined.⁴¹⁶ Built around the existing economic and political relations among francophone African countries,⁴¹⁷ the Treaty aims to accelerate economic development and foreign investments in member states through the provision of a secure judicial environment. The Treaty regulates - through the Uniform Acts - the following areas: company law, general commercial law, securities, enforcement measures, insolvency law, arbitration, accounting law and transport.⁴¹⁸ At present, there are sixteen member states spread across west and central Africa.⁴¹⁹ Since the majority of member states are francophone countries, the OHADA laws are largely based on the French legal system.⁴²⁰ In pursuant of the goal of continental integration, the Treaty provides that membership is open to all member states of the AU.⁴²¹

⁴¹⁵ The EAC, together with seven RECs, is officially recognised as one of the building blocks towards continental integration.

⁴¹⁶ See generally, Dickerson C, 'Harmonising business law in Africa: OHADA calls the tune'. *Columbia Journal of Transnational Law*. 44/17 (2005) 17-73

⁴¹⁷ Each of the OHADA member states belong to the two major French based economic and monetary zones: West Africa – *Union Economique et Monetaire Ouest Africaine* (UEMOA) and Central Africa - *Communaute Economique et Monetaire l'Afrique Centrale* (CEMAC).

⁴¹⁸ <http://www.ohada.com/textes.php> (Accessed 23 April 2008).

⁴¹⁹ They include Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Gabon, Equatorial Guinea, Guinea, Guinea -Bissau, Mali, Niger, Senegal and Togo. Most of the OHADA members are francophone countries with few exceptions: Equatorial Guinea (Spanish), Guinea - Bissau (Portuguese) and the English speaking parts of Cameroon.

⁴²⁰ The laws of Guinea Bissau (which was colonised by Portugal) and Equatorial Guinea (colonised by Spain) are similar to the French legal system. This was due to the influence of the French Commercial Code on the Spanish and Portuguese laws. These laws belong to the civil law tradition. See Porta R et al, 'Law and finance'. *Journal of Political Economy*. 106/6 (1998) 1118.

⁴²¹ OHADA Treaty – General Clause Title 1, art. 53. The following countries have signified their intentions to join the organisation – the Democratic Republic of Congo (which is in the process of becoming a member), Ghana, Nigeria and Liberia. See Cousin B & Carton A, *OHADA: A common legal system*

3.3.5.1 Supranational features of the OHADA

An important supranational component of the Treaty is the provision which stipulates that the Uniform Acts are immediately applicable in the domestic laws of each member state.⁴²² Unless specified otherwise (in the Uniform Act), the Treaty provides that Uniform Acts shall enter into force 90 days after their adoption.⁴²³ In addition, the Uniform Acts shall have direct effect, allowing any party to rely on its provisions, 30 days after their publication in the OHADA official journal.⁴²⁴

In order to give effect to its supranational goal, the Treaty has established the following institutions:

a. Common Court of Justice and Arbitration (CCJA)

There is no gainsaying the fact that one of the obstacles to foreign investments in the continent is the unreliability of national judicial systems. Recourse to the courts is sometime frustrating due to a number of factors which include bureaucratic bottlenecks, lengthy court process, weak laws and incompetent judicial officers. It is in light of this that the drafters of the OHADA Treaty have provided for a common court to interpret and monitor the implementation of the Uniform Acts. The provision of a secure judicial system is expected to bolster the confidence of actual and potential investors. The CCJA is located in Abidjan, Cote d'Ivoire.

The CCJA has two functions vis-à-vis OHADA laws: an arbitration centre and a Supreme Court for judgments delivered by national Courts of Appeal. However, the role of the court as an arbitration centre remains undeveloped.⁴²⁵ As the Court of last resort in terms of the OHADA laws, the CCJA plays a primary role

providing a reliable legal and judicial environment in Africa for foreign investors. (2007) 2. Available at <http://www.cerclehorizon.com/clubohada/nosarticle/judicial-environment-in-africa.pdf>. (Accessed 1 April 2007).

⁴²² OHADA Treaty, art. 10.

⁴²³ Ibid, art. 9.

⁴²⁴ Ibid.

⁴²⁵ Dickerson (2005) 56.

in ensuring that there is uniform application of the OHADA laws in member states.⁴²⁶ In respect of interpretation of the treaty, both the member states and the Council of Ministers may approach the Court in this regard.⁴²⁷ Appeal to the Court can either be instituted by one of the parties to the proceedings or by referral of a national court.⁴²⁸ In relation to the enforcement of the Court's decisions, the Treaty entrusts the member states with this function.⁴²⁹

Appraising the functioning of the Court, Dickerson observed that national courts are reluctant to send business-related cases to the CCJA coupled with the fact that logistical problems (especially financial) hinder parties from appealing to the CCJA.⁴³⁰ Explanation for the unwillingness of national courts to refer OHADA related cases to the CCJA is largely attributed to the fear of losing "interesting cases" to the CCJA.⁴³¹ This attitude is, to some extent, a reflection of an attachment to national sovereignty, which has the potential of impeding the progressive aspirations of the OHADA.

b. Council of Ministers

The Council is the legislative organ of the OHADA. It is composed of Justice and Finance Ministers of member states. This composition is a reflection of the primary role of national governments in this process. Although this has been criticised as a "non-democratic aspect [o]f the OHADA structure",⁴³² it not only represents a practical way of balancing national sovereignty and supranationalism but also beams the lights of scrutiny on the activities and commitment of national governments to the OHADA. It is important to note that even the EU - which is regarded as the most advanced supranational

⁴²⁶ See arts. 13-18 of the OHADA Treaty.

