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Integration Efforts in Central Africa:  
The Case of CEMAC



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## **Abstract**

The creation of the economic and monetary community of central Africa (CEMAC) in 1994 as the successor to the economic and customs union of central Africa (UDEAC) engendered much hope in the sub-regional integration process of the Central African States, a region which had faced many challenges in the preceding thirty years. Marked by a plethora of institutions, CEMAC recorded certain advances which still remain sub-optimal when taking into consideration its integration calendar. In reality, the problem faced by integration in the CEMAC sub-region is not related to the quality of the treaties, but concerns the limited technical capacity, the divergent attitudes of the member countries towards regional integration and sometimes, the absence of sanctions against States which do not respect Community norms. This reality is highlighted within the framework of this contribution with the goal of demonstrating the importance of CEMAC Member States taking their responsibilities accordingly.

**Keywords:** International responsibility, CEMAC, regional integration.

## Introduction

Following the golden jubilee celebration of the independence of many African states in 2010, it seems appropriate to assess the five decades marked by cooperation and integration<sup>1</sup> around the world. In effect, the main motivation for regional integration in Africa in general and Central Africa in particular has been the necessity to forge inter-African economic ties and break the bonds with former colonial powers<sup>2</sup>. The process of regional integration in Africa was developed under the auspices of the Organisation of African Unity (OAU)<sup>3</sup>. Its evolution was marked by important watersheds including: the implementation of the *Lagos Plan of Action*<sup>4</sup>, the *Abuja Treaty*<sup>5</sup>, the *Sirte Declaration*<sup>6</sup>, the *Constitutive Act of the African Union (AU)*<sup>7</sup> and its *New Partnership for Africa's Development (NEPAD)*<sup>8</sup> and the *Accra Declaration on the Union Government of Africa*<sup>9</sup>. While the initial reasons behind the creation of the OAU were the realisation and preservation of African independence and the fight against neo-colonialism, it expanded its goals to economic cooperation, with the ultimate goal of establishing an African Economic Community by 2000, as laid down in the *Lagos Plan of Action* of 1980. The *Lagos Plan of Action* called on all African countries to strengthen their existing regional economic communities and establish other economic groupings in other African regions, encompassing the continent as a whole (Central Africa, Eastern Africa, Southern Africa, Northern Africa), before 1990<sup>10</sup>. Because of the delays in the project, the *Abuja Treaty* of 1991 postponed its realisation to a new temporal target of 2028<sup>11</sup>. The *Sirte Declaration* of 1999 called for the shortening of this period, the reinforcement of African

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<sup>1</sup>Regional integration is the process by which two or more States defer parts of their national sovereignty to a supranational entity having similar attributes of a state, with the structures and means to define and implement a common policy. This renunciation of parts of state sovereignty can be in diverse fields such as political, economic, social and cultural fields.

<sup>2</sup>See Bax Nomvete, "Intégration régionale en Afrique : une route pleine d'obstacles". *Le Courrier Afrique Caraïbes-Pacifique-Communauté Européenne* 142 (November-December 1993) 49 at 49.

<sup>3</sup>*Charte de l'Organisation de l'Unité Africaine*, 25 May 1963, 479 RTNU 39.

<sup>4</sup>*Plan d'Action de Lagos pour le développement économique de l'Afrique 1980 -2000*, 1981 online : <[http://www.ilo.org/public/libdoc/ilo/1981/81B09\\_473\\_fren.pdf](http://www.ilo.org/public/libdoc/ilo/1981/81B09_473_fren.pdf)> [*Lagos Plan of Action*].

<sup>5</sup>*Traité instituant la Communauté Économique Africaine*, 3 June 1991, 30 ILM 1245 [*Abuja Treaty*].

<sup>6</sup>*Sirte Declaration*, Decl AUHSGC 46<sup>th</sup>Sess, AU Doc (IV) Rev.1 (1999) online: <[http://www.africa-union.org/Docs\\_AUGovernment/decisions/Sirte\\_Declaration\\_1999.pdf](http://www.africa-union.org/Docs_AUGovernment/decisions/Sirte_Declaration_1999.pdf)>.

<sup>7</sup>*Acte constitutif de l'Union africaine*, 11 July 2000, 2158 RTNU 3 (entered into force 26 May 2001).

<sup>8</sup>*The New Partnership for Africa's Development* online: <<http://www.un-documents.net/a57-304.htm>>.

<sup>9</sup>*Accra Declaration on the Union Government of Africa*, 3 July 2007 online: <[http://www.dfa.gov.za/docs/2007/ghan\\_decl0706.htm](http://www.dfa.gov.za/docs/2007/ghan_decl0706.htm)>.

<sup>10</sup>*Plan d'Action de Lagos*, *supra* note 4 at 137.

<sup>11</sup>It must be said that the year 2028 is counted from 1994. The *Abuja Treaty* provides in Article 6 that the effective implementation of the African Economic Community will be after a period of 34 years. This is to say 1994 +34 = 2028.

regional economic communities<sup>12</sup> as the pillars of integration in the continent, and the creation of the AU, which had set itself the goal of coordinating and harmonising the regional economic communities<sup>13</sup>. Now, the obvious question is, has Central Africa, and more precisely CEMAC (which replaced UDEAC), met its objectives of integration which it set immediately after independence? Further, why is it so important to talk about CEMAC's efforts?

It is well known that despite the fact that Central African States are weak, poor and landlocked this region has some advantages which make it peculiar compared to other regions in the continent. Situated at the center of Africa, there are several reasons for this. Central Africa is a part of the African continent, south of the Sahara Desert, to the East of Western Africa, and to the West of the Great Rift Valley. Because of its pivotal position, Central Africa borders all of the other regions in the African continent. This makes it an ideal transit zone. Consequently as a result of its location straddling the Congo Basin, Central Africa has the second largest forest reserve in the world and sixty percent of the hydroelectric potential in the continent. Moreover, Central Africa has considerable mineral, metal and agricultural potential which is yet to be exploited. All of these advantages make the success of Central African integration a prerequisite for African development as a whole<sup>14</sup>.

This view is shared by many observers who argue that, regional integration is the best way to exploit the potential of the Central African region. In effect, since the independence, the conception of the nation-state in Central Africa has shown its development limitations. Given that individually Central African States are not able to ensure the economic development of their region, they must come together in a regional framework of integration, instead of living withdrawn into oneself<sup>15</sup>. As noted by Elias Ayuk and Samuel Kabore, regional integration creates opportunities to improve the living conditions of populations. The advantages and benefits of regional integration include the exploitation of economies of scale, improving competitiveness and attracting

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<sup>12</sup> African regional economic communities are intergovernmental organisations created by groups of countries to stimulate stronger economic links and cooperation to achieve the creation of an African Economic Community.

<sup>13</sup> Para 8 (ii) a) and c) of the *Sirte Declaration*.

<sup>14</sup> African Development Bank Group, *Central Africa Regional Integration Strategy Paper (RISP) 2011-2015*, online [afdb.org](http://www.afdb.org) : <<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/RISP%20CENTRAL%20AFRICA-ECCAS%20English%20FINAL.pdf>> at v, 11; Guy Marcel Nono, "Regional Integration and Free Movement in Central Africa" (2013) 3: 3 Regions and Cohesion 123 at 124.

