

THE EU AS A MODEL FOR AFRICAN REGIONALISM: DECOLONIZING REGIONAL INTEGRATION IN AFRICA?

Armin Cuyvers and Patricia Ouma***

Abstract

The EU is the most dominant model used to design and support regional integration in Africa. As such, the EU model can be considered as part of the knowledge infrastructure in Africa: not only does the EU often provide the epistemic starting point for thinking about regional integration, it also contributes, financially and with expertise, to the process or regional integration. This paper critically reflects on the role and usage of the EU model in Africa. It asks which colonial pitfalls an EU-inspired approach may lead to and if and how these pitfalls may be avoided or mitigated. If possible at all, this may help answer the further question if and how EU experiences can be critically questioned and translated for cautious use in the African context, whilst reducing the risk of importing explicit or implicit colonial elements. One key element we focus on in this context is the implications of state-centred regional integration. We also turn this critical approach back on the EU: what can and should the EU learn from the African innovations in regional integration?

1. Introduction: the questions we ask and the answers we give...

The European Union (EU) is the most developed form of regional integration in the world. It is often viewed as the epitome of regional integration ‘because of its long history, broad scope, further deepening and successive enlargements’¹ as well as its relative success. Consequently, the EU is often used as a model, albeit sometimes an anti-model, for other forms of regional integration in the world.² This most certainly applies to Africa, where the EU is commonly used as a template or benchmark for different regional integration projects. As a result, the EU model often already

* Professor of European Union Law and Comparative Regional Integration at Leiden University. He is also the Director of CompaRe, the Leiden Jean Monnet Centre of Excellence on Comparative Regional Integration.

** PhD Candidate at Leiden University researching on the role of the East African Community executive in achieving regional objectives. She is also the Africa Regional Coordinator at CompaRe, Leiden.

1 Sanoussi Bilal, *Is the EU a Model of Regional Integration?: Risks and challenges*, EUR. CTR. FOR DEV. POLY MGMT. 3 (2007), <https://ecdpm.org/work/is-the-eu-a-model-of-regional-integration-risks-and-challenges>.

2 See, e.g., Philippe de Lombaerde et al., *Problems and Divides in Comparative Regionalism*, in *COMPARATIVE REGIONAL INTEGRATION: EUROPE AND BEYOND* 21-41 (Finn Laursen ed., 2010); see also Fredrick Söderbaum, *Old, New, and Comparative Regionalism: The History and Scholarly Development of the Field*, in *THE OXFORD HANDBOOK OF COMPARATIVE REGIONALISM* 16-41 (Tanja A. Börzel & Thomas Risse eds., 2016).

provides the epistemic starting point for thinking about regional integration. On a more practical level, moreover, the EU and several of its Member States regularly contribute, financially and with expertise, to the process of regional integration. This only adds to the influence of the EU model on regional integration in Africa, directly and indirectly.³

One can decry *and* welcome the influence of the EU model, both methodologically and normatively. Methodologically, for example, the risks of the N=1 problem are well known and frequently reiterated: how can one project the EU experience, which has been shaped by unique contextual factors, on wholly different contexts?⁴ Normatively, the use of the EU model may be perceived as a form of modern colonialism. Despite these significant risks, the fact remains that the EU simply is the most developed and best studied form of regional integration. Consequently, EU experiences and theories on EU integration are the richest sources on regional integration we have. In addition, no perfect comparisons ever exist in the inherently n=1 reality of political organization where one cannot turn back the clock and organize the same territory with the same history, culture, people and 'events' again except for the one key variable that one wants to isolate and test.⁵

Accordingly, as we cannot observe any multiverses that might be out there either, we will have to make do with the imperfect tool of comparison. Whilst doing so, however, we must try to minimize the distortions caused by manifold relevant differences between regions and maximize our sensitivity to the pitfalls these differences create, including with the help of decolonial comparative law. To this end, this contribution has three aims. First, to identify some of these distortions and pitfalls. Second, to explore if and how some of these findings should impact our research agenda and the type of advice we distil from the EU experience for regional integration in Africa. Third, and certainly not last, how we may use this critical rethinking of EU lessons to challenge perceived wisdom and dogma on EU integration itself. What could and should the EU learn from regional integration projects in the rest of the world, which may find better and more modern solutions to some of the shared challenges?