⁴²⁷ Ibid, art. 14. On a number of occasions, the CCJA has ruled that the OHADA laws are superior to any conflicting national laws. See Dickerson (2005) 56.

⁴²⁸ Ibid, art. 15.

⁴²⁹ Ibid, art. 20.

⁴³⁰ Dickerson (2005) 57-58.

⁴³¹ Ibid.

⁴³² Ibid, 60.

organisation in the world - still operates within the framework of mechanisms which protect the interests of national governments.

Except for the adoption of Uniform Acts, the decisions of the Council are reached by an overall majority of the member states present and voting.⁴³³ This approach is indicative of the supranational aspirations of the OHADA. It is, however, expected that in the long run, the decisions on Uniform Acts will also be reached by majority votes.

c. Ecole Regionale Supérieure de la Magistrature (ERSUMA)

The ERSUMA (in English, Regional High Judiciary School) was established to train legal professionals in the member states.⁴³⁴ Considering the revolutionising aims of the OHADA, the creation of this school could not have been more appropriate.

d. Permanent Secretariat

The Permanent Secretariat is the engine room of the organisation. It is responsible for drawing up the Uniform Acts.⁴³⁵ The effective functioning of the organisation is dependent on the transfer of more powers to the Permanent Secretariat. As Dickerson suggested, the administrative oversight functions of the Secretariat should be strengthened.⁴³⁶ This could be done in phases, over a period of time. Underfunding - a familiar virus which plagues regional integration initiatives on the continent - remains a major problem. It is essential that member states provide the OHADA institutions with the requisite funding so that they could be able to implement programmes which are vital for the proper functioning of the organisation.⁴³⁷

⁴³³ See art. 3 of the OHADA Treaty.

⁴³⁴ Ibid, art. 41.

⁴³⁵ Ibid, art. 7.

⁴³⁶ Dickerson (2005) 70.

⁴³⁷ Ibid, 69.

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

WAEMU is one of two CFA franc zones in Africa, the other being the Central African Economic and Monetary Community (CEMAC). Built around a common, convertible currency - the CFA franc - and a shared colonial heritage,⁴³⁸ the WAEMU was established in 1994 as a measure to address the attendant effects of the devaluation of the CFA franc and in turn, strengthening the economic cooperation among member states.⁴³⁹ The objectives of the organisation include the harmonisation of laws, the creation of a common market and the convergence of macro-economic policies of member states.⁴⁴⁰

The supranational ambition of the organisation is affirmed in article 6 of the UEMOA Treaty.⁴⁴¹ Lavergne notes that the supranational nature of the UEMOA can be inferred from four functions highlighted in the treaty:⁴⁴²

- Supranationality over monetary matters
- Prohibition of the application of new protectionist measures against member states (Article 77)
- Obligatory nature of institution directives, regulations and decisions (Article 43)
- Surveillance mechanisms and sanctions (Articles 64, 65, 72-75)

The institutional architecture of the organisation comprises of the Conference of Heads of State, the Council of Ministers, the Court of Justice, the Commission

⁴³⁸ The original seven members - Benin, Burkina Faso, Cote d'Ivoire, Mali, Niger, Senegal and Togo - are francophone countries. Guinea-Bissau, a Portuguese speaking country, later joined the group in 1997.

⁴³⁹ Pattillo C & Masson P, *Monetary union in West Africa (ECOWAS): Is it desirable and how could it be achieved?* International Monetary Fund (2001) 8-9; see also Oleynik G, Alexander N & Oliyik S (eds), *West African Economic and Monetary Union (WAEMU) business law handbook*. Washington DC: International Business Publications (2003) 6-7.

⁴⁴⁰ See art. 4 of the UEMOA Treaty Available at <http://www.uemoa.int> (translated version) (Accessed 25 March 2009).

⁴⁴¹ Art. 6 state the UEMOA's statutes are superior to the laws of member states.

