OIL IN THE GULF OF GUINEA STATES AND SOUTH AFRICA IN THE MATRIX OF OVERLAPPING MEMBERSHIP OF AFRICAN REGIONAL COMMUNITIES: AN IMPEDIMENT TO REGIONAL INTEGRATION?

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3rd International Conference on
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ABSTRACT

The Gulf of Guinea states (GOGs) discussed in this article comprise a diverse group of more than 20 African states bordering on the oil-rich Gulf of Guinea. They are former colonies of Belgium, France, Great Britain and Germany. These states are of strategic importance to the United States, the European Union, India and China because of their tremendous natural resources that include biodiversity, oil, gas and other strategic minerals. But to what extent are they also of strategic importance not only to South Africa but to SADC member states? After all, the GOGs boast of their sea routes being safer and more convenient for sea transport. Post-colonial independence finds these states still adopting a mixture of foreign legal systems side by side with indigenous laws and customs. The region is still underdeveloped, with poor physical infrastructure, weak government structures, an inefficient legal system, and internecine strife and other inter-state disputes exerting a debilitating influence. The NEPAD Plan of Action of 2001 looks to the regional economic communities (RECs) to become the leaders in regional economic co-operation and integration. Although the

Journal of Law, Society and Development
Multi-, Inter- and Transdisciplinary
Volume 3 | Issue 1 | 2016
pp. 6–30
ISSN 2313-8289
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GOGs are characterised at present by overlapping membership of various communities, they have enjoyed some successes based on the newly found petroleum commodity which, wisely managed, can help to increase intra-African trade and produce a viable extensive African market buttressed by South Africa's economic advances into the rest of Africa. In some of the regions in Africa RECs such as ECOWAS and SADC have been able to transform their economic and monetary co-operation efforts into a powerful driving force for economic policy co-ordination and integration, but a strong, credible, effective and efficient legal framework with sustainable supporting institutions is now needed. South Africa is well poised to assist with deepening the political and economic integration in the GOGs by intensifying foreign direct investment (FDI), capacity-building and training projects, and the transfer of skills and technology. But the RECs' overlapping membership needs to be rationalised, the negative influences of the superpowers need to be resisted, and support is required to maintain peace and stability and ensure the security of the maritime regimes. A strong, independent supra-national body that is also able to supervise and monitor revenues from oil for the benefit of the region as a whole should be established.

Keywords: Gulf of Guinea states, regional integration, regional economic communities, overlapping membership, Africa, African Union, SADC, COMESA, ECCAS, ECOWAS, EAC, SACU, Gulf of Guinea Commission, OHADA, treaties, South Africa, supra-national independent regional body

INTRODUCTION

The Gulf of Guinea states (GOGs) as a collective have tremendous potential for creating investment opportunities in the African region. Some of their resources, such as oil, minerals, forests and marine life, continue to attract significant investment, whereas others, such as natural gas, could be exploited to their full potential if the necessary investments were undertaken. But before the GOGs can actually benefit from these resources, they have to cope with many challenges – both exogenous and endogenous – political, cultural and economic. One of these challenges stems from the states' overwhelmingly weak institutions and governance and the inherited foreign colonial legal systems that are sometimes disruptive of the socio-cultural and political life of the citizens. It is also possible to explore the relevance and importance of regional institutional arrangements and the increased involvement of the international community and the African Diaspora to complement efforts at addressing policy and governance issues. The adoption of the New Plan for African Development (NEPAD 2001) was intended to reinforce the collective consciousness of the African people and recognise that states do not exist in silos or operate as islands. Hence, the ultimate goal of regional integration is to create a common economic space among the participating countries (Nanna 2006: 1–2). Intra-African trade has always been minimal, despite the fact that Africa comprises countries that

own and produce commodities which can enable the African states to trade with one another. Nanna (2006: 1–2) states further that

> 'monetary and economic integration may evolve from trade links, as well as, historical and cultural ties. The process entails the harmonisation of macroeconomic policies, legal frameworks and institutional architectures, towards nominal and real convergence.'

With the deepening of regional integration, the GOGs will also benefit from the establishment of a monetary union that corresponds to the formation of other African monetary unions. Added to this is a treaty establishing the Gulf of Guinea Commission (GGC),[1] which constituted recognition that the GOGs have a comparative advantage in respect of oil and its products (Onuoha 2010: 370–380) as against other oil-deprived African states such as South Africa, Lesotho and Swaziland in the Southern African Development Community (SADC) region (Nkomo 2009: 20–22).

The objectives of a monetary union include the enlargement and diversification of market size, the promotion of intra-regional trade and the strengthening of member countries' bargaining power in the global economy (Nanna 2006: 1–2). There is also a need to establish a legislative institutional framework for maintaining stability and security in all the states – through treaties, making better use of a region's own assets and the existing regional economic formations and communities, putting in place a favourable business environment, and augmenting exports by means of value addition (UNECA 2012: 42–43; Ndulu et al 2005: 101–120).

Again, from the outset, the most visible areas where the GOGs show comparative advantage are easily identifiable: the abundance of natural resources – notably oil, natural gas, forestry, fisheries, mining and tourism – almost tops the bill of this comparative advantage (Frynas & Paulo 2007: 241–243). This is complemented by this region's openness to the sea and relative closeness to the main consuming markets of the globe such as North America, the European Union (EU) and, latterly, China and India (Frynas & Paulo 2007: 241–243). However, in future, these consuming markets must be extended to aggressively embrace all the other African states as a matter of priority so as to intensify intra-African trade further.

