'I hereby declare that this essay is an original piece of work in its entirety'

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To Unite or Perish: A Case for African Union Law

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'A whole continent has imposed a mandate upon us to lay the foundation of our Union at this Conference. It is our responsibility to execute this mandate by creating here and now the formula upon which the requisite superstructure may be erected.'

-Kwame Nkrumah 1963
We Must Unite or Perish.[1]

To Unite or Perish

On 21 March 2018, 44 member states of the African Union (AU), signed the African Continental Free Trade Agreement (AfCTA).[2] While supranationalism appears to be under threat around the world,[3] on the African continent the tides of unification appear to be moving fast.[4] Unperturbed by a last minute withdrawal from Africa's largest economy, Nigeria, signatory states have agreed to create 'a single market for goods and services, facilitated by movement of persons in order to deepen the economic integration of the African continent'.[5] This agreement is expected to create the largest free trade zone in the world and lead to increases in gross domestic product (GDP), intra-African trade and foreign direct investment (FDI).[6] Although this agreement has the potential to result in economic integration and significant economic development, only 6 member states have ratified it.[7] Fifty-five years after Kwame Nkrumah's landmark speech at the inauguration of the Organisation of African Unity (OAU), and 62 treaties later, attainment of his

[1] Kwame Nkrumah's speech titled 'We Must Unite or Perish' delivered at the inaugural Organisation of African Unity Conference in Addis Ababa, Ethiopia 1963. Reproduced in Lawrence EK Lupalo, *Nkrumah Nyerere Senghor: African Visionaries* (Create Space 2016) 144.
[2] Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018) (AfCTA).
[3] Ralf Michael, 'Does Brexit Spell the Death of Transnational Law?' (2016) 17 German Law Journal 51.
[4] In 2016, the AU passport was launched. In 2018, the AU General Assembly adopted the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment.
[5] See AfCTA (n 2) article 3.
[6] UNCTAD, 'The African Continental Free Trade Area: The Day After the Kigali Summit' (Policy Brief No 67) <http://unctad.org/en/PublicationsLibrary/presspb2018d4_en.pdf> accessed 4 August 2018.
[7] These are Chad, Ghana, Kenya, Niger, Rwanda and Eswatini. Status of the AfCTA can be accessed on the African Union website <https://au.int/sites/default/files/treaties/34248-sl-agreement_establishing_the_african_continental_free_trade_area.pdf> accessed 30 September 2018.

vision for an integrated Africa remains far from being realised.[8] This is perhaps most evident in the low ratification of AU treaties by member states, the absence of a formal treaty on a legal superstructure for the functioning of the Union[9] and minimal global recognition of AU law. Notwithstanding, by signing the AfCTA, African states have indicated that a tide of change is sweeping across the continent. Against the background of this recent development, this essay makes three strong arguments for the recognition of AU law. Acknowledging the strengths and limitations of this position, this essay will argue that the urgency of economic development for survival will be the propelling force for increasing the global importance, relevance and visibility of AU law.

Unity and Law in Africa

In making arguments about the success of supranational organisations, scholars often make parallels between the AU and the European Union (EU).[10] While these two organisations developed fully in similar eras, their trajectories have been largely different. Built on a deeply harmonised legal framework, the EU represents the standard of a truly supranational and integrated organisation of states.[11] This is based on the constitutive Acts of the EU and the definitions in Articles 2 to 6 of the Treaty on the Functioning of the EU (TFEU)[12] under which EU law is binding on individuals and member states.[13] In sharp contrast, the AU has been described as 'predicated on intergovernmentalism'[14] and as 'an empty shell'.[15] A lay comparison

[8] Stephane Doumbe-Bille, 'The African Union: Principles and Purposes' in Abdulqawi A Yusuf and Fatsah Ouguergouz (eds), *The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization* (Martinus Nijhoff 2012) 53, 63.
[9] See Tiyanjana Maluwa, 'Ratification of African Union Treaties by Member States: Law, Policy and Practice' (2012) 13 Melbourne Journal of International Law 636.
[10] Nsonsurua Udombana, 'The Institutional Structure of the African Union: A Legal Analysis' (2002) 33 California Western International Law Journal 69, 72; Tiyanjana Maluwa, 'The Transition from the Organisation of African Unity to the African Union' in Abdulqawi A Yusuf and Fatsah Ouguergouz (eds), *The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization* (Martinus Nijhoff 2012) 25, 38.
[11] Peter L Lindset, 'Supranational Organisations' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press 2016) 152.
[12] Treaty on the Functioning of the European Union (Consolidated version) [2016] OJ C202/1.
[13] Trevor C Hartley, *The Foundations of European Union Law: An Introduction to the Constitutional and Administrative Law of the European Union* (Oxford University Press 2014) 12.
[14] Maluwa (n 9) 48.
[15] Corinne A Packer and Donald Rukare, 'The New African Union and Its Constitutive Act' (2002) 96 The American Journal of International Law 365, 377.