<sup>15</sup> See Ludger Kuhnhardt, "Les perspectives de l'intégration régionale dans le monde", (Conference presented at Université de Douala (Cameroon), 21 septembre 2010) [Unpublished].

investment<sup>16</sup>. Moreover, regional integration increases the mobility of both human and financial resources and technological spillovers can lead to increased productivity, reduced production costs, and attract more investments<sup>17</sup>.

In this context, free movement in Central Africa will contribute to greater integration of Africa, increased trade, investment, tourism, technological advancement, labor mobility and employment opportunities, student exchanges through diverse educational opportunities, peace and security, larger markets for African goods and services, reduced brain drain, greater unity and prosperity, amongst others<sup>18</sup>. All this can contribute to economic growth and poverty reduction in Africa in general. So if Central Africa cannot meet the challenge of integration, then, disintegration is what awaits Africa. However, the lack of population support at the national level, the lack of political will to support the implementation of the regionalisation process, and the dependence of the sub-regional economies on western countries (foreign debt, massive importation of manufactured goods produced outside of Africa), do not help accelerate the integration process in Central Africa.

This article presents first the current situation of regional integration in Central Africa, within the framework of CEMAC. Secondly, the implementation of State responsibility within the framework of CEMAC, and finally, the responsibility of CEMAC as an international organisation is analysed.

## **Current Situation of Regional Integration in Central Africa**

### **Historical Review, Policies, Institutions and Decision Making Procedures**

#### *Historical Review and Policies*

The regional integration process in Central Africa began in 1964 with the creation of the Customs and Economic Union of Central Africa (UDEAC)<sup>19</sup> four years after the independence of many African states. By creating UDEAC in 1964, the Heads of State and Government committed themselves to establishing a closer union between their people to strengthen regional solidarity and promote the gradual creation of a common

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<sup>16</sup> Elias T Ayuk and Samuel Tambi Kabore «Introduction: pourquoi s'intégrer? » dans Elias T Ayuk and Samuel T Kaboré, ed, *S'intégrer pour s'enrichir Intégration régionale et réduction de la pauvreté en Afrique de l'ouest*, Ottawa, New York; CRDI, Springer, 2012, 1 at 1, 3.

<sup>17</sup> *Ibid* à la p 6.

<sup>18</sup> "African Citizenship for All", online: AU Monitor <<http://www.pambazuka.org/aumonitor/comments/279/>>

<sup>19</sup> *Treaty Establishing a Central African Economic and Customs Union*, 8 December 1964, (1965) 4 ILM 699 (entered into force on 1 January 1966) [*UDEAC Treaty*].

market in Central Africa<sup>20</sup>. As a result, a principal goal of UDEAC was the diminution of tariffs. According to art 30 of the *UDEAC Treaty* the common customs and fiscal import tariff should have been put into place simultaneously in the five UDEAC States no later than 1<sup>st</sup> January 1966<sup>21</sup>.

After thirty years of existence, that is, from 1964 to 1994, the UDEAC could not achieve these goals. For this reason it was replaced in March 1994 by the CEMAC, which had the objective of completing the process of economic and monetary integration of central Africa in the CEMAC zone<sup>22</sup>. Mindful of the approach of integration proposed by the UDEAC, and determined to continue the work accomplished within the framework of the treaty of 16 March 1994 instituting the CEMAC, the CEMAC heads of States set a number of objectives to be achieved within the framework of the *Revised treaty of the CEMAC*<sup>23</sup> of 2008 and its subsequent texts.

These objectives are, *inter alia*, the creation of a Common Market (the implementation of disciplines on the free movement of persons, goods, capital and services), and the adoption of the common policies in many areas amongst which are good governance and human rights<sup>24</sup>. These objectives were supposed to be achieved three years after the entry into force of the *Revised Treaty of the CEMAC* of 2008. In view of achieving these objectives, the Member States of CEMAC pledged to adopt the appropriate measures to ensure the execution of the obligations found in the revised treaty of CEMAC. CEMAC Member States also agreed that in the event of a State failing to fulfill its obligations under Community Law, its international responsibility would be called into question and subject to adjudication before the court of justice of CEMAC (art. 4 *Revised Treaty of the CEMAC*).

At the moment, the regional integration process in Central Africa is supported by two pillars, namely, the Economic Community of Central African States (ECCAS), created in 1983<sup>25</sup> and the Economic and Monetary Community of Central Africa (CEMAC), created in

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<sup>20</sup>See James Mouangue Kobilala and Léopold Donfack Sokeng, " la CEMAC: à la recherche d'une nouvelle dynamique de l'intégration en Afrique Centrale" (1998) 6 *African Yearbook of International Law* 65 at 69.

<sup>21</sup>*UDEAC Treaty*, *supra* note 19 at art 30.

<sup>22</sup>*Traité constitutif de la CEMAC*, 16 mars 1994 at art 1 online : <[http://www.internationaldemocracywatch.org/attachments/173\\_CEMAC%20Treaty%20\(French\).pdf](http://www.internationaldemocracywatch.org/attachments/173_CEMAC%20Treaty%20(French).pdf)>.

<sup>23</sup> *Traité révisé de la Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC)*, 25<sup>th</sup> June 2008, online : <[http://www.cemac.int/sites/default/files/documents/files/traité\\_revisé\\_cemac.pdf](http://www.cemac.int/sites/default/files/documents/files/traité_revisé_cemac.pdf)> [*CEMAC revised Treaty*]

<sup>24</sup>*Convention régissant l'union économique de l'Afrique centrale (UEAC)* at art 2 c) to d) and 4 online : <[http://www.cemac.int/sites/default/files/documents/files/convention\\_ueac.pdf](http://www.cemac.int/sites/default/files/documents/files/convention_ueac.pdf)>.

<sup>25</sup>Made up of ten countries: Cameroon, Gabon, the Central African Republic, Congo, Chad, Equatorial Guinea, Sao Tome and Principe, the Democratic Republic of Congo, Angola, and Burundi. *Traité instituant la Communauté Économique des États de l'Afrique Centrale (CEEAC)*, 18 October 1983, 23 *ILM* 945.

1994<sup>26</sup>. Although ECCAS (unlike CEMAC) is among the eight regional integration organisations recognised by the AU<sup>27</sup> this article will focus on CEMAC, for a multitude of reasons. CEMAC boasts of some substantive realisations and has done more than ECCAS to make regional integration effective in Central Africa. The objectives of CEMAC's integration are to create a unified economic space, encourage the free movement of goods and people, and to promote peace and regional safety in accordance with the spirit of the Abuja and the AU Treaties. According to art 2 of the *CEMAC revised Treaty*, CEMAC aims at achieving economic integration: "... Members States intend to move from a situation of cooperation that already existed between them, to ... economic and monetary integration". Moreover, the regional policies of CEMAC are focused on the development and interconnection of transport infrastructure, the development of a water and energy environmental pool of central Africa (PEAC), peace, security and stability, free movement of people, development of the sub-regional hydroelectric potential, implementation of a functioning customs union, regional food security programme (PRSA) and the implementation of a common agricultural policy (PAC).