The economic advantages accruing from the GOGs' location include the cost advantage with regard to sea transportation of oil and other raw materials (Klare & Volman 2006; Zafar 2007; Hurst 2006). Furthermore, the GOGs, unlike other oil-supplying regions, benefit from the absence of transit choke-points, compared to the narrow maritime lanes found in the Panama Canal, the Strait of Hormuz and the Suez Canal (Frynas & Paulo 2007: 244–245). As such, oil carried in tankers is less susceptible to blockades, attacks and accidents. However, the concern is that in most oil-producing states within the region, the commodity has had a powerfully negative effect on the quality of government – this despite the fact that the oil economy thrived on the back of high oil prices and significant new investment from

1 See <http://library.fes.de/pdf-files/iez/02115/appendix.pdf>.

Western oil companies (Duruigbo 2005). Governments in the oil-producing region have also increasingly failed to provide welfare or security for their citizens and have instead used their states' oil revenues to protect their hold on power and enrich small elites (Duruigbo 2005: 63–67). These corrupt regimes and their increasing ability to absolve themselves of the usual responsibilities of sovereignty, such as providing healthcare, education and infrastructure to their citizens, need ultimately be subjected to progressive reforms. A harmonised legislative framework that buttresses good economic and corporate governance has to be enacted as a matter of extreme urgency in order to put an end to the continuing dissipation of oil revenues in wanton disregard of the welfare of the citizens.

This article gives an overview of the GOGs and their membership of various African regional economic communities (RECs); it also analyses their relationships against the background of the African Union (AU) policy documents, the NEPAD economic programme of action, their overlapping membership in various RECs and the problems of integration.

In Africa, the overlap of membership among RECs in the eastern and southern African regions has already been identified 'to an extent unparalleled anywhere else in the world' (Jakobeit et al 2005). The extent of this overlap, according to Geda and Kibret (2002: 13–15), has a bearing on the costs and benefits of deeper integration in particular. Moreover, Jakobeit et al have argued that membership of more than one customs union (CU) is technically impossible (2005: vi–vii). This is in view of the fact that most RECs in the eastern and southern African regions wish to move towards a CU. Accordingly, member states with multiple memberships at present will have to strike a balance between the costs and benefits entailed in belonging to one or more CU grouping.

But while the continental agenda is evolving, a regional approach in major structural areas will enable the GOGs to pool their resources and take advantage of regional institutional and human resources and, finally, become more integrated into the overall African market (Ndulo 1996). These structural areas include tariff reduction and harmonisation of the legal and regulatory frameworks, the rationalisation of the payments system, financial sector reforms, investment incentives and tax system harmonisation, and labour market reform. The achievement of these goals will also allow countries to present a common front for asserting their interests from a stronger and more confident position in the global market and in international economic relations. South Africa, as a highly industrialised country, can be a catalyst in this process, tapping into the oil wealth of the GOGs by exchanging its beneficiated products for oil, a scarcity in its economy.

African political leaders should not be allowed to dissipate oil revenues. Their management and the monitoring of their use and expenditure must not be the preserve of a single member state whose government has historically been riddled with corruption and incompetence and always in cahoots with oil-exploiting companies.

The AU should set up a special independent agency and receiving fund for such revenues and the AU should supervise the drafting of oil contracts so as to protect the welfare of the citizens. Physical and information communication technology (ICT) infrastructure can be funded from the revolving fund, preference being given to the economic development of less-developed member states.

The next section of this article briefly introduces South Africa, a coal-based economic hub of the continent, which, although highly industrialised, has extremely limited liquid oil resources to fuel its economy. It is followed a section on the web of overlapping RECs' membership in which South Africa and the SADC member states find themselves. This web is critically surveyed, as are the tensions (political and otherwise) that manifest themselves as a result. South Africa dominates the economies of both the SADC and the GOGs entities, and is effectively in charge of the foreign direct investment (FDI) established in those regions. Of late, such investments have seemed to prefer the oil-producing countries of the GOGs, though South Africa still maintains its stranglehold over the SADC region. The next section therefore summarises such economic positioning. In the following two sections, the political economy of oil in Africa and its effects are briefly discussed and attempts at political and economic integration are debated and the challenges identified. In the section entitled 'Overlapping membership: challenges', the challenges faced by African member states resulting from belonging to one or more RECs are identified and critically analysed, and some tentative recommendations are made. This is followed by some success stories of unification and harmonisation programmes and a brief discussion on the GGC and the Organisation for Harmonisation of Business Law in Africa (OHADA). Finally, in this section, a recommendation is made for the establishment of an independent transnational regional structure of the AU to rationalise Africa's oil revenues, to curb corruption at all levels, and to supervise an oil fund for the benefit of Africa's development agenda.

SOUTH AFRICA: AN OIL-SCARCE COUNTRY

Although an economic powerhouse in the continent, South Africa is not yet endowed with exploitable oil resources, though oil reserves off-shore are identifiable, sometimes being assessed as not being economically viable. In general, energy is fundamental to the social and economic development of a country, and South Africa is no exception. A growing economy is needed in order to bring prosperity and security to the country, eradicate poverty and establish an economy based on a sustainable development path. This can happen through the careful harnessing of energy that will provide heat and power for industry, warmth and lighting for households and fuel for transport. Through economic sanctions under the apartheid regime, liquid fuels became highly regulated and subject to secrecy (World Energy Council, 2003). After 1994, state ownership declined in this sector as private participation

increased. Overall, South Africa therefore depends on imports of oil from countries where access to and the importation of such reserves is costly and sometimes unsafe (Nkomo 2009: 20–21). As a whole, southern Africa's economy is based on coal and is short of liquid fuels (Kearney 2013).[2] According to an SA Petroleum Industry Association Report, in 2011 South Africa imported 130 million barrels of crude oil. This high import volume exposes the country to both political and supply risk. More recently, the country's primary source of crude oil has been Iran, followed by Saudi Arabia, Nigeria and Angola (Nkomo 2009). However, it is reported (Kearney 2013) that by June 2012 sanctions against Iran had led to the cancellation of all imports from that country and therefore South Africa had to search hastily for alternative sources. In these circumstances, of what strategic importance are the GOGs to South Africa and the SADC in particular? And what impediments are there to sourcing oil from such reserves? What is the relevance of the oil industry, properly managed, to increasing intra-African trade? And can deeper integration enable South Africa ultimately to secure oil at cheaper prices from this region?