⁴⁴² Lavergne R, 'Reflections on an agenda for regional integration and cooperation in West Africa'. Available at http://www.idrc.ca/pan/ev-68350-201-1-DO_TOPIC.html (Accessed 20 December 2009).

and the Central Bank of the States of West Africa (BCEAO).⁴⁴³ The BCEAO is the institution that truly reflects the supranational status of the organisation.⁴⁴⁴ It is the institution solely responsible for the issuing currency on the territory of its member states and also monetary policy within the zone.⁴⁴⁵ In this regard, the BCEAO has been commended for pursuing prudent monetary policy amidst worsening economic performance in some member states.⁴⁴⁶

Among the achievements of the WAEMU since its inception are the convergence of macro-economic criteria, harmonisation of business laws (especially indirect taxation regulations), establishments of customs union and common external tariff.⁴⁴⁷

3.3.7 The Central African Economic and Monetary Community (CEMAC)

As previously mentioned, the CEMAC⁴⁴⁸ is the second CFA Franc zone in Africa. The CEMAC, in 1994, replaced Customs and Economic Union of Central Africa (UDEAC), an organisation that was established, in 1961, to promote monetary cooperation among francophone central African nations.⁴⁴⁹ CEMAC, like WAEMU, aims to create a common market, harmonise laws and sectoral policies, and the convergence of macro-economic policies of member states.⁴⁵⁰ The organisation is made up of the following institutions: the Conference of the Heads of States, Council of Ministers, Community Parliament, Court of Justice, and the Bank of Central African States (BEAC).⁴⁵¹

⁴⁴³ <http://www.uemoa.int>

⁴⁴⁴ See e.g. Busch G, 'The CFA, ECOWAS and monetary union' (2009) 4. Available at http://www.ocnus.net/artman2/publish/Editorial_10/The_CFA_ECOWAS_And_Monetary_Union.shtml (Accessed 20 March 2009)

⁴⁴⁵ Ibid; see also Oleynik et al (2003)

⁴⁴⁶ See 'West African Economic and Monetary Union: Recent economic developments and regional policy issues; and public information notice on the executive board discussion'. *IMF Country Report No. 03/70* (2003) 4. Available at <http://www.imf.org/external/pubs/ft/scr/2003/cr0370.pdf> (Accessed 1 March, 2009). [Hereinafter referred to as IMF (2003)]

⁴⁴⁷ <http://www.uemoa.int>; see also ECA (2004) 30.

⁴⁴⁸ Of the six members of the organisation, five - Cameroon, Central Africa, Congo, Gabon and Chad - are former French colonies. The sixth member, Equatorial Guinea, is a former Spanish colony.

⁴⁴⁹ <http://www.cemac.cf> (translated version) (Accessed 20 March 2009).

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

As with the WAEMU, the BEAC is the supranational institution responsible for issuing the CFA Franc within the zone and in addition, the control over the monetary policy of the zone.⁴⁵² At present, the CEMAC has in place financial and legal (harmonisation of business laws) regulatory mechanisms.⁴⁵³

However, the customs union is yet to function effectively largely as a result of the low level of intra-community trade, bureaucratic bottlenecks that hinder the free flow of goods and services and the lack of political will to fast-track integration.⁴⁵⁴

3.4 Common factors hindering the maximal realisation of supranationalism in Africa

As evident in the preceding discussion, experimentation with supranationalism is not novel in Africa. Some of the organisations discussed above have made considerable progress on certain fronts, especially on monetary, security, business and judicial matters. Setting the tone for continental integration, these institutions have made modest, and sometimes bold, incursions into issues bordering on state sovereignty. Although mainly working within the rigid context of over-bearing member states' influence, organisations like CEMAC and WAEMU have put in place structures for monitoring and ensuring compliance with monetary policies of member states. The OHADA framework ensures, through its institutions, the supranationality of its jurisdiction on matters relating to the harmonised business laws. In a series of interviews conducted by Dickerson with various stakeholders across OHADA member states, optimistic views were expressed about the success of the process, especially in relation to the execution of judgments.⁴⁵⁵ In the SACU, the revenue derived from the Common External Tariff (CET) amounts to a significant portion of the budget

⁴⁵² Ibid.

⁴⁵³ ECA (2004) 29.

⁴⁵⁴ <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRREGINICOO/0,,contentMDK:20626584~menuPK:1592430~pagePK:64168445~piPK:64168309~theSitePK:1587585,00.html> (Accessed 10 February 2010).

⁴⁵⁵ Dickerson (2005) 65.

revenue of its member states.⁴⁵⁶ All of these point to the beneficial nature of supranationalism and its potential in addressing some of the continent's problems.

In spite of the achievements outlined above, there is still room for more improvement. As will be shown below, the worrying question relates to the glaring disconnect between commitment to supranationalism at public fora and the creation of an enabling environment for it to be operational. To put it simply, there has been a gross lack of political will on the part of Africa states to translate goals and objectives into reality.⁴⁵⁷ As Udombana aptly surmises:

African leaders lack the certitude to face the challenges of integration. Integration requires that each constituent party have clearly defined national plans and strategies to achieve economic development. Like a child in a toyshop, most leaders in Africa do not know which way to look. They have been unable to make the changes that will sustain growth and development. Others are not prepared to subordinate immediate national plans to long-term economic regional goals or to cede essential elements of sovereignty to regional institutions.⁴⁵⁸

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

3.4.1 Weak Institutional Machinery

A major impediment to operationalising supranationalism in Africa is the fact that regional institutions are not independent enough to implement integration initiatives. These institutions are expected to operate based on the whims of member states, often run by dictators with personal interests at heart, rather

⁴⁵⁶ It makes up approximately 50% of Swaziland's and Lesotho's budget revenues, and 30% and 17% of the budget revenues of Namibia and Botswana. See Ngwenya (2002) 26.