3 Wanyama Masinde & Christopher Otieno Omolo, *The Road to East African Integration*, in EAST AFRICAN COMMUNITY LAW: INSTITUTIONAL, SUBSTANTIVE AND COMPARATIVE EU ASPECTS 1-12 (Emmanuel Ugirashebuja et al. eds., 2017).

4 See Amitav Acharya, *Regionalism Beyond EU-Centrism*, in THE OXFORD HANDBOOK OF COMPARATIVE REGIONALISM 190-133 (Tanja A. Börzel & Thomas Risse eds., 2016); see also Finn Laursen, *Regional Integration: Some Introductory Reflections*, in COMPARATIVE REGIONAL INTEGRATION: EUROPE AND BEYOND 1-18 (Finn Laursen ed., 2010).

5 See more generally on the challenge of comparison, for example also between the EU and other (con)federal polities A. Cuyvers, *The EU as a Confederal Union of Sovereign Member Peoples: Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU* (2013) (Ph.D. Thesis, Leiden University), <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-publiekrecht/europees-recht/summary-thesis-a-cuyvers-english.pdf>; and Armin Cuyvers, *The Confederal Comeback: Rediscovering the Confederal Form for a Transnational World*, 19 EUR. L.J. 711 (2013).

The aim, therefore, is not just to ‘decolonialize’ the ideas lifted from the EU experience for African blocs, but also to ‘decolonialize’ the (self-)perception of the EU as the inherent gold standard in regional integration. This second part has become increasingly urgent as, with Brexit and the rest of the ‘pluricrisis’ facing the EU, the EU itself is also in need of fresh ideas and perhaps some rethinking of several initial doctrines and assumptions.⁶ Considering this aim, this paper focuses on the comparison between the EU and the East African Community (EAC). Not only is the EAC strongly modelled on the EU, it is also the regional organization we have collaborated with most, specifically on the challenges of adapting EU law and mechanisms to the East-African context.⁷ In addition, the EAC is currently engaged in an effort to draft a new regional constitution. This project could benefit from further consideration on whether and how to use the EU model.

To structure and delimit this contribution, it focusses on several key comparative elements. Section 2 looks at the concept of a region itself, including the relation between regional and continental perspectives and identities. Section three subsequently looks at the actors assumed to be relevant for regional integration, and the implications such often implicit choices have. Section four considers the underlying objectives of integration, which in turn affect the order and pace of integration addressed in section five. Section six ends with some conclusions and recommendations for future research, agenda setting and collaboration.

In addressing these comparative elements, we strive to contribute to a broader decolonial approach. As pointed out, the EU model influences several regional politics globally, several of which have been colonized by European powers. These legal transplants⁸ have had varied levels of success and failure, determined by a variety of factors. When studying the EAC, it is necessary to evaluate the key factors that have informed its regional integration model as a way of understanding its nature and functioning. A decolonial perspective allows us to interrogate the EAC’s specific context while examining the suitability of the borrowed EU model.

For this purpose, decolonial comparative law is preferred over mainstream comparative law, which has been linked by several authors to the risk of advancing the colonial agenda directly and indirectly.⁹ Mainstream comparative law can be traced to

6 See more generally Armin Cuyvers, *Brexit and the Real Democratic Deficit: Refitting National and EU Democracy for a Global Reality*, in REFLECTIONS ON DEMOCRACY IN THE EUROPEAN UNION (Afshin Ellian & Raisa Blommestijn eds., 2020).

7 See more generally EAST AFRICAN COMMUNITY LAW: INSTITUTIONAL, SUBSTANTIVE AND COMPARATIVE EU ASPECTS (Emmanuel Ugirashebuja et al. eds., 2017).

8 Alan Watson, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (2nd ed. 1993).

9 Lena Salaymeh & Ralf Michaels, *Decolonial Comparative Law: A Conceptual Beginning* 86 RABELS J. FOR FOREIGN & INT’L. PRIV. L. 166, 167-170 (2022).