ECCAS aims at achieving Economic Cooperation between States. According to art 4 (1) of the *Treaty establishing ECCAS*, "The purpose of the community is to promote and reinforce harmonious cooperation [...] in all domains of economic activity [...]". Concerning the institutions, one can note the absence in the ECCAS of three major institutions that characterise economic integration: the Court of justice (not operational), the Parliament (not planned) and the Fund for Economic Cooperation and Development<sup>28</sup>. The absence or weakness of these institutions causes ECCAS to have moribund institutional structures.

Concerning missions, CEMAC has focused its mission on the essential tasks of a sub-regional integration organisation (monetary integration, the free movement of goods and

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<sup>26</sup>With six Member States Cameroon, Gabon, the Central African Republic, Congo, Chad, Equatorial Guinea.

<sup>27</sup> See Ludger Kühnhardt, "African Regional Integration and the Role of the European Union" (2008) online: ZEI, University of Bonn <[http://www.zei.uni-bonn.de/dateien/discussion-paper/dp\\_c184\\_kuehnhardt.pdf](http://www.zei.uni-bonn.de/dateien/discussion-paper/dp_c184_kuehnhardt.pdf)> at 7. Currently, eight regional groupings in Africa have been designated as building-blocks for the development of an African Economic Community (AEC) by 2028: The Arab Maghreb Union (AMU), the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Common Market for East and Southern Africa (COMESA), the Southern African Development Community (SADC), the Intergovernmental Authority for Development (IGAD), the Community of Sahelo-Saharan States (CEN-SAD) and the East African Community (EAC).

<sup>28</sup> See James Mouangue Kobila, "La Concurrence des droits communautaires dans l'espace C.E.M.A.C. /C.E.E.A.C. ", (Colloque sur la concurrence à la cohabitation des droits communautaires, in Cotonou, 24 janvier 2011) [Unpublished].

people, peace and security). In this way ECCAS mainly serves as a sub-regional security organisation<sup>29</sup>.

### *CEMAC Institutions and decision making procedures*

To achieve its goal of accelerating the process of political and socio-economic integration in the CEMAC zone through the creation of a Common Market and the adoption of the common policies in a number of areas, among which are good governance and human rights, CEMAC leaders created five institutions. These include: the Economic Union of Central Africa (UEAC); the Monetary Union of Central Africa (UMAC); the Community Parliament; the Court of Justice; and the Court of Auditors (art. 10 of the *CEMAC revised Treaty in 2008*). The organs of the CEMAC are: the Conference of Heads of State; the Council of Ministers; the Ministerial Committee; the CEMAC Commission; the Bank of Central African States (BEAC); the Development Bank of Central African States (BDEAC); the Banking Commission of Central Africa (COBAC). As noted by Angela Meyer, some specialised institutions exist to support the implementation of the Community policies and programmes<sup>30</sup>. These include institutions that are active in fields such as agriculture, health, infrastructure, and others, such as the Economic Commission on Cattle, Meat and Fishery Resources (CEBEVIRHA), the Inter-State Committee on Pesticides (CPAC), the Institute for Statistics and Applied Economics (ISSEA) or the Sub-Regional Multi-Sectoral Institute for Applied Technology (ISTA), International Commission of the Congo-Ubangi-Sangha Basin (CICOS). There are also several schools and training facilities, such as an inter-state school for customs officers (EIED), a Tourism School (EHT-CEMAC), Institute of Economy and Finance (IEF) or an inter-state center for higher education on public health (CIESPAC).

The decision making power is given to the Conference of Heads of State, the Council of Ministers for UEAC, the UMAC Ministerial Committee and the CEMAC Commission. The Conference of Heads of State's main function is to determine the principal orientation of the Community and its institutions. Moreover, it decides on the admission of new members and nominates the heads and directors of most of the community bodies, for example the President and Vice President of the CEMAC Commission, the Commissioners, the Judge of the CEMAC court, the members of the Court of Auditors, the Governor, Vice Governor and secretary General of BEAC and the leaders of all specialised institutions (art. 12 of the *CEMAC revised Treaty*). The only exceptions are the CEMAC parliamentarians, who are directly elected by the citizens and the President of BDEAC,

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<sup>29</sup> *Ibid.*

<sup>30</sup> See Angela Meyer, "Central African Economic and Monetary Union" (2011) online: International democracy watch.org <[http://www.internationaldemocracywatch.org/attachments/464\\_CEMAC-meyer.pdf](http://www.internationaldemocracywatch.org/attachments/464_CEMAC-meyer.pdf)> at 11.

who is nominated by the General Assembly of shareholders. The Council of Ministers of UEAC's main role is to ensure the direction of the Economic union (art 17 of the *CEMAC revised Treaty*)<sup>31</sup>.

The Council of Ministers of UEAC have the power to legislate with respect to import duties and taxes and to determine the conditions of applications for the CEMAC customs Code. To this end, its actions are fully enforceable and, simultaneously came into force in the CEMAC Member States. In addition, the Council of Ministers sets the temporary importation arrangements or temporary export of personal items belonging to passengers. When the domestic production of goods from one CEMAC Member state is threatened by competitors or similar foreign products, they may be subject to countervailing or anti-dumping detailed rules which are set by the Council of Ministers UEAC<sup>32</sup>. The CEMAC Commission represents the Community in international negotiations. It is in charge of establishing cooperation agreements with third parties. It represents the Community in adjudicative processes. Its head acts as the Secretary of the Summit of Heads of States. It can make proposals to the Conference of Heads of State and the UEAC Council of Ministers regarding the orientation of the Member States' economic policies (art.25, 35 and 37 of the *CEMAC revised Treaty*). According to art 26 and 27 of the *CEMAC revised Treaty*; each CEMAC Member State is entitled to propose one Commissioner in charge of a specific sector. The Commissioners, as well as the Commission's President and Vice-President, are nominated by the Conference of Heads of State for a four-year-term, renewable once<sup>33</sup>. There are three institutions in charge of controlling the CEMAC Community's functioning and activities: the Parliament (art. 46 of the *CEMAC revised Treaty*), the Court of Justice (art.48 of the *CEMAC revised Treaty*), and the Audit Court (art.48 of the *CEMAC revised Treaty*).

The Audit Court ensures the budgetary control of the Community institutions' accounts and spending. The Court of justice ensures respect of the law through the interpretation and application of the *CEMAC revised Treaty* by Member States, institutions and bodies. According to the *Convention Governing the Court of Justice of CEMAC*, it has a jurisdictional and a consultative role (art. 3 of the *Convention Governing the Court of Justice of CEMAC*)<sup>34</sup>; its competence does not need to be accepted by the Member States to be obligatory. The judicial chamber of the Court of Justice of CEMAC, in principle

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<sup>31</sup> *Ibid* at 10 and 21.

<sup>32</sup> See Emmanuel Kam Yogo, " Le droit douanier de la Communauté économique et monétaire de l'Afrique centrale à l'épreuve des règles de l'organisation mondiale du commerce " (2009) 22 : 1 *Revue québécoise de droit international* 27 at 31 and 33.