⁴⁵⁷ See e.g. Thompson B, 'Legal problems of economic integration in west African sub-region'. *African Journal of International and Comparative Law*. 2 (1990) 86.

⁴⁵⁸ See Udombana (2002) 202.

than to fulfil the ambitious objectives of the organisation. It is thus not uncommon to see the dissolution or derailment of integration initiatives based on the change of government in member states or personal differences among heads of state.⁴⁵⁹

The dissolution of the first EAC is a classical case. The 1971 military putsch in Uganda quickened the eventual demise of the community. Julius Nyerere, being a close friend to the overthrown Milton Obote, disliked Idi Amin, the new Ugandan leader.⁴⁶⁰ As Garba notes, both Nyerere and Amin threw caution to the wind by verbally abusing each other at public forums.⁴⁶¹ The functioning of the community was adversely affected by this enmity.⁴⁶²

Since decision making powers are firmly placed in the hands of heads of states, the institutional machinery of most African organisations lack the power to initiate and supervise policies. It seems as if African leaders abhor the transference of sovereignty to regional institutions.

There is a strong nexus between the effective implementation of integration initiatives and the autonomy of regional institutions. The ability of these institutions to act above member states, in respect of specific areas of common interests, ensures that integration is firmly placed in capable and neutral hands, insulated from the vagaries of national politics. It also guarantees that integration proceeds at a significant pace since decisions will not always be taken by unanimity or consensus. In the case of the OHADA, it could be argued

⁴⁵⁹ In relation to the New Partnership for Africa's Development (NEPAD), some analysts have expressed concern about the continued existence of the organisation, especially after its main architects, Olusegun Obasanjo and Thabo Mbeki, retire from office as presidents of their respective countries. See e.g. Dowden (2008) 534.

⁴⁶⁰ Nyerere also resented the fact that Idi Amin was seen by white minority regimes in Southern Africa as an archetypical embodiment of the failure of black African leadership. See Gregorian H, *Plowshares into swords: The former member states and the 1978-1979 war* in Potholm & Fredland (1980) 189.

⁴⁶¹ Garba J, *Diplomatic soldering: The conduct of Nigerian foreign policy, 1975-1979*. Ibadan: Spectrum Books (1987) 125.

⁴⁶² As Mazzeo observed, the East African Authority, the highest decision making organ of the community, had no meeting in seven years as a result of this clash. See Mazzeo (1984) 156.

that the successful implementation of the harmonisation of business law is largely attributable to an independent and reliable Court of Justice.⁴⁶³ The same can be said about the BCEAO and BEAC as independent institutions within the WAEMU/UEMOA and CEMAC respectively.

Another factor that hampers the smooth running of integration initiatives is the lack of funds. The epileptic state of the economies of some African states coupled with their obligations to pay annual dues to the various sub regional organisations they belong to, largely contributes to the inability to discharge their financial obligations.⁴⁶⁴ There is no gainsaying the point that the availability of funds is crucial for the virility of any organisation, most especially an organisation charged with the responsibility of furthering - a capital intensive project - regional integration and co-operation.⁴⁶⁵

3.4.2 Non-implementation of key integration initiatives

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

In international law, there are three theories governing such a relationship: monism, dualism and harmonisation.⁴⁶⁶ According to monists, law is

⁴⁶³ In a series of interviews conducted by Dickerson with various stakeholders in OHADA member states, many expressed their optimism about the success of this initiative and also praised the clarity of OHADA laws vis-à-vis the execution of judgments. See Dickerson (2005) 65.

⁴⁶⁴ The issue of overlapping and multiple memberships will be discussed below.

⁴⁶⁵ In CEMAC for example, it has been observed that lack of funds has made it impossible to retain or hire qualified staff. See International Monetary Fund, 'Central African Economic and Monetary Community – Recent developments and regional policy issues' *IMF Country Report No 05/403* (2005) 19. Available at <http://www.imf.org/external/pubs/ft/scr/2005/cr05403.pdf> (Accessed 20 March, 2009) [Hereinafter referred to as IMF (2005)].