Some data bear consideration in response. First, South Africa is a middle-income country and one of the most industrialised countries in Africa. Secondly, South Africa's economy is heavily dependent on energy and, therefore, to be specific, its economy is coal-based (30 per cent of liquid fuels are derived from coal and gas). Crude oil provides for about 17 per cent of South Africa's primary energy needs and about 70 per cent of the country's liquid fuels are refined from crude oil (World Energy Council 2003). However, as indicated above, South Africa has limited oil reserves and about 95 per cent of its crude oil requirements are met by imports from the Middle East and Africa (Department of Minerals and Energy 2006). The country's total refining capacity is 250 million barrels per year, or about 700 000 barrels per day. It is reported that, of the daily total refining capacity, 500 000 barrels are crude oil and 195 000 barrels are coal-to-liquid synthetic fuel. In such circumstances, with a total consumption of

> 'about 24.5 billion litres (6.5 billion gallons) of fuel annually – mainly petrol and kerosene – there is a 7 per cent shortfall of 1.5 billion litres (nearly 400 million gallons) of fuel per year, accounting for South Africa's need to import refined products' (Kearney 2013).

Furthermore, against this backdrop there have been a series of fuel shortages related to refinery maintenance – the most significant of which occurred in January 2012,

2 Kearney states that recent discoveries of major gas and oil deposits in southern Africa could dramatically improve the prospects for these countries – reducing imports, driving economic growth and lowering carbon dioxide (CO_2) levels in power generation. Previously, pockets of natural gas off the South African and Mozambican coasts were all that southern African countries seemed to offer in terms of oil and gas resources. That changed in 2010 and 2011, when a potential 500 trillion cubic feet of gas was identified in this area, along with 11 billion barrels of oil off Namibia. In total, these gas reserves equal those of Canada or Venezuela and the discoveries could transform the region.

when several planned and unplanned refinery shutdowns combined with problems at the Single Buoy Mooring Facility off Durban caused widespread fuel shortages. It has also been noted that South Africa's four crude-oil refineries are old (an average of 43 years old) and need increasing levels of maintenance. The major refineries – Sapref, Enref, Calref and Natref – respectively produce petrol, diesel, residual fuel oil, paraffin, jet fuel, avgas, liquid petroleum gas (LPG) and refinery gas (Nkomo 2009: 23; Department of Minerals and Energy 2002).

Namibian oil is the simplest source of newly discovered liquid fuels to exploit. When it comes into production, it will provide a local, relatively secure additional source of crude oil for the region. Reduced reliance upon the Middle East and Angola would substantially improve the security of the crude-oil supply to South African refineries. The proximity of the Namibian oilfields will also reduce freight costs and provide more flexibility in scheduling supplies and managing stocks. Be that as it may, though, two regions still account for more than 20 per cent of global offshore oil production: the Middle East (22 per cent), where production is concentrated chiefly in shallow depths (less than 200 m), and West Africa (20 per cent), where production is focused on Nigeria, Angola and – more recently – Ghana (Hurst 2006; Kearney 2013). All in all, South Africa and the SADC need to harness oil supplies from the GOGs in order to maintain their economies on a viable and sustainable footing, while trading with those countries the goods the latter do not have.

SOUTH AFRICA AND SADC IN A MATRIX OF OVERLAPPING REC MEMBERSHIP

The RECs with overlapping membership considered here are in particular the Economic Community of Central African States (ECCAS/CEEAC); the Economic Community of West African States (ECOWAS); the GOGs; the Common Market of Eastern and Southern Africa (COMESA), the East African Community (EAC), the Southern African Customs Union (SACU) and the SADC. These is either already a CU, for example the SACU, or one in the transition phase to becoming a CU (the EAC), or one intended for the near future (the COMESA, SADC) (Geda & Kibret 2002: 13–15; Jakobeit et al 2005: vi–vii).

The regions of eastern and southern Africa provide a complex picture of overlapping RECs – the COMESA even has the highest incidence of overlapping memberships in the world. Most states are concurrently members of two or more regional organisations with an economic agenda. These organisations are:

- COMESA, comprising a large group of 20 extremely heterogeneous countries economically and politically, 11 of which are part of a COMESA Free Trade Area (FTA).

- SADC, which has 14 member states, with South Africa being the largest economy by far. The SADC is in the process of establishing an FTA among its members, but it also covers a broad range of other areas of co-operation, including politics and security.
- SACU, one of the CUs, is made up of five countries, South Africa being its economic centre. All SACU countries are simultaneously SADC members. Four SACU member states (excluding Botswana) are also members of the Common Monetary Area, with the smaller members pegging their national currencies on a par with the South African rand.
- EAC, comprising only three countries that are in the process of establishing a CU and implementing an FTA.
- IGAD, the Intergovernmental Agency on Development, is an East African organisation that was created to combat drought and desertification. To date, it has largely served as a negotiating forum with regard to the civil wars in Sudan and Somalia.

South Africa is a member of SADC; Angola and the Democratic Republic of the Congo (DRC) are members of the GGC (part of the GOGs) and also members of the SADC.

The DRC also enjoys overlapping membership in other RECs, namely, the COMESA and ECCAS. Being a member of the COMESA means that the DRC is also indirectly affected by some rules, regulations and policies promulgated under the EAC Treaty and its Protocols, and is also influenced indirectly by the policies under the Treaty and Protocols adopted by IGAD.

Angola, on the other hand, is a member not only of the SADC but also of the ECCAS and the GGC. In this matrix of overlapping membership, South Africa dominates the economy of the SADC region, contributing 80 per cent of the region's gross domestic product (GDP). However, the country has of late invested more by way of FDI in some economically important GOGs.

When it comes to oil, South Africa will be more dependent on Angola and other GOGs that produce quality oil, because South Africa's natural oil resources will be extremely limited for some time. Therefore the security of oil and gas infrastructure and supplies, and of the vast marine resources, is of crucial importance to South Africa. There are also pressures from South Africa to disinvest from coal carbon-intensive production and to migrate to a reduced carbon economy (oil and gas) and renewable energy resources. Future compliance with some international responsibilities mandating South Africa to abate its air pollution and mitigate its fossil fuel emissions will soon become a reality. Such a compliance regime will be in terms of the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol's future commitment periods (United Nations 2013).