between the sheer number of EU decisions, regulations, directives and court decisions and the AU's modest treaties and decisions shows the relative success of African integration efforts.[16]

Against this background, it is not surprising that EU law is widely recognised as an autonomous legal order.[17] The large expanse of academic literature and initiatives dedicated to the development, study and research of EU law are a reflection of its strength and global importance.[18] On the other hand, African Community law remains an abstraction, used sparingly with minimal formal recognition.[19] To be sure, for decades, international law scholars have researched the evolution and development of African law.[20] Oppong argues that the relegation of AU law may be attributable to the 'overbearing influence of politicians and the dominance of economists' in the AU process.[21] He has also accused African lawyers of showing minimal interest in African economic integration.[22] Despite the lack of formal recognition of this distinct legal order, the denial of its existence in its entirety not only undermines its importance but is also one rooted in Eurocentric ideals of interstate law.[23]

Having established the undeniable existence of AU law, it is necessary to determine what it comprises. AU treaties provide limited guidance on this. Article 4 of the Statute of the African

[16] This can be contrasted with the argument that the value of these treaties does not lie in their numbers but rather in the law-making function they perform for member states and the international community. Tiyanjana Maluwa, 'The OAU/African Union and International Law: Mapping New Boundaries or Revising Old Terrain?' (2004) 98 Proceedings of the Annual Meeting (American Society of International Law) 232, 233.

[17] Julie Dickson and Pavlos Eleftheriadis, *Philosophical Foundations of European Union Law* (Oxford University Press 2012) 7.

[18] See Packer and Rukare (n 15) 370. They argue that in comparison to the ASEAN and the EU, the AU has received little global attention.

[19] See Michèle E Olivier, 'The Role of African Union Law in Integrating Africa' (2015) 22 South African Journal of International Affairs 513 (she argues that AU law is largely unknown). See Olufemi Amao, *African Union Law: The Emergence of a Sui Generis Legal Order* (Routledge 2018) for a holistic treatise on the emergence of AU law as a legal order.

[20] Examples include: Anthony Allott, 'Towards the Unification of Laws in Africa' (1965) 14 International & Comparative Law Quarterly 366; Georges Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline' (1962) 8 Howard Law Journal 95; Felix Chuks Okoye, *International law and the New African States* (Sweet and Maxwell 1972); Nasila Rembe, *Africa and the International Law of the Sea: A Study of the Contribution of the African States to the Third United Nations Conference on the Law of the Sea* (Brill 1980); Taslim Olawale Elias and Richard Akinjide, *Africa and the Development of International Law* (Martinus Nijhoff 1988); Jeremy Levitt (ed), *Africa: Mapping New Boundaries in International Law* (Bloomsbury 2008).

[21] Richard Frimpong Oppong, 'Observing the Legal System of the Community: The Relationship between Community and National Legal Systems under the African Economic Community Treaty' (2006) 15 Tulane Journal of International and Comparative Law 41, 48.

[22] Richard Frimpong Oppong, 'The African Union, the African Economic Community and Africa's Regional Economic Communities: Untangling a Complex Web (2010) 18 African Journal of International and Comparative Law 92, 103.

[23] James Thuo Gathii, *African Regional Trade Agreements as Legal Regimes* (Cambridge University Press 2011) xxvii; Abdulqawi A Yusuf, *Pan-Africanism and International Law* (Brill 2014) 14-16.

Union Commission on International Law defines it as 'the treaties of the Union, in the decisions of the policy organs of the Union and in African customary international law arising from the practice of Member States'.[24] Building on this definition, AU law can be comprehensively defined as 'the bodies of treaties, resolutions and decisions that have direct and indirect application to the member states of the African Union'.[25] This includes decisions, declarations and resolutions of the AU General Assembly, Executive Council and all normative instruments of the AU's organs. By extension, this covers a broad range of binding and non-binding norms in areas including human rights,[26] foreign investment,[27] cyber security,[28] trade,[29] refugee law,[30] environmental protection, monetary regulation,[31] management of natural resources, anti-corruption[32] and anti-terrorism. Thus, although AU law is not universally recognised, there are strong arguments for increasing efforts in the development, study and research of this field. As will be argued below, the greatest arguments for recognising AU law are more economic than political.