⁴⁶⁶ Dugard J, *International law: A South African perspective*. Cape Town: Juta (2005) 43-47; Umozurike U, *Introduction to international law*. Ibadan: Spectrum (2005) 47-48.

hierarchical, with international law and domestic/national law being part of the same legal order.⁴⁶⁷ Therefore, international law applies in the domestic system without any need for its incorporation.⁴⁶⁸ Dualists view that both international law and domestic law are two distinct fields of law.⁴⁶⁹ Furthermore, in order for international law to be binding in the domestic system, there is a need for some process of incorporation or transformation.⁴⁷⁰ Lastly, the harmonists seek to arrive at some form of convergence by holding that where there is a conflict between the application of international law and domestic law, the court should apply the rules operative within its jurisdiction.⁴⁷¹ The consequence of this is that the court may apply either of the two.⁴⁷²

Placing these theories within the African context, the issue is not so much the nature of the legal framework, be it monist or dualist, but rather the lack of political will to domestically implement international law in the form of integration programmes such as elimination of tariffs and free movement of persons.⁴⁷³ In spite of the agreement on free movement of persons and goods within ECOWAS, it has been observed that security agents continue to harass and intimidate citizens across ECOWAS frontiers.⁴⁷⁴ Also, the proposed common currency, the Eco, for the West African sub-region which is expected to be launched in December 2009, remains unlikely due to the non-implementation of convergence criteria by member states.⁴⁷⁵ The routine disregard or non-

⁴⁶⁷ Dugard (2005) 47.

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid, 47-48; Umozurike (2005) 30.

⁴⁷⁰ Umozurike (2005) 30.

⁴⁷¹ Ibid, 31.

⁴⁷² Ibid.

⁴⁷³ Thompson (1990) 90; ECA (2004) 33; Kufuor K, 'Securing compliance with the judgments of the ECOWAS court of justice', *African Journal of International and Comparative Law*. 8 (1996) 6-7.

⁴⁷⁴ 'ECOWAS, media and challenges of integration'. *The Punch* (Nigeria). Available at <http://h2.punchng.com/Articl.aspx?theartic=Art200901022225112> (Accessed January 2, 2009). In 1983, the Nigerian government, in contravention of the ECOWAS Protocol on Free Movement of Persons, expelled nationals of ECOWAS member states from its territory. See Kufuor (2006) 33.

⁴⁷⁵ The West African Monetary Zone (WAMZ) is a monetary arrangement among five countries: Gambia, Guinea, Nigeria, Sierra Leone and Ghana. See Obayuwana O & Okwe M, 'Nigeria, Ghana, others yet to meet condition for Eco currency' *The Guardian* (Nigeria) 19 May 2009. Available at http://www.ngrguardiannews.com/news/article03//indexn2_html?pdate=190509&ptitle=Nigeria,%20Ghana,%20others%20yet%20to%20meet%20conditions%20for%20Eco%20currency (Accessed 19 May 2009).

implementation of these policies decimates the relevance of institutional machinery.⁴⁷⁶

Also related to the above discussion is the issue of the dichotomised legal tradition bequeathed to Africa by colonisation. A principal effect of colonisation is the adoption of the legal system of the colonialists. As such, African countries have divergent rules and regulations governing specific issues. Citing the example of the Mano River Union (MRU), Thompson shows how the income tax regimes in Sierra Leone, colonised by Britain, frustrates foreign investment while the tax regime in Liberia, influenced by the United States of America, is more favourable.⁴⁷⁷ The consequence of such dissimilarities is the uneven implementation or outright disregard of policies by member states.⁴⁷⁸ This reality is more evident in the practice of some African states to rather integrate around shared legal system (e.g. OHADA and WAEMU). There is no doubt that a shared legal system makes integration, especially the harmonisation of laws, easier.

Yet, it is equally important that in order to translate the vision of continental integration into practise, member states must be prepared to embark on the reconciliation of laws in various areas. In this regard, more efforts should be geared towards identifying the common denominators in each of the legal systems and more importantly, devising laws which suit the African peculiarities. For example, lessons and ideas could be drawn from African customary laws.

3.4.3 Crowded integration landscape

The proliferation of regional organisations is an indicator of the failure of African states to genuinely commit to a single, well-thought-out and implementable

⁴⁷⁶ According to the IMF, in spite of the establishment of a customs union within WAEMU and CEMAC, the momentum of integration continue to be slowed down by member states' non-compliance with key convergence criteria. See IMF (2003) 4; IMF (2005) 16.

⁴⁷⁷ Thompson (1990) 96.

⁴⁷⁸ Ibid, 94-97.

programme.⁴⁷⁹ Although the Constitutive Act provides that the AU must ‘coordinate and harmonise the policies between the existing and future RECs for the gradual attainment of the objectives of the Union’,⁴⁸⁰ the AU is yet to finalise the protocol which will provide a legal framework for the relationship between it and the RECs.⁴⁸¹ In order to address this, a number of views have emerged on how to rationalise the RECs.⁴⁸²

As long as the landscape of African integration is defined by multiple RECs with overlapping and replicated membership, integration will remain a mirage. Integration cannot be achieved in a situation where the constituent agencies are pulling in different directions. To effectively proceed with the rationalisation process, a detailed audit of each of the fourteen RECs should be carried out in order to determine their viability and relevance to the integration process. The audit should establish key points such as the proximity of each RECs’ activity to

⁴⁷⁹According to a ECA survey, the following points were identified as the reason why African countries join more than one REC:

- strategic and political reasons
- economic reasons
- Complementarity
- historical reasons
- geographical proximity
- need for additional external resources
- political pressure
- cultural vision.