South Africa must therefore conceptualise its niche and define its status and the relevance of the strategic importance of the GOGs to its overall political economy and international relations. It must also determine how its influence could be optimally leveraged against the highly hostile and competitive oil-hungry major regional powers, the United States, the EU, China and the other BRICS (Brazil, Russia, India) countries.

SOUTH AFRICA AND REGIONAL STRATEGIC POSITIONING

South Africa is a highly industrialised and an economically better developed country on the continent. It is a founder member of the AU and NEPAD. The country accounts for one-fifth of the entire production of the African continent. Its economy is well diversified and is capable of producing a wide range of consumer and investment goods. Over and above that, it has rich mineral resources: it is the world's largest producer and exporter of gold, platinum and chromium and also exports a significant tonnage of coal. Another major mineral export is diamonds.

According to the UNCTAD Economic Development in Africa Report 2013 (UNCTAD 2013: 1–5), in the SADC region, the average value of intra-group exports between 2004 and 2006 was just under US$11 billion per annum, which was equivalent to about 12 per cent of the group's total exports. Against this background, the Economic Development in Africa Report (EDAR) 2013, subtitled Intra-African Trade: Unlocking Private Sector Dynamism, focuses on how to strengthen the private sector in order to boost intra-African trade (UNCTAD 2013a: 1–5). This latest report provides some facts on intra-African trade and highlights distinctive features of Africa's enterprise structure that have to be addressed if intra-African trade is to be promoted. It also examines the challenges for intra-African trade posed by non-implementation of regional trade agreements and provides new insights into how to enhance the implementation of existing regional agreements (UNCTAD 2013a: 1–5). The report argues that for African countries to reap expected gains from intra-African trade and regional integration, they will have to place the building of productive capacities and domestic entrepreneurship at the heart of the policy agenda. In this context, the report recommends that African governments should promote intra-African trade in the context of developmental regionalism. In particular, the UNCTAD (2013a) report stresses the need for a shift from a linear, process-based approach to integration which focuses on the elimination of trade barriers to a more development-based approach to integration which pays as much attention to the building of productive capacities and private-sector development as to the elimination of trade barriers (UNCTAD 2013b).

However, it should come as no surprise that the intra-group imports and exports are dominated by South Africa, which alone is responsible for 44 per cent of intra-

group exports and 40 per cent of intergroup imports (UNCTAD 2013a). UNCTAD states that with respect to South African investments in other parts of Africa, there is a more diversified distribution of investment outflows relative to inflows (UNCTAD 2013a: 40–42). East Africa and West Africa take the lion's share, with the southern Africa region as the third recipient of South African investments. That shows an asymmetry in the relationship between southern African countries and South Africa. The UNCTAD report notes, further, that, whereas southern Africa considers South Africa as its key investment destination, South Africa sees better investment opportunities in other regions.

The picture that seems to emerge from the UNCTAD report (2013a), comparing the situation in 2007 to those in 2000 and 2004, is that South Africa's intra-African investment is shifting from southern to West Africa. Certainly there is a shift in emphasis from southern Africa to West Africa as the main destination of FDI, and differentiating FDI and portfolio investments helps to identify which components are driving the shift. UNCTAD (2013a) notes that South Africa's FDI is the dominant investment into West Africa, increasing from approximately 2.5 billion rand in 2000 to 34.8 billion rand in 2007. Although outward investment into southern Africa did not decrease, it nonetheless pales in comparison to the significant increase in FDI flow to West Africa. Oil imports from GOGs into South Africa will in future expand this volume of trade.

AFRICA AND THE POLITICAL ECONOMY OF OIL

Is it oil for development or underdevelopment? This is both the curse of oil resources in Africa and a paradox. This has to do with Africa's integration into the global economy, which is a product of rentier economies of diverse origins (the sale of agricultural and forestry products, and raw minerals, international aid and migratory transfers). Magrin and Van Vliet (2009: 103) state that 'rentier economy' means

> 'income flows that are disconnected from overall production activities in a given territory. Where there is production, it is often simple extraction, with the products being exported without either being processed or providing local benefits, and above all without contributing to a diversified economic system. Specific political forms are inherent to these peculiar economic systems … rentier states.'

Whereas African oil reserves are still dwarfed by those in the Persian Gulf states (Klare & Volman 2006: 609), the proven oil reserves of Algeria, Libya, Egypt and Sudan reached more than 5 million barrels per day (mb/d) in 2008, accounting for almost half of Africa's oil production (Fattou & Darbouche 2010: 1119–1120). Onuoah, quoting from the BP Statistical Review (2008), states that Africa had proven oil reserves of '117.481 barrels at the end of 2007 or 9.49 per cent of the world's reserves' and that five countries, Nigeria, Libya, Algeria, Sudan and Egypt, together hold '95% of total oil reserves in the continent' (Onuoah 2010: 370). Notable in

this regard is that Africa contributes more than 10 mb/d to the world's supply of over 90 mb/d (Onuoah 2010: 370). Frynas and Paulo (2007) state that the world oil production capacity is predicted to grow by 53 per cent between 2002 and 2025, from 80 to 122.2 mb/d (Frynas & Paulo 2007: 234). Africa's oil production is therefore scheduled to grow at a faster rate than elsewhere.

Although Africa is made up of 54 countries and an estimated 805 million people, to date oil and gas production has been concentrated in only the five abovementioned states, accounting for 85 per cent of Africa's oil production (Hurst 2006; Klare 2006). However, this is about to change, with the eastern states of Kenya, Uganda, Somalia and Ethiopia joining them and some other, smaller, producers too: Gabon, Congo Republic, Cameroon, Tunisia, Equatorial Guinea, the DRC, and Côte d'Ivoire (Frynas & Paulo 2007: 241). In a 2006 ranking of 114 oil-exploring and oil-producing countries, Africa's oil producers scored very highly in terms of attractiveness: Congo Republic was ranked 8th, Angola 9th, Nigeria 11th, Libya 12th, Mauritania 17th, Sudan 18th, Côte d'Ivoire 20th, Gabon 23rd, and Equatorial Guinea 24th (Klare & Volman 2006). Oil production and exploration in Africa can apparently be very profitable by international standards.