<sup>33</sup>See Angela Meyer, *supra* note 30 at 10-11.

<sup>34</sup>See Angela Meyer, *supra* note 30 at 17; *Convention régissant la cour de justice de la C.E.M.A.C.*, 05 juillet 1996, online : <[http://www.cemac.int/sites/default/files/documents/files/Convention\\_Cour\\_de\\_Justice.pdf](http://www.cemac.int/sites/default/files/documents/files/Convention_Cour_de_Justice.pdf)>.

examines all the cases involving the violation of provisions in the treaty of CEMAC and subsequent conventions, by direct recourse without prior exhaustion of domestic remedies. However, disputes related to the Community's public service are subjected to preliminary administrative recourse before being submitted to the Court of CEMAC.

In its jurisdictional role, the Court delivers judgments in cases where the *CEMAC revised Treaty* and other constitutive texts have been violated as well as on questions regarding the interpretation of Community legal texts. In case the Court declares a Member State non-compliant with CEMAC treaty / legal obligations, the State has to take the necessary measures to respect Community Law. In case of a Member State's failure to comply with the obligations it has under Community Law, the CEMAC Commission has a duty to duly address a report to the Council of Ministers. In the case of non-action in the Council of Ministers, the President of CEMAC Commission can seize the Court of Justice in view of applying sanctions (art 35 of the *CEMAC revised Treaty*). This also gives the Council of Ministers sovereignty and control which it did not initially possess<sup>35</sup>.

Concerning the CEMAC Parliament, the *Convention regulating the Parliament* was adopted by Member States on 25 June 2008<sup>36</sup>. Its effective implementation started on 16 April 2010. One of the merits of a parliamentary body is that it ensures public support and engagement in the management of public affairs<sup>37</sup>. The CEMAC Parliament is composed of thirty deputies, five delegates per State (art. 32 of the *Parliament's Convention*)<sup>38</sup>.

According to art 5 of the *Parliament's Convention*, CEMAC deputies shall be elected through direct universal suffrage for five years. The current members have however been selected from the national parliaments in line with temporary arrangements (art 32 of the *Parliament's Convention*). As pointed out by Angela Meyer, the *Parliament's Convention* does not make any provisions for the possibility that citizens enter directly into contact with their regional deputies to express themselves on matters they would like to be addressed by the Assembly<sup>39</sup>. The Parliament is headed by a bureau and a president is elected by the parliamentarians among themselves for one year. The parliament's Secretary General is nominated by the CEMAC Conference of Heads of State

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<sup>35</sup>See Angela Meyer, *Ibid* at 17-18, 20, and 21.

<sup>36</sup>*Convention régissant le Parlement communautaire*, 25 juin 2008, online : <[http://www.cemac.int/sites/default/files/documents/files/convention\\_parlement\\_cemac.pdf](http://www.cemac.int/sites/default/files/documents/files/convention_parlement_cemac.pdf)>

<sup>37</sup> See Gilles Carson Ossette Okoya, " Le parlement de la CEMAC ou l'aboutissement d'une dynamique institutionnelle sous-régionale " (2010) 4 *Revue juridique et politique des états francophones* 505 at 505 and 506.

<sup>38</sup>*Ibid* at 510.

<sup>39</sup>See Angela Meyer, *supra* note 30 at 24-25.

for four years non-renewable (art 7 and 8 of the *Parliament Convention*). The Parliament has two functions: Democratic control and participation in the decision making process (art 14 the *Parliament Convention*)<sup>40</sup>.

Concerning the Democratic control, the Parliament may, at its own initiative or upon request, hear the President of the Council of Ministers or the President of the Ministerial Committee, the President and members of the Commission, the leaders of community bodies and specialised institutions of the CEMAC (art 23 of the *Parliament Convention*).

According to art.15 of the *Parliament's Convention*, CEMAC Deputies have to assess the action program of every newly appointed Commission President as well as the CEMAC Commission's annual report on the Community's evolution and functioning, once per year. If they identify any irregularity in the way the Commission carries out its mission, they can either seize the CEMAC Council of Ministers; address the CEMAC Commission, pass a vote of no-confidence (which will dependent on whether it is supported by only one third of the deputies, given that two-thirds of them are present during the deliberations) against the Commission, or seize the Conference of Heads of State<sup>41</sup>.

If the Deputies inform the Conference of Heads of State about a vote of no-confidence, these can invite the Commission to resign. The power of the Parliament is limited by the fact that it is only the Conference of Heads of State which has to react upon a vote of no-confidence in the CEMAC Commission and decide upon the dissolution of the Commission. The deputies are also asked to assess the annual report of the CEMAC Court of Auditors. As an organ of democratic control, the CEMAC Parliament expresses its views in the form of resolutions or reports. In the decision making process, the CEMAC deputies express their views by recommendations or assents or by proposing amendments.

The legal acts produced by the CEMAC bodies are: Additional acts<sup>42</sup>, Decisions<sup>43</sup>, Regulations<sup>44</sup>, Directives<sup>45</sup>, Recommendations and Opinions<sup>46</sup>. Decisions are taken by the Conference of Heads of State by consensus (art 16 of *CEMAC revised Treaty*). It should be noted that there is a difference between consensus and unanimity. Unanimity requires a vote with the expression of the consent of all those involved in the process, while

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<sup>40</sup> *Ibid* at 14.

<sup>41</sup> *Ibid*.

<sup>42</sup> Additional Acts adopted by the Heads of State have to be implemented directly by the CEMAC institutions and bodies, as well as Member States' authorities that are directly concerned by them.

<sup>43</sup> Decisions are taken by the Heads of State. They are binding and mandatory for the addressed parties.

<sup>44</sup> Regulations: are either entirely or partly mandatory and have to be directly implemented in the Member States.

<sup>45</sup> Directives lay down specific results to be attained while leaving it to the Member States to choose the measure to be taken in order to achieve them.

<sup>46</sup> Recommendations and Opinions are not binding.

consensus concludes a resolution without a vote. In the second case, it is the recognition by the President of the session that no objection is made on a proposal for a decision to be made by a member or a competent body in this regard. The consensus is not total agreement, but a general tacit agreement, while unanimity is a total agreement<sup>47</sup>. The revision of the CEMAC Treaty or the UEAC and UMAC Conventions requires a unanimous vote of the Conference of Heads of State (art 57 of *CEMAC revised Treaty*). Specific decisions concerning the evolution of the Economic Union and the Monetary Union are made by countries' Ministers in the UEAC Council and the UMAC Committee (art 40 of the *CEMAC revised Treaty*). They can also act through regulations, directives, and recommendations. Except for recommendations, the other acts adopted by the Council of Ministers and the Ministerial Committee must be motivated or justified.

The Council of Ministers for UEAC takes decisions by consensus or upon a simple (art 17, 34, 37, 40, 45, 48, 58, 63, 67, 68 of the *UEAC Convention*) or qualified majority (art 15, 18, 20, 22, 23, 30, 31, 50, 56, 61 of the *UEAC Convention*), or according to the issue concerned, with unanimity (art 12, 26, 49, 60, 82 of *UEAC Convention*). Commission decisions are adopted by simple majority. In the case of a tied vote, the chairman has the casting vote (art 28 of *CEMAC revised Treaty*). The UMAC Ministerial Committee decides by unanimity or by a 5/6 majority (art 19 of the UMAC Convention).