See AU & ECA (2006) 52-54.

⁴⁸⁰ See Article 3(l) of the Constitutive Act.

⁴⁸¹ See the Draft Protocol on the Relationship Between the Regional Economic Communities (REC) and the AU. *EX/CL/158(IX)*

⁴⁸² The UN Economic Commission also proposed five possible scenarios: a) Managing the status quo, b) Rationalisation by merger and absorption, which entail the merging of existing RECs in order to come up with 5 RECs in each of Africa’s sub-region, c) Rationalisation around rooted communities, which calls for the creation of RECs according to common characteristics such as geography, ethnicity and sociology. d) Rationalisation by division of labour, which divides cooperation efforts into regional and sub-regional programmes, categorising them according to the interests of the countries in the same region and e) Rationalisation through harmonisation and coordination, which aims at the harmonisation and coordination of trade liberalisation, and macro-economic convergence policies and criteria of the current regional economic blocs. See AU & ECA (2006) 115-26. The AU Commission has also proposed four possible rationalisation scenarios: a) Maintaining the status quo, b) Maintaining the tenets of the Abuja Treaty within a shorter time frame, c) Rationalisation by anchored community, d) Rationalisation of a political decision by heads of state. See Report of the meeting of experts on the rationalisation of Regional Economic Communities (RECs) held in Ouagadougou, Burkina Faso. 27-29 March, 2006.

the realisation of the steps outlined by the Abuja Treaty, the feasibility of limiting the membership of states to one REC, delineation of duties and objectives among the RECs, synchronisation of policies and the consequence(s) of narrowing down RECs to five.⁴⁸³

Table 3.1: Member states of major sub-regional organisations in Africa

COUNTRIES	UMA	CEMAC	COMESA	CENSAD	EAC	ECCAS	CEPGL	ECOWAS	IOC	IGAD	MRU	SACU	SADC	UEMOA
ALGERIA	*													
ANGOLA			*			*							*	
BENIN				*				*						*
BOTSWANA												*	*	
BURKINA FASO				*				*						*
BURUNDI			*		*	*	*							
CAMEROON		*				*								
CAPE VERDE								*						
CENTRAL AFRICAN REPUBLIC		*		*		*								
CHAD		*		*		*								
CONGO		*				*								
COMOROS			*						*					
COTE D'IVOIRE				*				*						*
DJIBOUTI			*	*						*				
EGYPT			*	*										
ERITREA			*	*						*				
ETHIOPIA			*							*				
GABON		*				*								
GAMBIA				*				*						

⁴⁸³ The delineation of powers between a future supranational AU and the RECs is discussed in chapter 5.



GHANA								*						
GUINEA								*			*			
GUINEA BISSAU								*						*
EQUATORIAL GUINEA		*				*								
KENYA			*			*				*				
LESOTHO												*	*	
LIBERIA								*			*			
LIBYA	*			*										
MADAGASCAR			*						*					
MALAWI			*										*	
MALI				*				*						*
MAURITANIA	*												*	
MAURITIUS			*						*					
MOROCCO	*			*										
MOZAMBIQUE													*	
NAMIBIA			*									*	*	
NIGER				*				*						*
NIGERIA				*				*						
UGANDA			*			*				*				
DEMOCRATIC REPUBLIC OF CONGO			*			*	*						*	
RWANDA			*		*	*	*							
SAO TOME						*								
SENEGAL				*				*						*
SEYCHELLES			*						*				*	
SIERRA LEONE								*			*			
SOMALIA				*						*				
SOUTH AFRICA												*	*	

SUDAN			*	*						*				
SWAZILAND			*									*	*	
TANZANIA					*								*	
TOGO				*				*						*
TUNISIA	*			*										
ZAMBIA			*										*	
ZIMBABWE			*										*	

Source: Adapted from Kennes W, African regional economic integration and the European Union, in Bach D (ed) *Regionalisation, integration and disintegration in Africa* Bloomington: Indiana University Press (1999) 40

Out of the 54 African countries outlined above, only 5 belong to one regional organisation, 27 belong to two organisations, 17 belong to three organisations and 3 belong to four organisations.

3.4.4 Skewed distribution of benefits and hegemonic threats

One of the principal motivations behind a state's participation in regional integration initiatives is the expectation of immediate and long-term welfare gains. In a situation where a country loses out on the benefits accruing from integration schemes, there is a strong possibility of such a country either committing half-heartedly to integration objectives or completely pulling out.⁴⁸⁴ As Molle points out, two reasons underline the need for redistribution policies in a regional integration scheme. The first is the 'efficiency argument' which holds that uneven distribution of benefits such as production factors and economic activities prevents the economy from reaping full profits and attaining maximum potential.⁴⁸⁵ The second is the 'equity argument' which states that inequality is socially unacceptable and morally unfair.⁴⁸⁶

⁴⁸⁴Molle W, *Economic integration and equal distribution*. Working Paper Series 216. Washington DC: Inter-American Development Bank (1997) 7-8.