Arguments in Favour of Recognising African Union Law

Several arguments can be made both in favour of and against the recognition of AU law. A recent report by President Paul Kagame which describes the AU as a 'dysfunctional organisation in which member states see limited value, global partners find little credibility, and our citizens have no trust' highlights the limited influence of AU law.[33] While recognising these limitations,

[24] Statute of the African Union Commission on International Law (adopted 4 February 2009, entered into force 4 February 2009) (AUCL Charter).
[25] See African Union Law Research Network, 'LPS Prize for African Union Law: Essay Competition 2018' (University of Sussex LPS Prize for African Union Law Essay Competition, 3 April 2018) <https://africanunionlaw.org/yahoo_site_admin/assets/docs/African_Union_Law_Essay_Competition.16452812.pdf > accessed 1 June 2018.
[26] Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2012).
[27] Camilo Andres Rodriguez Yong, 'Legal Certainty and Foreign Investment in Africa: Let's Call the African Union' (2011) 6 Via Inveniendi et Iudicandi 1.
[28] African Union Convention on Cyber Security and Personal Data Protection (adopted 27 June 2014).
[29] Patrick Low, Chiedu Osakwe and Maika Oshikawa, (eds), *African Perspectives on Trade and the WTO: Domestic Reforms, Structural Transformation and Global Economic Integration* (Cambridge University Press 2016).
[30] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) (Kampala Convention); Marina Sharpe, *The Regional Law of Refugee Protection in Africa* (Oxford University Press 2018).
[31] Protocol on the Establishment of the African Monetary Fund & Statute of the African Monetary Fund (adopted 27 June 2014).
[32] Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Bloomsbury 2014).
[33] Paul Kagame, 'The Imperative to Strengthen our Union: Report on the Proposed Recommendations for the Institutional Reform of the African Union' (29 January 2017) 5 <https://au.int/sites/default/files/pages/34871-file-report-20institutional20reform20of20the20au-2.pdf > accessed 15 July 2018.

this subsection will examine closely three economic, intrinsically-linked arguments for recognising AU law.

The strongest argument for its recognition is linked to developments towards the realisation of an African economic union.[34] The AfCTA is a step closer towards realising such a full regional integration.[35] Transition from the OAU to the AU has been marked significantly by a shift from an agora-based loose association of states to treaty-based political and economic unity. This is reflected in the Constitutive Act of the AU and recent declarations.[36] Although political unity is integral to the ideal of a 'United States of Africa', pragmatism demands that we examine unity more closely in economic terms. As Oppong argues, we must recognise that convolution of political and economic integration ideas 'has led to an inappropriate structuring and fusion of institutions, which ultimately ill-serve the objectives of economic integration'.[37]

With an unequivocal foresight into the future, in 1963 Kwame Nkrumah emphasised that African states must recognise that economic independence resides in an African union and requires the same concentration upon the political achievement.[38] Years after independence, the need for unity is linked to the desire for economic growth and development in the continent. In 1991, the Abuja Treaty for the Establishment of the African Economic Community was adopted by the OAU General Assembly.[39] This treaty sets out in Article 6 a six-stage roadmap covering 34 years, to be established over a transition period not exceeding 40 years. Reiterating these goals, Agenda 2063 of the AU provides that by 2030 there shall be a consensus on the form of the continental government and institutions.[40] The AfCTA falls under stage three of the roadmap for the realisation of an African Economic Community (AEC) and is a departure from less emphasis

[34] See Oppong (n 21) 53. (He argues that the AEC is a legal system.).
[35] UNECA 2018, 'Assessing Regional Integration in Africa VIII: Bringing the Continental Free Trade Area About' 11 (6 February 2018) <https://www.uneca.org/sites/default/files/PublicationFiles/aria8_eng_fin.pdf > accessed 15 July 2018.
[36] Constitutive Act of the African Union Law (adopted 7 November 2000, entered into force 26 May 2001).
[37] Oppong (n 22) 98.
[38] Lupalo (n 1) 145.
[39] Abuja Treaty for the Establishment of the African Economic Community (adopted 3 June 1991, entered into force 12 May 1994) (Abuja Treaty).
[40] African Union, 'Agenda 2063: The Africa We all Want' (September 2015) goal 23 <https://au.int/sites/default/files/pages/3657-file-agenda2063_popular_version_en.pdf> accessed 15 June.