Moreover, according to the revised 2012 BP Statistical Energy Survey, Africa had proven oil reserves of 132 438 billion barrels at the end of 2011, equivalent to 41.2 years of current production and 8.01 per cent of the world's reserves. The continent produced an average 8.8 mb/d of crude oil 2011, just more than 10 per cent of the global output.

The GOGs have a market size of about 300 million consumers. These countries enjoy a wide geological, geographical and cultural diversity. They range from English-speaking countries to French-, Portuguese- and Spanish-speaking nations. Overall, the GOGs generate a GDP of US$112 billion, exports of about US$45.5 billion and imports of about US$31.63 billion. GOGs have been keen on developing oil production at a fast speed and have allowed multinational firms to enter their territories. The US Department of Energy estimated that total African oil production is set to rise by 91 per cent between 2002 and 2025, from 8.6 to 16.4 million barrels (Klare & Volman 2006: 611–615). In relative terms, Africa should now be deriving some economic independence from the oil boom. Moreover, Chinese loans and investments, in particular, have opened up new policy options to African leaders (Taylor 2006): for example, Dos Santos in Angola or Obiang in Equatorial Guinea no longer has to rely on the support of either the Western governments or the Bretton Woods institutions alone (Frynas & Paulo 2007: 241–243).

Klare and Volman state that there are a number of advantages to exploiting African oil (2006: 612–615). For example, the key attraction to Africa stated by oil companies is the high success rate in drilling operations, that is, the number of successful oil- and gas-well discoveries divided by the total number of drillings (Klare & Volman 2006: 612–615). As a key geological advantage, the quality of

African oil tends to be high; African crude oil tends to be of relatively high quality according to the American Petroleum Institute (API) gravity standard and, with a few notable exceptions, such as Egyptian crude, it boasts a low sulphur content (which is sought after). In addition to the relatively low operating costs and the quality of the oil, Africa has transport advantages; this makes it both economically advantageous and strategically significant: in comparison with crude oil from the Middle East, crude oil from West and North Africa is closer to the markets of Europe and the United States, so an oil tanker journey from Nigeria or Angola is at least several days shorter, and the buyer can therefore save money on the payment of tanker charter and insurance. Furthermore, North Africa holds the key advantage of supplying oil and gas via pipelines to Europe, and there are currently plans for expanding and building new pipelines from Libya and Algeria to Spain, Italy and the rest of the EU (Bahgat 2007: 100–101; Fattou & Darbouche 2010). The most ambitious plan is to build the 4 300-kilometre-long trans-Sahara pipeline from Nigeria through Algeria to Europe (rumoured to require an investment of US$10 billion), for which a feasibility study has recently been completed (Frynas & Paulo 2007: 242; EIA 2013).

But oil revenues have also had many negative economic consequences, as identified by Frynas and Paulo (2007: 241–243). As has often been cited, many petro-states have previously suffered from the phenomenon known as the 'resource curse'. Despite being well endowed with natural resources, petro-states have experienced economic underdevelopment and political mismanagement, a finding strongly supported by many quantitative and qualitative studies and accepted by World Bank and International Monetary Fund (IMF) economists. Quantitative studies show that states with a high share of natural resource exports have had lower economic growth rates than states without these resources (Duruigbo 2005: 1–15). As explained by Duruigbo, the causes of this lower growth include a phenomenon known as 'Dutch Disease', where large inflows of foreign exchange make exports of agricultural and manufacturing goods more expensive and draw resources from non-mineral sectors, thereby stifling the development of those sectors (Duruigbo 2005: 1–15). The Dutch Disease, which owes its origin to the experience of the Netherlands with the discovery of North Sea natural gas in the 1960s, has two elements in its technical form (Duruigbo 2005: 13–15). According to economists and other legal and political analysts, the first element is the spending effect, that is, that natural resource booms tend to lead to appreciation in the real foreign exchange rate, driving spending to the non-tradable sector (eg construction), which results in inflation. The second element is the migration of labour and capital to the booming non-tradable sectors. Both of these elements combine to render the non-boom-tradable sector (eg manufacturing and agriculture) less competitive or non-competitive and to effectively crowd out previously productive sectors. Duruigbo further refers to the Nigerian scholar Pat Utomi's account that links the problems of the Nigerian economy to the Dutch Disease (Utomi 2003). He states that Utomi bases his position principally on data

which indicate that in the years in which Nigerian oil revenues dwindled (1987–1990) manufacturing boomed. The oil windfalls of 1991 put an end to this progress and, with consistent growth in oil revenues since 1999, Nigeria's economy has been in the doldrums (Utomi 2003).

Natural resource exports are also said to undermine good governance and political accountability to society, not least through the neglect of non-mineral tax revenues, the relaxation of government accountability standards, and the growth of a dependency mentality.

All in all, one cannot dispute the increased international importance of Africa, which can be attributed to the increasing demand for its natural resources and the interest from 'new' players such as China and India. China's rise as one of Africa's principal commercial partners is also of immense importance.

THE AFRICAN REGIONAL INTEGRATION PROJECT: SUCCESSES OR FAILURES

African leaders and economic operators (both foreign and indigenous) now recognise the need for closer regional ties as a way of overcoming the fragmentation introduced by colonialism, which put major constraints on the continent's economic development. Economic integration is perceived by many African leaders and governments as a promising vehicle for enhancing economic and social development in their respective countries (GTZ 2009). This thinking derives partly from the relatively successful experiences of integration between Western European countries and the US–Canadian Free Trade Agreement. Other integration schemes among countries in Latin America and in the Pacific and Asian regions have also played a major role as models in themselves. The harmonisation of laws in general, but of trade laws and commercial practices in particular, is an important ingredient of regional integration, without which no meaningful political and economic integration can be achieved. Most importantly, economic integration needs a legal framework to foster and support it. The proliferation of regional economic communities and other groupings through treaties and declarations requires an efficient institutional framework which in future will co-ordinate deeper attempts directed not only at legislative integration but also at political and economic integration. The phenomenon of states' overlapping membership in several regional entities is also a matter of concern; and how contradictions of sovereignty and loyalty are resolved as a matter of great sensitivity is crucial as failure to manage these concerns may exacerbate political and even economic instability within the region.