⁴⁸⁵ Molle (1997) 8

⁴⁸⁶ Ibid, 9.

The position with regional integration in Africa is that countries with the strongest economies end up deriving maximum advantage to the detriment of other member states. For example, in the old EAC, Kenya, due to its relatively developed economy, benefited more than the other partner states. Various measures were put in place to address this imbalance. The transfer tax system was adopted to ensure that industries in Uganda and Tanzania operated efficiently through the provision of additional budgetary revenues.⁴⁸⁷ A related measure was the East Africa Development Bank's (EADB) to increase its investment in the less industrialised states.⁴⁸⁸ Due to its limited resources, the EADB could not achieve a significant result in this regard.⁴⁸⁹ Another criticism levelled against the bank was that it invested in projects which had little effect on the strengthening of the economies of member states.⁴⁹⁰ One of the measures of ensuring redistribution was the relocation of the headquarters of common services and decentralisation of the operations. The lack of clarity with regard to the objective of decentralisation brought about a position of two centres of power: the Community on one hand and the country headquarters on the other.⁴⁹¹

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

As noted earlier, the transformation of SACU from an organisation 'cast in imperialist mould'⁴⁹² into an institution of equals led to the review of the revenue

⁴⁸⁷ Hazlewood (1985) 176; Mazzeo (1984) 153.

⁴⁸⁸ The Bank's development activity was unevenly distributed in order to benefit the less developed member states: Tanzania (38.75%), Uganda (38.75%) and Kenya (22.5%). See Fredland R, *Who killed the East African Community?* in Fredland & Potholm (1980) 65-66.

⁴⁸⁹ Mazzeo (1985) 155.

⁴⁹⁰ Hazlewood (1985) 176-177.

⁴⁹¹ Mazzeo (1985) 154-155.

⁴⁹² Alden & Soko (2005) 373

sharing formula. In spite of the generous and favourable revenue sharing formula, Alden & Soko observe that South Africa, due to its developed infrastructure and currency, remains the dominant partner in the relationship.⁴⁹³ The fact that the South African rand remains the legal tender within the zone, except for Botswana, means that member states cannot exercise independent fiscal and macro-economic policies without South Africa's consent.⁴⁹⁴

Also in the Senegambia Confederation, Senegal, being the larger and stronger partner, viewed the Confederation as an economic union - hence its insistence on a customs union in spite of Gambia's reservations - which would eventually evolve into a political merger.⁴⁹⁵ On the Gambian side, this smacked of an attempt to absorb their country into a larger Senegal.⁴⁹⁶ Although no express statements were made to highlight Senegalese domination, the perception persisted.⁴⁹⁷ This could have been countered by allowing Gambia's proposition of rotational presidency of the Confederation. Furthermore, concerted efforts should have been made towards coming up with a workable arrangement which would compensate Gambia in the event of any loss as a result of the customs union.

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

[T]he more obvious the existence of a regional *hegemon*, the more vigorous the rejection amongst smaller states. The independence of this variable in relation to 'national identities' is based on the fact that asymmetry can be perceived as a

⁴⁹³ Ibid, 372-273.

⁴⁹⁴ Ibid, 372.

⁴⁹⁵ Hugh & Lewis (1995) 239.

⁴⁹⁶ Some Gambians saw the Confederation as a pretext for Wolof hegemony. The Wolof ethnic group is one of the dominant trans-frontier ethnic groups in the area. See Ibid, 236.

⁴⁹⁷ Ibid, 239.

hazard without this being based on national sentiments: citizens can shirk supranational projects involving a much larger entity due to fears that the lack of influence of their own country within the arrangements will harm local interests, regardless of their attitudes towards the concept of nationhood.⁴⁹⁸

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

3.4.5 Political instability

It is trite knowledge that the implementation of integration objectives demands some level of political stability in member states. Supranational organisations can only (effectively) assert their control and influence in a stable climate. The fact that integration programmes require domestic and uniform implementation lends credence to this assertion. The instability in most African countries, as a result of election rigging, intimidation of the opposition and the citizenry clearly frustrates the attainment of uniformity of standards and objectives. From Gabon to Egypt, Zimbabwe to Cameroon, Eritrea to Libya, Equatorial Guinea to Gambia, African leaders continue to make a mockery of the core principles of good governance and democracy. This has in turn spurred a litany of perennial conflicts plaguing the continent.⁴⁹⁹

The negative impact of armed conflicts on the continent's economy cannot be over-emphasised.⁵⁰⁰ According to the IMF, the crisis in Cote d'Ivoire, the largest country in the WAEMU zone, impacted negatively on the economic situation of

⁴⁹⁸ MacClanahan Y, *Supranational integration: Explaining the distinctive levels of sovereignty transferral between the different integrated areas*. Available at <http://portal.idc.ac.il/He/schools/Government/staff/Documents/Yair%20McKlanahan%20paper.doc> (Accessed 20 April 2008).