on continental economic treaties. However, adherence to the AEC roadmap has been hindered by overlapping regional economic communities.[41]

The enthusiasm for the AfCTA has not been followed by quick ratification. Delayed ratification of AU treaties at this stage represents a challenge to recognition of AU law. Low ratification, described as a 'crisis of implementation'[42] in Africa, can largely be attributed to governance challenges and lack of political will. For example, only 57 out of 176 intra-African international investment agreements are in force.[43] Additionally, only 30 of the 62 African treaties have entered into force.[44] These percentages can be explained by theories of cost-benefit and an absence of proper sanctions for non-compliance.[45] When states do not perceive any immediate gains in surrendering a part of their sovereignty for community rules, political will remains subdued. Oppong aptly argues that Africa's 'economic integration is being devalued, delayed and diluted due to the fact that countries are able to sign up at will without strict, prior defined and continuous commitments to implementation'.[46] He goes on to argue for a union that does not necessarily include membership for all states. An eventual shift to more binding norms will increase the importance of AU law.

In the absence of a multilateral investment agreement, there is a global shift towards regionalisation of international economic norms, especially through investment chapters in regional trade agreements.[47] Notably, in 2009, the EU assumed exclusive competence over foreign direct investment agreements, which will have great implications for the global regime of FDI governance.[48] Although the Southern African Development Community, Common Market for Eastern and Western Africa and Economic Community of African States have signed binding

[41] See Melaku Geboye Desta and Guillaume Gérout, 'The Challenge of Overlapping Regional Economic Communities in Africa: Lessons for the Continental Free Trade Area from the Failures of the Tripartite Free Trade Area' in Zeray Yihdego and others (eds), *2017 Ethiopian Yearbook of International Law* (Springer 2018) 111-141.
[42] Kagame (n 33) 4.
[43] See UNCTAD's International Investment Agreements Navigator for a comprehensive database of IIAs. <http://investmentpolicyhub.unctad.org/IIA> accessed 30 September 2018.
[44] See the AU's collection of treaties <https://au.int/en/treaties> accessed 30 September 2018.
[45] See Stacy-Ann Elvy, 'Theories of State Compliance with International Law: Assessing the African Union's Ability to Ensure State Compliance with the African Charter and Constitutive Act' (2012) 41 Georgia Journal of International and Comparative Law 75.
[46] Oppong (n 22) 97.
[47] Tania Voon, 'Consolidating International Investment Law: The Mega-Regionals as a Pathway towards Multilateral Rules' (2018) 17 World Trade Review 33.
[48] See Julien Chaisse, 'Promises and Pitfalls of the European Union Policy on Foreign Investment—How will the New EU Competence on FDI Affect the Emerging Global Regime?' (2012) 15 Journal of International Economic Law 51.

investment agreements, AfCTA Phase II negotiations on intellectual property rights, investment and competition policy will align the AU with global trends. Also worthy of note is the growth of African dispute resolution centres. If AU member states can leverage the gains of the existing eight regional economic communities (REC) and commit to economic integration, increased economic growth will be attainable. Challenges to regional economic integration include heavy reliance on foreign aid, high foreign debt, low levels of intra-African trade, poor governance, corruption, overlapping RECs and imports. Currently, intra-African trade represents only about 13 per cent of Africa's total trade.[49] Africa is distinct because of its large number of overlapping regional economic communities. The *Organisation pour l'harmonisation en Afrique du droit des affaires* is not one of the eight AU-recognised RECs but is distinct due to its supranational system built on adoption of uniformly applicable commercial laws.[50] Notwithstanding, as envisaged in AU instruments, the RECs can provide a springboard for achieving continental economic integration,

A second argument for recognition of AU law is the continent's rich human and natural resources.[51] Sadly, poor governance, conflict and corruption have led to endemic poverty with the collective wealth remaining in the hands of a selected few.[52] This may, however, be changing, and Africa may finally be rising. There has been an increase in the number of democratically elected governments. There is also an increased drive for good governance, innovation and respect for socio-economic rights. Governments are taking active steps to protect the sustainable and efficient use of natural resources. For instance, in 2017 Tanzania passed into law three Acts introducing innovative legal and institutional frameworks aimed at governing sustainable exploitation of its natural resources.[53] Africa has the fastest growing youth population in the world, with 60 per cent of its population under 24.[54] This will be an important

