

# African Unification



# African Unification

*Law, Problems, and Prospects*

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*To the Princess of Magdalene Road*



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# Introduction

One persistent issue that faces African politicians, scholars of African law and politics, and political activists is the prospect of a united Africa. Litres of ink have been spilt on this issue with, ostensibly, the balance of the argument being in favour of some sort of regional body that will pull African states together and thus serve to accelerate the economic and political development of the continent. The shape and powers of the final institutions<sup>1</sup> and organization<sup>2</sup> depends on the political will and effort of African states.

Certainly there are costs involved in this hoped-for transformation of Africa but they can be overcome if African leaders can see the benefits of a continental single market free of any barriers to trade, the immense economic wealth that this hoped-for unification can generate, the political stability it will engender through the reduction of border conflicts and the sense and feeling of solidarity, and a united Africa's political might in international affairs.

The inclination has been to compare Africa's failures to unite with the success of Europe's model after the Second World War. The position taken by pan-Africanists tends to be that the European Union (EU) model is easy to copy and implement in Africa. A single state, or at the very least an EU-style supranational body, would be a decisive step towards unshackling Africa from its poverty, political instability, and international marginalization. However,

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1. A definition for institutions is that they are the rules of the game: the humanly devised constraints that structure human interaction. They are made up of formal constraints (such as rules, laws, and constitutions), informal constraints (such as norms of behaviour, conventions, and self-imposed codes of conduct), and their enforcement characteristics: see Douglass C. North, *Institutions, Institutional Change and Economic Performance* (1990), Cambridge University Press: Cambridge, p.3.

2. An organization is defined as a group of individuals bound by some common purpose to achieve objectives. Organizations include political bodies (political parties, regulatory agencies), economic bodies (firms, trade unions), social bodies (churches, clubs), and educational bodies (schools, universities); *ibid.*, p.5.

the aspirations of those actors keen on African unification (we give priority to the word unification over integration and cooperation) are still yet to be realized. While a lot of effort has gone into speeches and plans to the extent that there is now a plan for a union government for Africa, there remains a huge gap between these dreams and reality. As of this writing, the possibility of even EU-style unification, with a strong supranational body issuing regularly complied-with decisions, is still remote.

A range of explanations have been put forward to explain this paralysis of the African unification movement. A first problem is with the number of states involved in the integration process. European unification commenced with only six states; recent attempts at African unification involve more than fifty states. Inevitably, this has implications for the manner in which the organization can and should achieve its objectives. In its early efforts at economic integration it was relatively easy for six European economies to pool their resources, create a common market, and extend this market, step by step, to other states that met certain minimum conditions. It is unlikely that Europe's internal market could have been realised if the EU had started with the twenty-seven member states that it has as at the time of this writing.

African unification is also founded on a common market but Africa is faced with the formidable task of having to integrate more than fifty national markets that vary in strength and capacity. This problem is acknowledged by pro-unification supporters and it explains the current embrace of sub-regional economic and political integration. The presumption is that unification in Africa will first be pursued at the sub-regional level and it is the merger of the various sub-regional markets that will lead to the creation of an African common market. However, this deliberate creation of multiple sub-regional bodies has implications for the institutional and organizational structure of African unification. For the years—perhaps even decades—to come, these sub-regional bodies will prevent unification occurring at the regional level as they have so far limited and will continue to limit, any paramount African body from playing a role save a co-ordinating and stimulating role in pursuing the future goal of transforming all sub-regional African markets into a continental one.<sup>3</sup>

There are those who see the main problem for African unification being the diversity of African legal systems and the differences in domestic commercial, company, and mercantile laws, which do not facilitate cooperation and har-

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3. See Anne Pieter Van der Mei, *The Ordeal of African Unity—Past, Present and Future of the African Union* (2009), Maastricht Faculty of Law Working Paper No.5, available at [http://www.maastrichtuniversity.nl/web/Faculties/FL/2009\\_maastricht\\_working\\_papers.htm](http://www.maastrichtuniversity.nl/web/Faculties/FL/2009_maastricht_working_papers.htm), (last visited 23 October 2015), pp.29–30.

monization.<sup>4</sup> A mixture of common law, Roman-Dutch law, customary law, civil law, and Islamic law come together to make the harmonization of legal systems across Africa in a manner akin to what has taken place in Europe, rather difficult if not impossible.<sup>5</sup>

The delicate state apparatus across Africa is another explanation for why it has not developed strong regional structures. The view here is that when compared to Europe, the African bureaucratic apparatus is unable to serve as the needed conduit through which there can be effective implementation of regional programmes leading to integration and then unification. An enormous task, unification necessitates an administrative state with the capacity to deal with the multi-faceted nature of policy-making and implementation processes for bringing home regional unification edicts.<sup>6</sup>

Further to the allegation about fragile domestic bureaucratic structures is the assertion we have made in a paper published in the *Journal of African Law* that the failure for the Organisation of African Unity<sup>7</sup>, (OAU) at the time the paramount African continental body, to play a constructive role as a driver of African unification lay in its weak founding Charter and the brittle organs it created that failed to establish a sturdy foundation for the system's further development.<sup>8</sup> We have made somewhat similar arguments regarding the ingredients for successful sub-regional integration by the Economic Community of West African States<sup>9</sup> (ECOWAS).

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4. See Bankole Thompson and Richard S. Mukisa, 'Legal Integration as a Key Component of African Economic Integration: A Study of Potential Legal Obstacles to the Implementation of the Abuja Treaty', 20 *Commonwealth Law Bulletin* Issue 4 (1994), pp.1446–1457, p.1447.