According to art 40 of the *CEMAC revised Treaty*, all of the leaders of CEMAC institutions, bodies and specialised institutions can produce regulations and directives and draw up decisions, recommendations or opinions.

### **Efforts and Challenges of CEMAC**

Many reforms have been taken to implement a common market in the CEMAC zone. The most significant advances at the end of the first decade of this 21<sup>st</sup> century include the monetary integration, the achievement of free trade, and the relative efficiency of the free movement of persons.

#### *The Monetary Integration Marked by the Use of a Common Currency (FCFA)*

It should be noted that the Central African CFA Franc was created by France for its former colonies in 1945 in the absence of a sub-regional integration policy. Nowadays, this monetary integration system is headed by France which plays a vital role in the functioning of the Franc CFA zone as a whole and in the functioning of BEAC in particular.

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<sup>47</sup> See Jean de Noël Atemengue, " la procédure de décision dans la communauté économique et monétaire de l'Afrique centrale" (2011) 86 *Juridis périodique* 115 at 124.

It is an instrument to control the monetary sovereignty of all the Member States of the Franc zone<sup>48</sup>.

In line with articles 3 and 20 of the *Convention Governing UMAC*<sup>49</sup>, the issuance of the CFA franc is guaranteed by the BEAC that is an organ of the UMAC which plays an important role in regulating the financial system of all of the Member States. In addition to the importance of the BEAC in organising and managing the monetary system, banking, financial and exchange rate regime, there is COBAC (Banking Commission of Central Africa), established in 1993, whose aim is to monitor and control the performance of banking activities in CEMAC. Moreover there is the Central African States' Development Bank (BDEAC) whose mission is to promote the economic and social development of the CEMAC countries. Particularly, through financing national and multinational investments and economic integration projects; provide assistance to the States, sub-regional organisations, financial Institutions and economic operators in their effort to mobilize financial resources and financing projects; support States, sub-regional organisations and economic operators in financing feasibility studies for programs and projects. In the same vein, a Central African stock exchange known as the "Bourse des valeurs mobilières d'Afrique Centrale" (BVMAC) was established in 2003 in the CEMAC zone, precisely in Gabon, with the task of supporting business capitalisation and the development of an investment portfolio in the sub-region.

### *The Achievement of Free Trade Zone CEMAC*

Concerning the free movement of goods, the implementation of the Community customs code makes CEMAC a customs union and an incubator for the free movement of goods. In actual fact, CEMAC has implemented a preferential tariff for products originating in Central Africa called Generalised Preferential Tariff (GPT). In principle within the CEMAC zone, the rate of customs duties on goods of regional origin is zero since 1998. On the contrary, they are subject to Value Added Tax (VAT) and any other internal tax in the final destination Member State. Moreover, there is a common external tariff (CET<sup>50</sup>) that is applicable in the CEMAC zone. In short, CEMAC has made very significant progress in its trade liberalisation by creating a customs and monetary union. The customs union is ensured by the existence of a CET and the use of FCFA. The CET is a reality in the CEMAC zone in spite of some of the inconveniences caused by some

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<sup>48</sup>See Emmanuel KamYogo, " Monetary Integration in Central Africa: Review and Outlook" (2011) 5:1 ZEI Regional Integration Observer 4 at 4.

<sup>49</sup>*Convention régissant l'Union monétaire de l'Afrique centrale*, 25 June 2008 online: <[http://www.cemac.int/sites/default/files/documents/files/convention\\_umac.pdf](http://www.cemac.int/sites/default/files/documents/files/convention_umac.pdf)>.

<sup>50</sup> The Common External Tariff (CET) applies to goods imported from third countries to the CEMAC Zone.

States or by corrupt officials. The structure of a common external tariff and on the products imported from third countries to the CEMAC is classified as follows<sup>51</sup>:

<b>Category</b>	<b>Designation</b>	<b>Rate</b>
I	basic necessities	5 %
II	primary raw materials and capital equipment	10%
III	intermediate or semi-processed goods	20 %
IV	final consumer goods	30 %

*Free Movement of People*

Many positive steps have been made in this domain, notably the implementation of the CEMAC digital passport since 2010. It is now easy for CEMAC citizens to travel to Cameroon, Congo, CAR, and Chad without a visa as they can simply move across borders with their community passport.

However, it should be noted that, Gabon and Equatorial Guinea continue to require obtaining a visa for entry into their respective countries from the nationals of CEMAC<sup>52</sup>. In addition, freedom of movement in Central Africa is often characterised by acts of intolerance of the populations towards the immigrants.

Furthermore, according to the African Development Bank Group, the weak basic infrastructure and inadequate interconnection of national transport networks between countries remains one of the main obstacles to achieving the economic and physical integration of Central African countries<sup>53</sup>. Asphalted roads represent less than 20% of the whole regional road network which covers 150,000 km. Moreover, Railway systems are not connected, and railway lines are obsolete and underused. In terms of maritime transport, the major ports in Central Africa are ill-equipped to handle the burgeoning maritime transport in that region<sup>54</sup>.

Thus, among the efforts made in free circulation, one can mention the elaboration of the Regional Economic Programme (PER), the aim of which is to make CEMAC a viable

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<sup>51</sup> See "Les droits et taxes de douane dans la Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC) (Cameroun, Congo, Gabon, Guinée Équatoriale, Centrafrique et Tchad)" online : izf <[http://www.izf.net/upload/TEC/tableau\\_taxes\\_ac.htm](http://www.izf.net/upload/TEC/tableau_taxes_ac.htm)>.

<sup>52</sup> See Guy Marcel Nono, *supra* note 14 at 130.

<sup>53</sup> African Development Bank Group, *supra* note 14 at v para 4.

<sup>54</sup> *Ibid* at 10.

economic actor in Africa; the harmonisation of regional sector policies (energy, transport, agriculture, environment). Apart from that, one can note the development of sub regional infrastructure, aimed at linking Cameroon, Chad and Central African Republic through road and rail constructions. In terms of road infrastructure, the community roads that cut across national boundaries have also started to be constructed. These include the Touboro (Cameroon)-Moundou (Chad) -, Yaoundé -Ebolowa, Ambam (Cameroon) -Oyem (Gabon), the Ebolowa, -kye Ossi (Cameroon) -Ebébiyin (Equatorial Guinea) and the proposed Sangmélina (Cameroon) - Congo border road projects<sup>55</sup>.

Furthermore, one can mention the introduction of CEMAC registration numbers, which are connected to a database which permits the security forces of Member States and Interpol to conduct searches, in many cases concerning vehicle theft. In addition, vehicles displaying these registration numbers can move freely between member countries without having to change their registration numbers. Lastly, CEMAC has introduced a common vehicle insurance scheme known as the "Pink card"<sup>56</sup>. This card allows any driver traveling in one or more countries, to be properly insured in the case of accident in the destination country. CEMAC countries have also adopted a community Highway Code which governs the use of community roads open to traffic.