European legal tradition. For instance, the centrality of legal rules in comparative studies can be seen as a typical feature of European approaches.¹⁰ The added advantage of decolonial comparative law is that it goes beyond analysing the contextual similarities and differences, and also ‘examines relationships of power between legal systems or traditions.’¹¹ In drawing conclusions on the suitability of the EU model for African integration, decolonial comparative law allows a deeper exploration into the impact of coloniality on what may otherwise seem to be a removed new era of regional cooperation, due to the absence of formal political control by former colonial powers.

This provides a fuller analysis of the phenomenon studied by revealing the interconnectedness of events and using that as the basis to offer various descriptive and normative claims.

Decolonial comparative law also addresses the implicit hierarchy typically found in mainstream comparative law that assumes one system (the donor’s) is better than the other (the recipient’s).¹² By going beyond the comparison of legal rules, and instead also highlighting and examining the underlying relationships of power between the regions compared, decolonial comparative law offers more in-depth explanations without implicitly assigning values and embedding the colonial ‘lustre’ even further.

Another reason why a decolonial approach is important for this paper lies in the more general need to continue dispelling the notion of the universality of European knowledge. The problem of coloniality is not the spreading of ideas, but their universalisation, which leads to a systematic classification of populations and their knowledge as inferior.¹³ This false yardstick has led to the suppression of ‘other’ knowledges, a feature termed as ‘epistemicide’ or ‘epistemic racism’ by Milton Santos and Ramon Grosfoguel respectively.¹⁴ Suppression, in turn, has led to the assumption that these knowledges do not exist, giving even more dominance to western world views.¹⁵

Even knowledge that has the aura of universality emerged from a particular locality, after which it became globalised due to hegemonic forces. The EU model is no exception. For although the EU model is indeed the most developed and studied, this, does not exclude the imperial factors that are also at play in the hegemonic expansion of EU knowledge on regional integration. Yet, like all other knowledges,

10 *Id.* at 171.

11 *Id.* at 187.

12 *Id.* at 173.

13 *Id.* at 177.

14 Lynn Mario T. Menezes de Souza, *Glocal Languages, Coloniality and Globalization from Below*, in *GLOCAL LANGUAGES AND CRITICAL INTERCULTURAL AWARENESS: THE SOUTH ANSWERS BACK* (Manuela Guilherma & Lynn Mario Menezes de Souza eds., 2019).

15 Kristie Dotson, *Tracking Epistemic Violence, Tracking Practices of Silencing*, 26 *HYPATIA* 236, 236 (2011).

the knowledge on EU integration originated locally. What is more, Europe's imperial quest did not only lead to the imposition, expansion and investment in European thought, but also to the containment of non-European epistemology. Centralising European knowledge and methodology while diminishing others therefore creates the unacceptable risk of ignoring what other ideals are out there, learning how to pursue them, and ensuring that there is room for them to develop structurally from an epistemological standpoint, given the equality of origination.

Conversely, a decolonial comparative approach may also enable EU theory to become more receptive to ideas originating from other spheres of cooperation, seriously considering them as useful and equal. While it is important to decolonise regional integration within African blocs, it is also crucial to decolonise the West. In explaining that decolonial scholarship is not anti-Western scholarship, Salaymeh and Michaels observe that inasmuch as coloniality emerged from the West, it is not essential to it because the West can be decolonized.¹⁶ An injection of innovative approaches and perhaps even an upgrade of dated doctrine could prove beneficial to current crises faced by the EU.

Even as decolonial theory continues to gather ground and gain further articulation, it of course also faces sharp criticism. Some authors argue that the decolonial strategy is a conservative one and bears a likeness to coloniality in the way that it allows the generalisation of the colonial experience, much in the same way coloniality generalises knowledge that is otherwise unique to a certain locality.¹⁷ It therefore tends to work within already established macrostructures such as capitalism along similar trajectories as coloniality, rather than seeking to subvert these systems entirely.¹⁸ Another criticism is that decolonial theory ends up recentring global history around a singular European period by privileging the colonial moment over all others' essentially drawing attention away from the substantive knowledge it seeks to validate.¹⁹

We also note that in founding our claims and justifications on decolonial theory, whilst at the same time using the methodological framework of the very systems that are claimed to be rooted in coloniality, we not only strengthen and reaffirm the integrity of these structures, but also seek validation and admission into them. The

16 Salaymeh & Michaels, *supra* note 9, at 179.

17 Gianmaria Colpani, Jamila M.H. Mascot & Katrine Smiet, *Postcolonial responses to decolonial interventions*, 25 POSTCOLONIAL STUD. 1, 1-16 (2022).