[49] Economic Commission for Africa, 'Eighth Session of the Committee on Trade, Regional Cooperation and Integration Report on International and Intra-African Trade' (Addis Ababa, Ethiopia, 6-8 February 2013) 6-8 <https://repository.uneca.org/bitstream/handle/10855/22133/b10696167.pdf?sequence=1> accessed 15 June 2018.
[50] See Jonathan Bashi Rudahindwa, 'OHADA and the Making of Transnational Commercial Law in Africa' (2018) 11 Law and Development Review 371.
[51] UNCTAD, 'Economic Development in Africa Report 2014 – Catalysing Investment for Transformative Growth in Africa' (4 July 2014) 5 <https://unctad.org/en/PublicationsLibrary/aldcafrica2014_en.pdf> accessed 5 June 2018.
[52] ibid 2.
[53] Natural Wealth and Resources (Permanent Sovereignty) Act 2017.
[54] Mohamed Yahya, 'Africa's Defining Challenge' (7 August 2017) <http://www.africa.undp.org/content/rba/en/home/blog/2017/8/7/africa_defining_challenge.html> accessed 15 June 2018.

catalyst for economic growth and legal norms will be integral to this. This is evident in the number of global law firms and multi-national organisations which have set up operations in Africa.[55]

A third argument in support of the recognition of AU law is the growth of continental level norms, decisions and institutions. Unlike its predecessor organisation, the AU through its Constitutive Act has been marked by a transition to broader goals beyond post-colonial solidarity and mutual respect for state sovereignty.[56] The reach of cooperation now extends to both social and economic issues. This has been marked by a steady increase in the number of AU statutes. Notably, since 2000, 42 protocols and treaties have been adopted by the AU Assembly. Thirty of these laws have been adopted in the last ten years. In comparison, under the OAU, 19 protocols and treaties were adopted. It is thus clear that since the transition to the AU there has been a renewed drive towards regional cooperation on several important issues. These instruments are generally in line with the goals and objectives of the AU and have resulted in the creation of new organs and bodies. This is why Yusuf argues that the AU has assumed an innovative and important role in the codification of human rights.[57] As highlighted above, the importance of these norms cannot be undermined solely by the low level of ratification.

In 2008, the Court of Justice of the African Union and the African Court on Human and Peoples' and Rights were merged to create the African Court of Justice and Human Rights. Figures show that the African Court on Human and Peoples' Rights has received 180 applications since its establishment.[58] The Court has also undertaken advisory proceedings in 13 applications and finalised 55 decisions. Although few of these decisions were made on merit, they nevertheless represent important developments as scholars have been able to examine these in relation to the protection of human right violations.[59] Importantly, decisions of the African Court on the interpretation and application of the Constitutive Act are binding on member states. By merging the two courts, the AU has helped to curb multiplicity and fragmentation of

[55] See Crasner Consulting, 'Law Firms Scramble for Africa' (18 October 2016) <http://www.crasnerconsulting.com/news/law-firms-scramble-for-africa/> accessed 15 June 2018.
[56] Nsonsurua Udombana, 'The Institutional Structure of the African Union: A Legal Analysis (2002) 33 California Western International Law Journal 69, 74.
[57] Abdulqawi A Yusuf, *Pan-Africanism and International Law* (Brill 2014) 252.
[58] These include 128 pending applications <http://www.african-court.org/en/index.php/cases> accessed 30 September 2018.
[59] Frans Viljoen, 'Understanding and Overcoming Challenges in Accessing the African Court on Human and Peoples' Rights' (2018) 67 International & Comparative Law Quarterly 63, 96.

international tribunals. Article 3 of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights vested the Court with original and appellate jurisdiction over matters that may be provided for in future agreements.[60] This is generally in line with the cautious and gradual approach to political and economic integration of the AU. This indicates that a wider jurisdiction may be assumed by the Court in the future. While disregard of court decisions, notably by Ghana and Libya, undermine the authority of the African Court, by no means do these undermine the importance of AU law and adjudicatory jurisprudence.[61]

Since 2000, the AU organs have passed hundreds of resolutions, motions, decisions and declarations. Although the AU treaty makes no distinction, the language adopted in these instruments indicates the level of compliance required. In all instances, under Article 23 any member state that fails to comply with the decisions and policies of the Union may be subjected to sanctions. Generally, decisions in the form of regulations require domestication by member states, while for directives, states are free to implement this to suit their circumstances.[62] It is difficult to determine adherence to these directives, but their size and breadth is a testament to the growth of AU law.