### *The Major Challenges of CEMAC*

In the preamble to the *CEMAC Treaty*, the Heads of State reaffirm their respect of the principles of democracy, human rights, the rule of law, good governance, social dialogue and gender issues. In the subsequent CEMAC texts, particularly articles 2 (d) and 47 (a) and (b) of the *Convention governing the Economic and Monetary Union of Central Africa (UEAC)* envisages the adoption of a common policy in the domain of good governance and human rights.

That said, the continuation of *the revised treaty of CEMAC* and of *the Convention of the UEAC* shows no sign of putting in place of an institution to ensure the respect of these principles. Meanwhile, the CEMAC zone has been deeply afflicted by the coup d'État and subsequent political turmoil in Bangui (Central African Republic), political and military instability in Chad (civil war, massacres, and secular conflicts), paternalistic authoritarianism in Equatorial Guinea, and the contested electoral tyrannies in Gabon and

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<sup>55</sup> See Nkemdem Forbinake, "Integration Imperative" *Cameroon Tribune* (9<sup>th</sup> December 2009) at 4.

<sup>56</sup> It is an international card issued by insurers for drivers who have subscribed for automobile liability insurance. It is compulsory in all countries of the CEMAC zone.

Cameroon<sup>57</sup>. These examples show that the human rights situation in CEMAC is precarious. Contrary to other Courts and Tribunals of African regional economic communities that have widened their competences to include human rights<sup>58</sup>, the judicial chamber of the Court of Justice of CEMAC, does not have any competence in the domain of human rights.

In addition, it should be noted that the objective affirmed by the Heads of State for CEMAC to adopt a common policy concerning good governance, is far from being achieved. The CEMAC Member States are not sanctioned in cases of non-compliance with the principle of democracy. Another aspect which is not taken into consideration by the *CEMAC revised Treaty* and its subsequent acts, is undoubtedly diplomatic protection, which could accelerate the process of integration of the CEMAC and help protect human rights.

The most important aspect is to ensure the diplomatic protection of citizens of Member States by making it possible for a citizen of Central Africa who is in trouble in any part of the world, where his State of origin is not represented, to contact a consulate or an embassy in another country in Central Africa to defend his or her cause and satisfy their essential needs.

### **State Responsibility within the Framework of CEMAC and the Responsibility of CEMAC as an International Organisation**

The possibility of Community nationals challenging the international responsibility of States has the advantage of increasing the protection an individual's rights through the respect of Community legislation concerning the freedom of movement of the goods, people and capital.

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<sup>57</sup> See Jean Didier Boukongou, " L'application de la Charte africaine des droits de l'homme et des peuples par les autorités nationales en Afrique centrale " in Jean-François Flauss and Elisabeth Lambert-Abdelgawad, ed, *L'application nationale de la Charte africaine des droits de l'homme et des peuples*, Bruxelles, Bruylant, 2004, 123 at 124.

<sup>58</sup> Particularly the Southern African Development Community (SADC) Tribunal (albeit being subject to a moratorium from political masters), the Economic Community of West African States (ECOWAS) Community Court of Justice, and the East African Community (EAC) Court of justice. See Solomon T Ebobrah, "Human Rights Realisation in the Sub-Regional African institutions" in Manisuli Ssenyonjo, ed, *The African regional human rights system: 30 years after the African Charter on Human and Peoples' Rights*, Martinus Nijhoff publishers, 2012, 283 at 294 to 298.

Respect for international responsibility at a regional level appears to be a factor strengthening integration. This is because it permits citizens of the Community to invoke regional standards and make them binding on members of CEMAC or on CEMAC itself. Respect for international responsibility is particularly strong in regional frameworks where there is solidarity, as opposed to at the universal level, because Community norms should be directly applied to guarantee their effectiveness<sup>59</sup>.

State responsibility is "The obligation of State to make reparation arising from a failure to comply with an obligation under international law"<sup>60</sup>. Standards for State responsibility were agreed to by the General Assembly of the United Nations in Resolution 58/83<sup>61</sup>.

After the adoption of the draft articles on the responsibility of States for internationally wrongful acts, the General Assembly of the UN recommended that the International Law Commission (ILC) focus on the issue of the responsibility of international organisations<sup>62</sup>. In 2004, the Assembly of UN adopted draft articles on the responsibility of international organisations, which were originally written by the ILC.

### **The Implementation of the Responsibility of States within the Framework of CEMAC**

Under general international law, the implementation of the international responsibility of States is undergirded by two hypotheses. The first hypothesis concerns the case of a convention which creates obligations only between states. In this case, when the violation of the provisions of a treaty affects the interests of any or all of the Contracting Parties, even if none of the contracting parties is particularly affected, the wrongdoer may be held responsible by the injured State or other contracting parties. The second hypothesis concerns the case where, in the context of an international convention, States intend to create a legal order in which the subjects are not only States but also their nationals. In this case, an individual (private person) may invoke the responsibility of the State on the basis of the provisions of the Treaty, subsequent to the incorporation of the treaty in domestic law<sup>63</sup>.

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<sup>59</sup> See Ngyuen Quoc Dinh, *Droit international public*, Paris, LGDJ, Lextenso, 2009 at 898.

<sup>60</sup> See Robert L Bledsoe & Boleslaw A. Boczec, *The international law dictionary*, Santa Barbara, Calif, ABC-CLIO, 1987 at 57 to 58.

<sup>61</sup> *Responsibility of States for internationally wrongful acts*, Doc off AG NU 46<sup>th</sup> sess, Doc NU A/56/83 (2002); *Responsibility of States for internationally wrongful acts*, Doc off AG NU 46<sup>th</sup> sess, Doc NU A/56/83 (2002).

<sup>62</sup> *Responsibility of international organisations*, Doc off AG NU 66<sup>th</sup> sess, Doc NU A/66/100 (2011).

<sup>63</sup> See Ngyuen Quoc Dinh, *supra* note 59 at 899.

It must be said that compared to general international law, CEMAC Community law is not indifferent to the type of relationships that must be established between CEMAC Community law and the national law of any CEMAC Member State. If the States are free to maintain the praxis of dualism under general international law, in the context of regional integration, Community law postulates monism and imposes it on Member States<sup>64</sup>. There are results in four consequences of this: Community law is integrated into the domestic law of States, without requiring any special incorporation mechanism; Community standards take their place in the domestic legal order in the form of Community law; citizens have the right to invoke community standards at the national level; and the national courts are obliged to apply Community law<sup>65</sup>. Indeed, the primacy of Community law over national law is *sine qua non* for the existence of a regional integration process<sup>66</sup>. Community law will only exist if it is taken into account in the national legal system of Member States<sup>67</sup>. Thus, the objective of CEMAC, namely the achievement of a common market, requires the uniform application of Community law, without which there can be no integration<sup>68</sup>. This is reflected in the preamble of the CEMAC Treaty "[We the Heads of State are] determined to give a new and decisive impetus to the integration process in Central Africa through the greater harmonisation of policies and the laws of their states" [*author's translation*]. It should be noted that although the CEMAC Treaty contains no express provision of the primacy of Community law over national law, art 21 of the *Addendum to the Treaty on The CEMAC Institutional and legal system*, states that Regulations have a general application. They are binding in their entirety and directly applicable in all Member States<sup>69</sup>. This pre-eminence of Community law has been recognised in a similar way in the European framework, particularly in the famous Costa judgment rendered in 1964. In this judgment, the Court of Justice of the European Communities noted that "the precedence of Community law is confirmed by article 189 [art. 288 of the *Treaty on the Functioning of the European Union*], whereby a regulation 'shall be binding' and 'directly applicable in all Member States'. This provision, which is subject to no reservations, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law"<sup>70</sup>. In addition to the primacy of Community law over the