The benefits of regional integration have been the subject of a number of studies, both theoretical and empirical (ZBF 2008; Nanna 2006; GTZ 2005; Andrew et al 1997). Some benefits are related directly to trade issues, whereas others are broader and go beyond the scope of trade. Some of these benefits are discussed

and summarised in the 2008 Zambia Business Forum Report (ZBF 2008); they include: trade-creation effects, economies of scale, prospects for FDI, co-operation in public-sector investment, technological transfers, bargaining power, stability and democracy, and depth of economic integration. These are expanded upon below.

Trade-creation effects

The ZBF report states that the theory of trade creation assumes that when barriers to trade are reduced or eliminated, as happens in all economic groupings, producers of goods in member countries have equal and unfettered access to markets in all member countries belonging to the economic grouping (Balassa 1961; Biswaro 2003; Carbaugh 2004). Consequently, consumers will buy any category of goods from the cheapest and most efficient producer in the economic bloc. Based on empirical evidence, therefore, regional economic groupings should result in increased levels of trade in the grouping than before its formation, a shift in the production of all goods to countries which can produce them most competitively and efficiently, an improvement in welfare (such as in consumer surplus resulting from lower prices for competitively produced goods), an increase in employment and, above all, the creation of an opportunity to identify their comparative advantages and produce goods which reflect these advantages (Markussen et al 1995).

Economies of scale

Regarding economies of scale, the ZBF report states that the reason for the competitive pricing of goods expected in an economic grouping is the larger market space that it offers. Producers in the groupings find themselves producing not for their national market but for a regional one that offers a bigger population, a larger geographical scale, more purchasing power and therefore economies of scale (Schiff & Winters 1993).

Prospects for FDI

As regards prospects for FDI, the ZBF report states:

> '[A] larger market space offered by an economic grouping also provides improved prospects for Foreign Direct Investment (FDI) into the region. Investments in individual countries acquire a new level of attractiveness after forming a union because generally a small African country has a dual disadvantage of small population and low income levels. This deficiency is only overcome by expanding the physical space of the markets and improving aggregate income through countries coming together into one integrated market.'

Empirically, therefore, there should be higher investment inflows after than before the formation of a regional bloc.

Co-operation in public-sector investment

Physical infrastructural inadequacies in the form of road, rail, air and telecommunication connections among countries in Africa pose a significant hindrance to efficient trade between them. Within an economic bloc, the development of certain infrastructural projects becomes possible because they acquire the status of regional projects and are therefore funded through co-operation between a number of countries in the economic bloc. Therefore, with regional integration there should be an increase in investment for regional infrastructural development, which in turn will facilitate trade and welfare improvements.

Technological transfers

The ZBF report observes that the transfer of technology and modern management techniques is possible in an economic grouping, particularly if members are at different levels of technological and economic development. In fact, the more advanced members of the groupings can play the catalytic role of pulling the other countries up. Hence, the resulting technological improvement in these countries has the potential to transform production capabilities, leading to improved efficiency and the solidification of comparative advantage.

Bargaining power

The ZBF report observes that the process of negotiating for fair and equitable international trade relations is a hard-fought battle in which the weak countries have historically lost and still continue to do so. For the small countries in Africa, meaningful bargaining power is possible only through economic groupings and not as individual entities.

Stability and democracy

The ZBF report expresses the firm belief that investment flows and the resulting economic development are increasingly tied to the perceived and actual stability of countries. Regional economic groupings are increasingly addressing issues of security and democracy by committing themselves to conventions and protocols, democratic reforms become locked in and policy reversals are more difficult at the national level. Therefore, regional economic groupings help to build a political environment conducive to national development.

Depth of economic integration

Finally, the ZBF report states that 'an additional assumption made when accessing the benefits of economic integration is that the deeper forms of integration are more likely to yield higher benefits'. And it is for this reason that lower levels of integration such as PTAs and FTAs are not considered as an end in themselves but rather as early stages of a process whose ultimate destination is either a common market or an economic union. Accordingly, the transformation of GOG RECs into CUs aims, at least in theory, to deepen the integration process in all these organisations with a view to bringing about more benefits to the member states than they currently enjoy (Biswaro 2003; Carbaugh 2004).

However, despite many efforts to deepen political and economic integration, there seems to be consensus that the degree of success of all the RECs in achieving their objectives has been less than satisfactory. There also seems to be some insistence that there should be more continental intra-trade activity before most of the objectives of integration can be achieved. Geda and Kibret seem to think that the intra-Africa trade is not small compared to what should be expected (2002: 13–15). Various reasons are suggested as causes for the lack of progress in regional integration efforts in Africa. Chief among them are the unwillingness of governments to:

- surrender the sovereignty of macro-economic policymaking to a regional authority;
- face potential consumption costs that may arise from importing from a high-cost member country;
- accept an unequal distribution of gains and losses that may follow an integration agreement, and
- discontinue existing economic ties with non-members (Johnson 1995: 213).

Other researchers, such as Lyakurwa et al (1997), add to the above list: 'lack of a strong and sustained political commitment and macroeconomic instability' (1997: 176). The challenges of the overlapping membership of RECs has also been the subject of special studies.

OVERLAPPING MEMBERSHIP: CHALLENGES

The problems caused by overlapping membership have been tackled at regional and continental levels by the United Nations Economic Commission for Africa (UNECA 2005; UNECA 2012). The capacity constraints of the RECs to administer properly the existing treaties, protocols, agreements and their agendas have debilitating effects and their focus risks being diluted by overlapping membership. It is observed that RECs operating within the same sub-regional space basically pursue identical mandates and objectives, though there are a few variations in the modalities and

tempo of operations. The overlaps also increase the hurdles to Africa's integration because they tend to dissipate the collective focus on the common goal of the AU. Multiple arrangements and institutions, as well as overlapping membership in the same region, tend to confuse integration goals and lead to counter-productive competition between countries and institutions. Overlaps of RECs also entail added burdens for member states: a country belonging to two or more RECs, for instance, would have to cope with varying meetings, policy decisions, instruments, procedures and schedules in addition to its multiple financial obligations.