⁴⁹⁹ See e.g. Cilliers J, *Towards a continental early warning system for Africa*. Pretoria: Institute of Security Studies Paper 102 (2005) 20.

⁵⁰⁰ It is estimated that over a period of 15 years, 1990-2005, Africa has lost \$284 billion to conflicts and wars. The continent's economy has also within this period, shrunk by an average of 15% yearly. See *Africa's missing billion*, IANSA, Oxfam, and Saferworld (2007) 8-9. Available at http://www.oxfam.org.uk/resources/policy/conflict_disasters/downloads/bp107_africa_missing_billions.pdf (Accessed 12 October 2007). [Hereinafter referred to as Oxfam & Saferworld].

the whole zone.⁵⁰¹ Conflicts undermine the integration process by creating distrust among member states and more importantly, the diversion of funds that could have been used to promote and sustain integration initiatives.⁵⁰² Such commitments should also include the devolution of monitoring and disciplinary powers to regional institutions.⁵⁰³ With such powers, regional institutions would be able to promptly intervene in (potential) conflict situations and also impose relevant sanctions on errant member states.

3.4.6 Democratic deficit

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

These norms are critical to further deepen integration...Africa will unite faster if Africans embark on democratisation drives and create democratic institutions based on the logic of the self-empowerment of the people on the foundation of an effective and engaged state civil society nexus.⁵⁰⁴

⁵⁰¹ See IMF (2003) 4; see also International Monetary Fund, 'West African Economic and Monetary Union: Recent economic developments and regional policy issues in 2000' (2001) 4. Available at <http://www.imf.org/external/pubs/ft/scr/2001/cr01193.pdf> (Accessed 1 March, 2009).

⁵⁰² It is also estimated that about 24 African countries have spent around USD300bn on conflicts since 1990. See Oxfam & Saferworld (2007) 3.

⁵⁰³ See e.g. Fagbayibo B, 'Make African Union supranational'. *The Nation* (Nigeria) 22 April 2008.

⁵⁰⁴ Habib A, Muchie M & Padayachee P, *African integration and civil society: The case of the African Union*. Development Research Series, Working Paper No 137 (2006) 16. Available at <http://www.dir.ihis.aau.dk/?contentId=3426698&assetId=3427050> (Accessed 20 March 2008).

The problem with the integration process in Africa is that the people are excluded from matters relating to integration. Decisions and policies emanating from regional integration are neither subjected to referendums or wide consultation with the people concerned. The consequence is that the people know little about the integration process and thus attach little or no legitimacy to the regional institutions. It thus begs the question: If some African leaders are not prepared to allow democratisation at the national sphere, what is the probability of encouraging it at a transnational or regional level? As highlighted in the previous chapter, the tendency of reducing integration into egotistical contestation and an automated process stems from the poor democratic credentials of these leaders at the domestic level.⁵⁰⁵ This has led to the conclusion, in some quarters, that regional organisations in Africa are merely an instrument for legitimising and maintaining (autocratic) regimes on the continent.⁵⁰⁶

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

As long as the commitment to democratic values remains within the realm of rhetoric, integration initiatives will continue to flounder, unable to attain their full potential. Therefore, it is of the essence that regional institutions are

⁵⁰⁵ According to the 2009 Freedom House Survey of Political Rights and Civil Liberties, Sub-Saharan African countries record a poor showing in terms of adherence to rule of law and democratic governance. Of the 48 countries surveyed, only 10 (21%) were regarded as free, 23 (48%) were rated partly free and 15 (31%) were rated not free. Available at http://www.freedomhouse.org/uploads/special_report/77.pdf (Accessed 11 April 2009) [Hereinafter referred to as Freedom House Survey 2009].

⁵⁰⁶ See e.g. Fanta E, 'Politics of (non-)integration and shadow regionalism in Africa', 17-19. Paper presented at BISA Workshop, Open University Milton Keynes, United Kingdom, July 9 2008. Available at <http://www.open.ac.uk/socialsciences/bisa-africa/workshop/efanta.pdf> (Accessed 31 March 2009).

bequeathed with the necessary powers to monitor compliance with democratic standards in member states.

3.5 Summary

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

Political will, beyond the oft-cited problem of weak economic structures of African state, plays a major role in the success of any integration process. As evident from the relative success of the OHADA, the granting of requisite powers to regional organisation is fundamental. It is not suggested that political will is the singular basis for a successful regional integration process; it nevertheless, helps firm up the foundation on which virile cooperation can be built upon.

The success of supranationalism in the continent is thus dependant on learning from the experiences of organisations that have attempted to establish leviathan institutions. As shown in this chapter, the problems experienced by these organisations are similar. While it is simplistic to assume that the compliance with the suggestions offered above will guarantee the effective operation of supranationalism in Africa, working towards understanding these obstacles and gradually correcting them is a necessary first step.

The next chapter investigates the feasibility of a supranational AU.