<sup>64</sup> See Guy Issac and Marc Blanquet, *Droit général de l'Union européenne*, 10<sup>th</sup> ed, Paris, Sirey, 2012 at 371.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid* at 400.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Additif au Traité de la CEMAC relatif au système institutionnel et juridique de la Communauté*, online : <<http://www.ehu.es/ceinik/tratados/11TRATADOSOBBREINTEGRACIONYCOOPERACIONENAFRI/CA/115CEMAC/IC1158FR.pdf>> [*Addendum to the Treaty on The CEMAC Institutional and legal system*].

<sup>70</sup> ECJ *Flaminio Costa v E.N.E.L*, C- 6/64 [1964] ECR 588 at 594 online: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964CJ0006:EN:PDF>>; see also Guy Isaac and Marc Blanquet, *supra* note 64 at 399; see article 288 of the *Treaty on the Functioning of the European Union* "[...]A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member

national law of a given Member State, the particularity of Community law is that it is directly applicable (direct effect). Because of the primacy of Community law over the national laws of the Member States, Community law is automatically inserted in the internal order of the Member States and enriches the legal heritage of individuals with subjective rights or obligations<sup>71</sup>. Indeed, it is the purpose of integration which postulates the direct applicability of Community law. This direct effect of Community law was enshrined in the jurisprudence of the Court of Justice of the European Communities in its judgment *Van Gen and Loos*. Acting pursuant to Art 267 of the *Treaty on the Functioning of the European Union*<sup>72</sup> (formerly Art 177 of the *Treaty establishing the European Economic Community*)<sup>73</sup>, the Court held that the said article "Confirms that States have recognised to Community law an authority that may be invoked by their nationals" in the national courts. It deduced a fundamental principle which is that of direct effect<sup>74</sup>. It should be noted that Article 48 (b) of the *Statute of the Judicial Chamber of the Court of Justice of CEMAC*<sup>75</sup> provides that the judicial chamber has competence "in last recourse" on the legality and interpretation of the statutes and Acts of organs of CEMAC. Thus, in their relationships with other individuals, or in their relations with the State to which they belong, private persons from CEMAC have the right to ask the judge to apply the Community standard regardless of the law of the country s/he comes from. It should also be noted that although in the *Treaty of CEMAC* individuals are not specifically identified, it cannot be disputed that the CEMAC treaty grants rights or imposes obligations directly on individuals<sup>76</sup>. Further, the achievement of a common market affects the lives of citizens and the process of integration, as it aims to not only integrate institutions, but also integrate people. Moreover, to ensure the successful integration of people, CEMAC individuals participate in decision-making within the community through the Community

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States [...].” EC, *Consolidated Version of the Treaty on The Functioning of the European Union* [2012] OJ, C 326/47 at C 326/171- C 326/172 online: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>>.

<sup>71</sup> Guy Isaac and Marc Blanquet, *supra* note 64 at 375.

<sup>72</sup> See article 267 of the *Treaty on the Functioning of the European Union* “The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union [...]” *Ibid* at C 326/164.

<sup>73</sup> See Ex article 177 of the *Traité instituant la Communauté économique européenne* " The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union[...]", *Traité instituant la Communauté économique européenne*, 25th 195, online : <<http://www.cvce.eu/obj/traité-instituant-la-communauté-économique-européenne-rome-25-mars-1957-fr-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html>>.

<sup>74</sup> ECJ *Van Gend & Loos*, C- 26/62 [1963] ECR 7 at 23 online :<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962CJ0026:FR:PDF>> .

<sup>75</sup> *Acte additionnel n° 06/00/cemac-041-cce-cj-02 portant statut de la chambre judiciaire de la cour de justice de la CEMAC*, 14<sup>th</sup> December 2000, online : <[http://www.cemac.int/sites/default/files/documents/files/Statut\\_CJ.pdf](http://www.cemac.int/sites/default/files/documents/files/Statut_CJ.pdf)>.

<sup>76</sup> See Guy Isaac and Marc Blanquet, *supra* note 64 at 377-378.

Parliament<sup>77</sup>. In addition, art. 14 of the *Convention Governing the Court of Justice of CEMAC* states that "The Judiciary Chamber is competent on appeal of any Member State, any organ of the CEMAC or any natural or legal person who has a clear and legitimate interest in all cases of violation of the provisions of the Treaties of the CEMAC and subsequent Conventions". This is an indication of the desire to determine the intention of States to adopt Community rules, creating rights and obligations for individuals which may be invoked by them against their State of origin, or against any State Party to the *CEMAC Treaty*.

### The Responsibility of CEMAC

The invocation of State responsibility requires four conditions to be met: a situation must occur which is subject to international law; it should affect a person in terms of international law; it must represent a breach of international law; and has caused injury<sup>78</sup>. A closer look at the cases before the Court of Justice of CEMAC in the context of Community litigation relates to labor law. Even if under such litigation the court does not rely on the provisions of the African Charter on Human and Peoples' Rights we must recognize that the jurisprudence of the Court of CEMAC implicitly, albeit clumsily, embraces human rights. This reception has grown over the years but needs to be improved and promoted further.

That said, by increasing their operational role, international organisations are also likely to put their international responsibility on the line or seek compensation for the damages suffered by their agents or by themselves. Thus, the responsibility of international organisations has two facets. First, an international organisation may take on the responsibility as an active or passive subject of international law, depending on the situation<sup>79</sup>. Second, an international organisation can invoke the responsibility of States. It may also place its own responsibility on the line on their behalf<sup>80</sup>. In this section we will look at the passive responsibility of CEMAC, in other words when the organisation is called upon to answer for its actions.

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<sup>77</sup> *Ibid* at 378.

<sup>78</sup> See David Ruzié, *Droit international public*, 18<sup>th</sup>ed, Dalloz, 2006 at 98-102.

<sup>79</sup> See Pierre Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens*, Bruxelles, Bruylant, 1998 at 5; Perez Gonzalez, " Les organisations internationales et le droit de la responsabilité " (1988) 92 *Revue générale de droit international public* 63 at 73.

<sup>80</sup> See Alain Pellet, "The Definition of Responsibility in International Law» in James Crawford et al, eds, *The law of international responsibility*, New York, Oxford University Press, 2010, 3 at 6 to 7.