5. See Richard Frimpong Oppong, 'Observing the Legal System of the Community: The Relationship between Community and National Legal Systems under the African Economic Community Treaty', 15 *Tulane Journal of International and Comparative Law* (2006–2007), pp.41–87, pp.69–70.

6. See R. Mukamunana, and K. Moeti, 'Challenges of Regional Integration in Africa: Policy and Administrative Implications', *Journal of Public Administration: Conference Proceedings* (2005), pp. 90–101.

7. The OAU Charter is available at [http://www.au.int/en/sites/default/files/OAU\\_Charter\\_1963\\_0.pdf](http://www.au.int/en/sites/default/files/OAU_Charter_1963_0.pdf) (last visited 26 October 2015).

8. See Kofi Oteng Kufuor 'The Collapse of the Organization of African Unity: Lessons from Economics and History', 49 *Journal of African Law* No.2 (2005), pp.132–144.

9. Kofi Oteng Kufuor 'Law, Power, Politics and Economics: Critical Issues Arising out of the New ECOWAS Treaty', 6 *African Journal of International and Comparative Law* No.3 (1994), pp.429–448. The Revised ECOWAS Treaty is available at <http://www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf> (last visited 26 October 2015)

Another claim is that pan-Africanists fail to take into account power in international relations as an explanation for successful regional integration. The role of the United States (US) in supporting the processes of post-war European unification has been well documented and analysed. Seeking to contain the power of the Soviet Union and its expansion in Europe, the US encouraged the creation of European institutions and organizations as a means of ensuring peace on that continent. Post-war Western European states had to cooperate with one another to avoid a breakdown of relations, another major war, and the probable exploitation of anarchy by the Soviet Union to spread its influence further.<sup>10</sup> The US was able to support European unification as it had emerged from the Second World War as the world's most powerful economic, political, and military state.

US support for EU unification designed on principles it deemed appropriate is instructive for the analysis of the failure of radical pan-Africanism. There are three main powers in Africa (South Africa, Nigeria, and Egypt) and they are gradualists in the African integration project. The fact that none of the three regional powers seeks accelerated, radical unification is therefore problematic in that the strategies of powerful states tend to play a major role in international relations. Hence given the stance of Nigeria, South Africa, and Egypt, African unification is still effectively in its embryonic stage.

Thus the assumptions underpinning pan-Africanism, essentially solidarity and equality in the interest of a strong supranational system or a single state, are not in tune with the reality of power structures in the international system. By implication, the international system will not develop along lines that the unification enthusiasts want without these structured power interactions.<sup>11</sup> Pan-Africanism does not seem to acknowledge this role of power in its quest for

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10. The US was keen to bring about deeper European integration for a number of reasons. First, post-war US foreign policy included the support of democracy and defence of a threat to democracy. Then there was the Marshall Plan's goal of the economic reconstruction of Europe. For the US this objective was best achieved only if requests for assistance were a collective effort instead of being based on individual state requests. Being granted aid under the Marshall Plan was also conditional on the Europeans adopting a federal structure for cooperation. The US actually went as far as providing the basic contours of the proposed federal structure to include free trade and a customs union.

A further US contribution was that it pressured France to devise a supranational solution to the German problem: see Bruce Carolan, 'The Birth of the European Union: US and UK Roles in the Creation of a Unified European Community', 16 *Tulsa Journal of Comparative & International Law* No.1 (2008), pp.51–65, pp.56–57.

11. See Stephen Okhonmina, 'The African Union: Pan-Africanist Aspirations and the Challenge of African Unity', 3 *Journal of Pan African Studies* No.4 (2009), pp.85–100, p.89.

African unification but rather presupposes collective action based largely if not solely, on the altruism of African states.

Africa's shortcomings are compounded by a weak economic infrastructure that is insufficient to support unification. For instance, one of the major constraints on the growth and development of inter-African trade has been the inadequacy of payment and financial systems for the purpose. Increased trade among African countries will need finance and financial instruments such as banking networks providing letters of credit and export credits. Diversified currency exchange regimes and payment restrictions prevail in Africa. Unification will require the adoption of collective policy measures to facilitate the liberalisation of payment and exchange restrictions and to enhance the convertibility of national currencies which, as at writing, are in an underdeveloped or primitive stage.<sup>12</sup>

For supporters of African unification it is dilemmas such as these that need to be tackled and overcome and it is in this regard that they point to the lack of political will on the part of African leaders as being the primary if not sole explanation, for the failure of the African unification project. Any or all of the above problems, so the assertion goes, can be overcome through the political will of African states. There will be no unification if Africa waits to strengthen its national bureaucracies, harmonize the variety of domestic legal systems, construct a viable financial infrastructure etc. The desire to unite must ignore these problems or there will be no unification at all. Hence unification requires commitment, agreement, the renunciation of state sovereignty (or its serious dilution), and with this the benefits of an Africa as a cohesive force under the direction of a single government or powerful continental body will be realized.

In this book we assert that the assumption that the lack of political will is the problem is a one-dimensional and insufficiently developed interpretation of the dilemmas facing African unification. We argue that African unification is set in a socio-political and legal complex that bears very little similarity to that which gave rise to the much-admired European unification. Hence to assume the simple transfer of ideas and models from Europe to Africa in the expectation that African unification will be propelled at a pace that brings it in line with Europe is a far-fetched assumption.

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12. See Muna Ndulo, 'Harmonisation of Trade Laws in the African Economic Community', 42 *International and Comparative Law Quarterly* No.1 (1993), pp.101–118, pp.104–5.