Notably the AU has not been very active in the conclusion of economic agreements. However, in line with goals under the Abuja Treaty, this appears to be changing as characterised in a shift in policy focus towards economic development through an intra-African trade based treaty.[63] International economic agreements can broadly be defined as agreements which regulate economic activity between member states and with third party states. These mostly include notably trade agreements and international investment agreements. In 2016, the Draft Pan-African Investment Code (PAIC) was released by the AU. Although the PAIC is a non-binding guiding instrument, Article 3 of the Draft PAIC provides that member states may agree that the Code is reviewed to become a binding instrument to replace intra-African bilateral investment

[60] Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (adopted 27 June 2014).
[61] See also Karen J Alter, James T Gathii and Laurence R Helfer, 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences' (2016) 27 European Journal of International Law 293. In 2017, Ghana's Supreme Court disregarded a provisional order of the African Court on Human and Peoples' Rights, arguing that it had not domesticated the treaty.
[62] Ambassador Omar Alieu Touray, *The African Union: The First Ten Years* (Rowman and Littlefield 2016) 162.
[63] Gathii (n 23) xxix.

treaties (BITs) or investment chapters in intra-African trade agreements.[64] It is therefore clear that in the future the AU will be positioned to negotiate and sign agreements with third party states on behalf of member states. This will no doubt increase the relevance of AU law.

The Pan-African Parliament which is a key law-making organ for African integration, has legislative functions which allow it to make new norms in response to the needs of the Union.[65] It is clear from the above that the AU has embraced a gradualist approach which is 'functionally dependent on strategic needs'.[66] The core elements needed to foster a supranational African legal system equivalent to the EU which include direct effect of Union law and supremacy over national legislation remain absent in Africa. However, path-dependency theories serve as a reminder that history matters in choices between maximum or minimum harmonisation. The choice made in 1963 due to divided opinions and colonial traditions may have had an effect on realisation of integration, but this is bound to change with time and need. When the Pan-African Parliament begins full legislative operation, AU law will become even more visible.

Africa Will Unite: The Africa of the Future

Goal 23 of Agenda 2063 provides that 'the political unity of Africa will be the culmination of the integration process, which includes the free movement of people and the establishment of continental institutions, leading to full economic integration'. This indicates that there is a revival of a Pan-African drive towards realisation of full integration as envisioned by Kwame Nkrumah. This essay has argued that the future of AU law rests on economic integration. In attaining its aspirations, Africa must remain united and acknowledge the truth of current realities. While it is important that we recognise the limits of law, we must also not fail to promote and support the growth and development of AU law. Scholarship has repeatedly pointed to the limited interest of Africa scholars in economic integration law.[67] Activities of the African

[64] United Nations Economic and Social Council, 'Draft Pan-African Investment Code' (26 March 2016) UN Doc E/ECA/COE/35/18. See also Makane Moïse Mbengue and Stefanie Schacherer, 'The "Africanization" of International Investment Law: The Pan-African Investment Code and the Reform of the International Investment Regime' (2017) 18 The Journal of World Investment & Trade 414.
[65] Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament (adopted 27 June 2014) article 8.
[66] Olivier (n 19) 527.
[67] Oppong (n 22) 103; Uche Ewelukwa Ofodile, 'The Past and Future of African International Law Scholarship: International Trade and Investment Law' (2013) 107 Proceedings of the ASIL Annual Meeting 194.

International Law Commission and African international law organisations have helped encourage study and research of AU law.[68] However, more needs to be done. By establishing funding schemes to support AU legal research, involving lawyers in AU activities and integrating AU law into curriculums of law schools, we can leverage on our rich expertise and be fully prepared for the innovations which lie ahead. There is adequate evidence that AU law and economic integration is increasing in global relevance.[69] Without overemphasising the role of law, the future of Africa lies in strengthening our norms and legal structures. With renewed hope for creating the change we desire, we must learn from the past and continue in a collective, absolute resolve to promote AU law as to unite is to not perish.