This situation is important because it highlights the ability and willingness of CEMAC to repair the damages caused to others. It should also be noted that at present, the CEMAC decisions that led to the implementation of responsibility are essentially related to the acts of its agents (decisions *lato sensu*)<sup>81</sup>. In some cases, the CEMAC was responsible for the breach of Community law, in particular in the context of litigations pertaining to the community's public service or workers. Many liability lawsuits have been brought against agents or organs of CEMAC<sup>82</sup> before the Court of Justice of CEMAC. These include *Okombi Gilbert v. CEMAC*<sup>83</sup>, *Thomas Dakayi Kamga v. CEMAC*<sup>84</sup>, *GOZZO Samuel Aaron v. CEBEVIRHA CEMAC*<sup>85</sup>, *Mokamaned John Wilfrid v. Inter-State School of Customs of CEMAC*<sup>86</sup>. Of the last two cases that were successful before the judicial CEMAC chamber, it would be useful for the purposes of this article to take a moment to consider the case of *Mokamaned John Wilfrid v Inter-State School of Customs of CEMAC*.

The facts of this case are as follows. On 23 March, 2006, Mokamanede John Wilfrid, a permanent instructor at the Inter-State School of Customs of CEMAC, requested an annulment order of Decision No 72/CEMAC/EIED of 17 November 2005 made by the director of that school for violation of community standards by the Court of Justice of CEMAC.. The decision concerned the dismissal of the applicant. Mokamanede requested injunctive relief demanding the Inter-State School of Customs (EIED) pay him the sum of FCFA 400 million as damages and 522 267 840 F CFA bonus.

After being reassured of the existence or attempted prior administrative appeal, the CEMAC Court stated that "in deciding the dismissal of the applicant, a senior staff of the School, the Director substituted itself to the Board of Directors and thus violated those provisions of Community rules governing the disciplinary rules of executive officials of EIED." Mokamanede requested that the EIED pay him the sum of FCFA 400 million as damages and 522 267 840 F CFA bonus. Whereas the aim of the application for the reinstatement led in reality to the execution of the judgment measures to intervene, it is

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<sup>81</sup>See Perez Gonzalez, *supra* note 79 at 67 to 68.

<sup>82</sup> Art 2 of the Draft articles on the *Responsibility of international organisations*, relating to Use of terms states that « (c) "organ of an international organisation" means any person or entity which has that status in accordance with the rules of the organisation; (d) "agent of an international organisation" means an official or other person or entity, other than an organ, who is charged by the organisation with carrying out, or helping to carry out, one of its functions, and thus through whom the organisation acts » Art. 6 of the Draft articles on the *Responsibility of international organisations*, relating to the conduct of organs or agents of an international organisation, states that "The conduct of an organ or agent of an international organisation in the performance of functions of that organ or agent shall be considered an act of that organisation under international law, whatever position the organ or agent holds in respect of the organisation". See *Responsibility of international organisations*, *supra* note 62.

<sup>83</sup>*OKOMBI Gilbert v CEMAC*, Arrêt N°002/CJ/CEMAC/CJ/05 du 09/06/2005.

<sup>84</sup>*Thomas Dakayi Kamga v CEMAC*, Arrêt N°004/CJ/CEMAC/CJ/03 du 17/07/2003.

<sup>85</sup>*GOZZO Samuel Aaron v CEBEVIRHA*, Arrêt n° 001 /CJ/CEMAC/CJ/03 du 20/02/2003.

<sup>86</sup>*Mokamaned John Wilfrid v. L'École inter-État des Douanes de la CEMAC*, Arrêt n° 02/CJ/CEMAC/ CJ/06 du 30/11/2006.

solely the Board of Directors that was responsible for appointing and dismissing senior staff in the school and to take the "measures necessary for the implementation of the judgment of the Judicial Bench," according to the provisions of Art 16 of the *Convention governing the Court of Justice of CEMAC* [author's translation]. On those grounds, the Court of CEMAC, acting in relation to Community law, declared Decision No 072/CEMAC/EIED 17 November 2005 disputed and to become null and void.

The interest of community nationals in CEMAC invoking the responsibility of states is imperative to advance the integration process, particularly in an area such as the free movement, where Community Standards specify the rights of individuals. Indeed, although the six CEMAC Member States agreed to remove the visa requirement for community nationals, Gabon and Equatorial Guinea continue to require visas. The reluctance observed by some of the CEMAC Member States, notably Gabon and Equatorial Guinea, about the free movement of persons is epitomised by the closure of borders, mass expulsions, sometimes even followed by the violation of physical integrity of citizens (unjust imprisonment, caning) as well as crass diplomatic incidents. To our knowledge the CEMAC court has not yet been seised with issues of free movement in the CEMAC zone, let alone in the context of a dispute between two CEMAC members. The CEMAC court is still under-used. This should not lead to a presumption of respect for community standards by Member States and individuals, but rather indicates a low degree of outreach by CEMAC institutions par rapport to its population<sup>87</sup>.

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<sup>87</sup> See Leopold Nyabeyeu Tchoukeu, "La responsabilité de l'autorité nationale en cas de violation du droit de la CEMAC" (2011) 88:1 *Revue de droit international et de droit comparé* 121 at146.

## Conclusion

Our intention was to evaluate the progress towards achieving integration in Central Africa over a period of nearly fifty years. Overall, progress has been made concerning the objectives laid down since the birth of the UDEAC in 1964. We questioned whether the objectives of creating a common market and the adoption of common policies on good governance and human rights have been achieved. We noted that there are some successes. In particular, as regards the freedom of movement of both goods and of people. These successes are the creation of an imperfect customs union, the free movement of CEMAC nationals is limited to four countries (Cameroon, Central African Republic, Congo, and Chad). Furthermore, CEMAC nationals have the ability to establish liability of the State or the responsibility of the CEMAC in case of violation of their rights by virtue of CEMAC Community law. In fact, the efforts made so far in terms of regional integration in CEMAC remains low relative to the prior fixed goal which concerned the implementation of the common market back in 2011. Fifty years after the creation of the UDEAC, the assessment of the process of integration in Central Africa is less than upbeat, because the objective laid down by the founding texts of CEMAC, namely in relation to the realisation of a Common Market at the latest by 2011, is far from being achieved. There are obstacles to the implementation of the objectives of the CEMAC at the Member State level. In particular, the Member States lack of will in general and the defectiveness of sanctions in the event of non-compliance on the disciplines of free-circulation or respect for human rights. Another factor that hinders regional integration in Central Africa is the under development of infrastructure networks.

Concerning the State responsibility developed in this paper, one can notice that the access to the CEMAC Court of justice is not exclusively limited to the Member States. An injured person is entitled to invoke the international responsibility of the State or the responsibility of CEMAC for internationally wrongful acts. In addition, in the framework of CEMAC, we witness the concretisation of the implementation of international responsibility on the subjects of international law other than States. This is to say that in the framework of CEMAC, international responsibility is not limited to the wrong-doing State and injured State it is extended to the other subjects of international law as well. This means that the implementation of international responsibility within CEMAC is oriented on the model of legal settlement, in which there may ultimately be a direct relationship between on the one hand, CEMAC and individuals (natural or legal entity)<sup>88</sup> and on the other hand, between states and individuals.

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<sup>88</sup> See Manuel Perez Gonzalez, *supra* note 79 at 99, 100.