In the area of trade liberalisation, for instance, customs officials would have to deal with the different tariff reduction rates, rules of origin, trade documentation, statistical nomenclatures and so on, applicable to different RECs. In the process, customs procedures and paperwork could be amplified and therefore run counter to the intended liberalisation of trade facilitation and simplification. The imperative to give Africa's overall integration process a clear sense of purpose and direction will therefore require RECs to rationalise overlaps. Co-ordinating and harmonising the activities of the RECs has accordingly been on Africa's integration agenda.

The African Economic Community (AEC) Treaty devotes an entire chapter to the need for the RECs to march in unison towards the establishment of the AEC. The Constitutive Act of the AU reiterates its vital importance to ensuring a harmonious approach to realising the union. There is therefore consensus on the need to forge unity of purpose and action in pursuit of the continent's integration agenda. As documented in many studies, multiple overlapping memberships in RECs have created a complicated web of competing commitments which, combined with different rules, result in high costs of trade between African countries – in effect undermining integration. Multiple overlapping memberships lead to resource and effort wastage as a result of the duplication or multiplication of effort. They also complicate efforts aimed at harmonisation and co-ordination among member states and, according to the UNECA report (2005), tend 'to muddy the goals of integration leading to counterproductive competition among countries and institutions'. Many analysts believe that overlapping memberships in RECs cause complications and inconsistencies due to conflicting obligations and divided loyalties, and are accountable for the lack of progress or success of African integration schemes. A typical example is the rivalry between Anglophone and Francophone countries on various commissions and committees. \

The UNECA premier study on integration, supported by other researchers, outlines the following challenges (Geda & Kibert 2002: 1315; Jakobeit et al 2005: vi–vii):

- The need to rationalise the RECs, since multiple memberships spread limited resources thinly and complicate the integration process, given diverse agendas.

- The need to expedite ratification and rationalise protocols to enhance convergence of subregional goals. Given contradictory REC protocols, signing and ratification has been slow, which reduces the integration momentum. RECs by and large lack supra-national authority to ensure implementation of collective decisions and enforcement of policy convergence. It is notable that at least two RECs (UEMOA and CEMAC) have adopted a more expeditious approach, adopting 'acts' or 'decisions' that take effect immediately.
- The need for prioritisation to match goals with available resources, focus on achievable objectives and deepen fundraising.
- Strengthening private-sector involvement in integration efforts.
- Making integration part of Africa's overall development strategy.
- Ensuring equitable outcomes through integration and guarding against deepening inequities.
- Integration requires sustained commitment from member countries, and must be reflected in matching domestic policies.
- Ensuring the AU plays a critical role in providing leadership for integration.
- Some other challenges are listed in box 1 below:

Such overlaps also mean, inter alia, that:

- because RECs adopt different sectoral harmonisation models and policies, dilemmas are created for countries that lead to delays in the implementation of region-wide programme objectives;
- competition for resources poses a dilemma for development partners;
- complexities arise in the legal and financial structuring of cross-border regional projects, where participating countries belong to different RECs with different legal systems.

Other constraints on integration include:

- the systemic problems that hamper the development of national economies also impede Africa's integration;
- reluctance to adhere to integration programmes due to concerns over losses and uneven over gains;
- insufficient analytical and technical support limits the implementation of some integration instruments (eg on trade liberalisation);
- divergent and unstable national macro-economic policies;
- a lack of clarity of visions, ignoring the principle of subsidiarity;
- a lack of national mechanisms to co-ordinate, implement and monitor integration programmes;
- an inability to make integration part of national development frameworks;
- insufficient political will, requisite investment and resources for integration;
- poorly streamlined mandates and legal frameworks from which RECs derive authority;
- a crisis of confidence and legitimacy that results from the legitimacy and authority of some RECs apparently being tied to particular individuals and personalities;
- problems related to old colonial loyalties and inclinations, and sometimes subtle rivalries at the secretariats of the various RECs.

(Identified in UNECA, AU Commission Reports, 2006)

GULF OF GUINEA COMMISSION AND ORGANISATION FOR HARMONISATION OF BUSINESS LAW IN AFRICA:[3] INDEPENDENT TRANSNATIONAL REGIONAL FRAMEWORK TO ADMINISTER OIL REVENUES

Africa needs to establish a strong, independent supra-national body capable of supervising and monitoring oil revenues from petroleum development and oil products (Fagbayibo 2013: 33–35; Beauchard & Kodo 2011: 15–17; Verdier 2009: 117–119). Models that can be refined for this purpose already exist, and these include the OHADA model (Dickerson 2005: 55–63). In the latter part of the last century, governments had been increasingly willing to abandon some of their regulatory competencies in favour of institutions which were not necessarily democratically accountable but insulated from political influence (Gillardi 2002: 873–878). Africa needs to learn from these new institutional features that now characterise a rising regulatory state. The GGC is discussed in this context because of its relationship to the overlapping membership matrix involving the OHADA and ECOWAS treaties and, especially, in view of the transnational character of OHADA's judicial structure (Doris 2012: 264–265) – a model we import for the purposes of conceptualising the recommendation for a transnational independent regulatory framework discussed below.

Gulf of Guinea Commission

The GGC, created in 1999, is limited to sovereign states bordering on the Gulf of Guinea (Onouha 2010: 370–373). These states include Angola, Cameroon, the DRC, Congo Republic, Equatorial Guinea, Gabon, Nigeria and São Tomé et Príncipe. African oil-producing countries may also include those shown in box 2 below.