References

Abi-Saab G, 'The Newly Independent States and the Rules of International Law: An Outline' (1962) 8 Howard Law Journal 95

Abuja Treaty for the Establishment of the African Economic Community (adopted 3 June 1991, entered into force 12 May 1994)

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012)

African Union Convention on Cyber Security and Personal Data Protection (adopted 27 June 2014)

African Union Law Research Network, 'LPS Prize for African Union Law: Essay Competition 2018' (University of Sussex LPS Prize for African Union Law Essay Competition, 3 April 2018) <https://africanunionlaw.org/yahoo_site_admin/assets/docs/African_Union_Law_Essay_Competition.16452812.pdf > accessed 1 June 2018

African Union website <https://au.int/sites/default/files/treaties/34248-sl-agreement_establishing_the_african_continental_free_trade_area.pdf> accessed 30 September 2018

African Union, 'Agenda 2063: The Africa We all Want' (September 2015) <https://au.int/sites/default/files/pages/3657-file-agenda2063_popular_version_en.pdf> accessed 15 June 2018

Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018)

Alieu Touray O, *The African Union: The First Ten Years* (Rowman and Littlefield 2016)

Allott A, 'Towards the Unification of Laws in Africa' (1965) 14 International & Comparative Law Quarterly 366

[68] This includes the African International Economic Law Network of the Society of International Economic Law, African Association of International Law and the African Society of International Law. Also important is the Section of International Law: Africa Committee of the American Bar Association.

[69] Initiatives include the Trade Law Centre that South Africa established to develop technical expertise and capacity in trade governance across Africa. Also worthy of note is the Trade Policy Training Centre in Africa, inaugurated in 2006 to train and develop expertise on trade related issues.

Alter KJ, Gathii JT and Helfer LR, 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences' (2016) 27 European Journal of International Law 293

Amao O, *African Union Law: The Emergence of a Sui Generis Legal Order* (Routledge 2018)

Bashi Rudahindwa J, 'OHADA and the Making of Transnational Commercial Law in Africa' (2018) 11 Law and Development Review 371

Chaisse J, 'Promises and Pitfalls of the European Union Policy on Foreign Investment—How Will the New EU Competence on FDI Affect the Emerging Global Regime?' (2012) 15 Journal of International Economic Law 51

Chuks Okoye F, *International Law and the New African States* (Sweet and Maxwell 1972)

Constitutive Act of the African Union Law (adopted 7 November 2000, entered into force 26 May 2001)

Crasner Consulting, 'Law Firms Scramble for Africa' (18 October 2016) <http://www.crasnerconsulting.com/news/law-firms-scramble-for-africa/> accessed 15 June 2018

Desta MG and Gérout G, 'The Challenge of Overlapping Regional Economic Communities in Africa: Lessons for the Continental Free Trade Area from the Failures of the Tripartite Free Trade Area' in Zeray Yihdego and others (eds), *2017 Ethiopian Yearbook of International Law* (Springer 2018)

Dickson J and Eleftheriadis P, *Philosophical Foundations of European Union Law* (Oxford University Press 2012)

Doumbe-Bille S, 'The African Union: Principles and Purposes' in Abdulqawi A Yusuf and Fatsah Ouguergouz (eds), *The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization* (Martinus Nijhoff 2012)

Economic Commission for Africa, 'Eighth Session of the Committee on Trade, Regional Cooperation and Integration Report on International and Intra-African Trade' (Addis Ababa, Ethiopia, 6-8 February 2013) <https://repository.uneca.org/bitstream/handle/10855/22133/b10696167.pdf?sequence=1> accessed 15 June 2018

Elias TO and Akinjide R, *Africa and the Development of International Law* (Martinus Nijhoff 1988)

Elvy S-A, 'Theories of State Compliance with International Law: Assessing the African Union's Ability to Ensure State Compliance with the African Charter and Constitutive Act' (2012) 41 Georgia Journal of International and Comparative Law 75

Gathii JT, *African Regional Trade Agreements as Legal Regimes* (Cambridge University Press 2011)

Hartley TC, *The Foundations of European Union Law: An Introduction to the Constitutional and Administrative Law of the European Union* (Oxford University Press 2014)

Kagame P, 'The Imperative to Strengthen our Union: Report on the Proposed Recommendations for the Institutional Reform of the African Union' (29 January 2017) <https://au.int/sites/default/files/pages/34871-file-report-20institutional20reform20of20the20au-2.pdf > accessed 15 July 2018

Levitt J (ed), *Africa: Mapping New Boundaries in International Law* (Bloomsbury 2008)

Lindset PL, 'Supranational Organisations' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press 2016)

Low P, Osakwe C and Oshikawa M (eds), *African Perspectives on Trade and the WTO: Domestic Reforms, Structural Transformation and Global Economic Integration* (Cambridge University Press 2016)

Maluwa T, 'Ratification of African Union Treaties by Member States: Law, Policy and Practice' (2012) 13 Melbourne Journal of International Law 636

Maluwa T, 'The OAU/African Union and International Law: Mapping New Boundaries or Revising Old Terrain?' (2004) 98 Proceedings of the Annual Meeting (American Society of International Law) 232