3 Organisation pour l'Harmonisation du Droit des Affaires en Afrique (OHADA).

• Angola • Benin • Cameroon • Central African Republic (CAR) • Chad • Côte d'Ivoire • DRC • Equatorial Guinea • Gabon • Gambia • Ghana	• Guinea • Guinea-Bissau • Liberia • Mali • Mauratania • Nigeria • Republic of Congo • São Tomé et Príncipe • Senegal • Togo

The GGC sets out to:

- achieve mutual confidence and trust among member states;
- create an atmosphere in which the mutually beneficial economic activities of citizens can be peacefully pursued;
- provide a framework for monitoring and controlling environmental degradation in the gulf, as well as
- harmonise the exploitation of natural resources (fishing, oil exploration) in the overlapping areas of exclusive economic zones (EEZs).

The GGC also sets out to co-ordinate and articulate common positions on issues of particular interest to the enhancement of peace and stability in the subregion.

Establishment of OHADA

The establishment of OHADA is now regarded as a ground-breaking success since it has unified regional business laws to an extent unheard of anywhere else (Dickerson 2005). Under the OHADA Treaty there are three main institutions: the Council of Ministers, the Common Court of Justice and Arbitration and the Permanent Secretariat. The Council of Ministers is the main decision-making body of the organisation. It consists of the Justice and Finance Ministers of each member state. Decisions of the Council of Ministers require a majority vote; decisions to implement Uniform Acts require unanimous votes. The Common Court of Justice and Arbitration comprises seven judges elected for a period of seven years, renewable for a further seven years. The court is the final arbiter in any disputes arising between the member states with regard to the interpretation or application of the treaty or any of the Uniform Acts. The supra-national nature of the OHADA model shows that Africans have started addressing the problem themselves jointly, and that each OHADA member state agreed to give up some national sovereignty in order to establish a single, cross-

border regime of uniform business laws as immediately applicable as the domestic laws of each country (Beauchard & Kodo 2011: 10–15; Fagbayibo 2013: 43–45).

Recommendation for establishment of supra-national independent regulatory body for Africa

The presence of a supra-national regulator will help ensure that rules and regulations are properly enforced by relevant national regulators. According to Fagbayibo (2013: 33–34), 'supra-nationalism', is a

> 'politico-legal concept which embodies but is not limited to the following core elements: decisional autonomy (in particular the rule of the voting majority as opposed to consensus), the binding effect of the laws of international organisations (where member states are precluded from enacting contradictory laws), the institutional autonomy of an organisation from its member states, and the direct binding effect of laws emanating from regional organisations on natural and legal persons in member states'.

Fagbayibo (2013) further argues that supra-nationalism essentially 'implies the existence of an organisation capable of exercising authoritative powers over its member states'. The guideline set by the European Central Bank (ECB) on the fiscal deficit of its member countries is a possible comparison (Smits 2007: 1624–1627). The authorities of member countries are under pressure to comply. However, a lack of 'effectiveness' or 'teeth' and different views on the ambit and depth of the national sovereignty status to be surrendered are real problems to be faced in assessing the credibility of an independent regulatory agent. De Haan (1997: 388) states that 'in practice, it is not feasible to exclude government influence completely when appointments are made to such an important public institution as central bank'. Be that as it may, a supra-national regulator is expected to apply rules and regulations equally to all jurisdictions.

As might be expected, though, different regulators in different jurisdictions may have different understandings and interpretations of supra-national rules and regulations – hence the need to have a structure such as the OHADA Court of Justice. In such circumstances, a supra-national regulator is expected to be in a better position to ensure a consistent approach to enforcement and compliance. These independent structures, it is anticipated, will bring benefits to cross-border markets by harmonising rules and regulations. Some commentators (Salami 2012; Keenen & Meade 2008) have argued that harmonisation facilitates:

- standardisation of licensing, registration and educational qualifications;
- standardisation of securities laws and legislation (as well as compliance and enforcement techniques);
- harmonisation of accounting standards, leading to a reduction in the costs of cross-border investment;

- an increase in market efficiency by reducing barriers to entry and inducing better allocation of resources (human, databases and technology), and
- an increase in competitive pressure to improve investment products and financial services.

Therefore, a new protocol establishing an independent regional agency under an AU supervisory structure ought to be established to monitor oil revenues from each oil-producing country. These supra-national, independent regional regulatory structures would be independent in the following manner:

- The personnel will not be appointed by governments of the AU member states, but by a neutral independent continental body.
- The personnel will have relevant skills and be accountable only to the AU. The personnel will also lend capacity and give training to AU member-state governments, advising them on how to interpret and domesticate AU treaties by incorporating them into relevant domestic legislation.
- The personnel will also advise the various governmental institutions and structures on the implementation of regional oil treaties and the expediency of their ratification.
- The oil treaty states will establish a regional oil fund that may include revenue streams from other mineral resources – all consolidated into one fund, under the AU and on behalf of the regional economic communities as a whole.

Such independence can be compared to that of the ECB (central bank independence), which refers to three areas in which the influence of government must be excluded or drastically curtailed (De Haan 1997: 398; Hasse 1990):

- independence in personnel matters;
- financial autonomy, and
- policy independence.

The details can be worked out in a future relevant treaty founding this regional AU supra-national oil treaty.

CONCLUSION

Oil is a special commodity in the African political economy that can be a catalyst in promoting intra-regional trade. A number of countries, including South Africa, are not naturally endowed with this commodity. However, African oil revenues need to be optimally and efficiently managed, with greater sensitivity being shown towards the sovereign status of countries from which oil is obtained. Such arrangements should be the collective responsibility of the AU, the African RECs, non-governmental

organisations and the participating representatives of the respective communities where oil production is located – the citizens of the continent. The AU should, by means of a treaty, set up a special fund for monitoring and managing Africa's mineral resources under an independent transnational regional authority as discussed in the section above. The RECs also have a major role to play as they are at the cutting edge of administering oil-mining activities and should account to the relevant structures of the AU. For that to happen, political and economic integration in Africa should be deepened. The harmonisation of African laws to support this regional integration project and the rationalisation of overlapping membership in RECs should be managed in such a way as not to defeat the beneficial effects of economic integration. Africa has sufficient resources to support its institutions and manage its revenues from its mineral wealth, but such revenues and assets are dissipated by its political leaders, with encouragement from the corrupt corporate world.

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