Maluwa T, 'The Transition from the Organisation of African Unity to the African Union' in Abdulqawi A Yusuf and Fatsah Ouguergouz (eds), *The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization* (Martinus Nijhoff 2012)

Mbengue MM and Schacherer S, 'The "Africanization" of International Investment Law: The Pan-African Investment Code and the Reform of the International Investment Regime' (2017) 18 The Journal of World Investment & Trade 414

Michael R, 'Does Brexit Spell the Death of Transnational Law?'(2016) 17 German Law Journal 51
Natural Wealth and Resources (Permanent Sovereignty) Act 2017

Nkrumah, K, 'We Must Unite or Perish' (Speech, Inaugural Organisation of African Unity Conference in Addis Ababa, Ethiopia, 1963) in Lawrence EK Lupalo, *Nkrumah Nyerere Senghor: African Visionaries* (Create Space 2016)

Ofodile UE, 'The Past and Future of African International Law Scholarship: International Trade and Investment Law' (2013) 107 Proceedings of the ASIL Annual Meeting 194

Olaniyan K, *Corruption and Human Rights Law in Africa* (Bloomsbury 2014)

Olivier ME, 'The Role of African Union Law in Integrating Africa' (2015) 22 South African Journal of International Affairs 513

Oppong RF, 'Observing the Legal System of the Community: The Relationship between Community and National Legal Systems under the African Economic Community Treaty' (2006) 15 Tulane Journal of International and Comparative Law 41

Oppong RF, 'The African Union, the African Economic Community and Africa's Regional Economic Communities: Untangling a Complex Web (2010) 18 African Journal of International and Comparative Law 92

Packer CA and Rukare D, 'The New African Union and Its Constitutive Act' (2002) 96 The American Journal of International Law 365

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (adopted 27 June 2014)

Protocol on the Establishment of the African Monetary Fund & Statute of the African Monetary Fund (adopted 27 June 2014)

Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament (adopted 27 June 2014)

Rembe N, *Africa and the International Law of the Sea: A Study of the Contribution of the African States to the Third United Nations Conference on the Law of the Sea* (Brill 1980)

Rodriguez Yong CA, 'Legal Certainty and Foreign Investment in Africa: Let's Call the African Union' (2011) 6 Via Inveniendi et Iudicandi 1

Sharpe M, *The Regional Law of Refugee Protection in Africa* (Oxford University Press 2018)

Statute of the African Union Commission on International Law (adopted 4 February 2009, entered into force 4 February 2009)

Treaty on the Functioning of the European Union (Consolidated version) [2016] OJ C202/1

Udombana N, 'The Institutional Structure of the African Union: A Legal Analysis' (2002) 33 California Western International Law Journal 69

UNCTAD, 'Economic Development in Africa Report 2014 – Catalysing Investment for Transformative Growth in Africa' (4 July 2014) <https://unctad.org/en/PublicationsLibrary/aldcafrica2014_en.pdf> accessed 5 June 2018

UNCTAD, 'International Investment Agreements Navigator' <http://investmentpolicyhub.unctad.org/IIA> accessed 30 September 2018

UNCTAD, 'The African Continental Free Trade Area: The Day After the Kigali Summit' (Policy Brief No 67) <http://unctad.org/en/PublicationsLibrary/presspb2018d4_en.pdf> accessed 4 August 2018

UNECA 2018, 'Assessing Regional Integration in Africa VIII: Bringing the Continental Free Trade Area About' (6 February 2018) <https://www.uneca.org/sites/default/files/PublicationFiles/aria8_eng_fin.pdf > accessed 15 July 2018

United Nations Economic and Social Council, 'Draft Pan-African Investment Code' (26 March 2016) UN Doc E/ECA/COE/35/18

Viljoen F, 'Understanding and Overcoming Challenges in Accessing the African Court on Human and Peoples' Rights' (2018) 67 International & Comparative Law Quarterly 63

Viljoen F, *International Human Rights Law in Africa* (Oxford University Press 2012)

Voon T, 'Consolidating International Investment Law: The Mega-Regionals as a Pathway towards Multilateral Rules' (2018) 17 World Trade Review 33

Yahya M, 'Africa's Defining Challenge' (7 August 2017) <http://www.africa.undp.org/content/rba/en/home/blog/2017/8/7/africa_defining_challenge.html> accessed 15 June 2018

Yusuf AA, *Pan-Africanism and International Law* (Brill 2014)