18 *Id.*

19 Where they note,

Since colonialism has violently introduced an inescapable fissure in the (post)colonial world, including by injecting the colonial gaze into the self-perception and imagination of the (post)colonial subject, *translation* between imperial and subaltern languages - across idioms as well as conceptual universes - has become the unsurpassable horizon of post coloniality, which does not allow for the retrieval of untouched and untranslated non-Western epistemologies.

Id. at 10.

audience we seek, whose acknowledgment and more we deem necessary, (consciously or unconsciously), is usually largely with the western world rather than the colonised world, reinforcing the hierarchies that continue to oppress. In this sense, we continue to essentially ask for permission for our ideas to exist through behaviour that suggests a lack of agency. This procedural challenge of decoloniality is not lost on us, but by admitting that this paper does not adhere to calls for a radical exercise in decoloniality, it recognises the limitations that any recommendations given might have in evoking any big shifts. At the same time, we do hope that through our chosen approach, a bridge is built between the more traditional and decolonial comparative approach, on the one hand, which can both constructively connect to the key constructs in traditional regional integration theory on the other. This would in our view contribute to more radical attempts to rethink the very nature and structure of regional integration.

2. The concept of a region and the role of the state

Regional integration requires that there is such a thing as ‘a region’ to integrate.²⁰ In the EU, the region has historically been strongly defined along the lines of nation-states sharing a certain geographical location and proximity.²¹ In part this is due to the initial overriding objective of preventing future conflicts between France and Germany after centuries of warfare escalating into two World wars. This inevitably led to a strong focus on controlling states and their behaviour. In addition, since Westphalia, the nation-state has been a highly dominant factor in European governance in general, welding together identity, legitimacy, money, public administration, the use of force and other key factors. Consequently, the process of European integration largely focused on states and hence defined the concept of the European region along state lines as well.²² Key questions, for example, became how to connect European integration to the democratic and governance structures of the Member States, what the (hierarchical) relationship between the EU and the Member States is or should become, or how EU law relates to the laws propagated by Member States. Membership of the EU is also only open to states, meaning that the borders of the EU follow the borders of its Member States.²³

20 On the contested and complex concept of a region, and the many different ways in which one can conceptualize a ‘region’, see *inter alia* Söderbaum, *supra* note 2; see also Joseph S. Nye, *Comparative Regional Integration: Concept and Measurement*, 22 INT’L ORG. 855 (1968).

21 Note that the concept of a *European* state, which is a requirement to join under Article 49 TEU, has not been legally defined, meaning that the ultimate geographical scope remains open for future political decision-making within any potential boundaries set by the Court of Justice of the EU (CJEU).

22 This is of course not to say that non-state actors did not play an important role. Frank Schimmelfennig, *Europe*, in THE OXFORD HANDBOOK OF COMPARATIVE REGIONALISM 178-202 (Tanja A. Börzel & Thomas Risse eds., 2016); see also Armin Cuyvers, *The Road to European Integration*, in EAST AFRICAN COMMUNITY LAW: INSTITUTIONAL, SUBSTANTIVE AND COMPARATIVE EU ASPECTS 22-43 (Emmanuel Ugirashebuja et al. eds., 2017).

23 This is complicated by the different status of overseas territories as well as the fact that post-Brexit Northern-Ireland, for now, remains part of the EU Customs Union and largely the EU internal market for goods, but this is not relevant for the point made here.

The broader concept of a 'European region', moreover, was never clearly defined. Although a certain, if blurry, idea of 'Europe' as a continent has been around for a long time, the EU did not start out with a clearly delineated concept of Europe as a region. Rather, initial integration was primarily centred around France and Germany, gradually radiating outwards. In fact, expansion to other European states was only a last-minute addition to the Schuman plan which kicked-off European integration. Monnet initially envisaged a community between France and Germany alone, only adding the option for other states to join the evening before, by hand. As it happened, however, the EU gradually expanded. From the initial core of six Member States, the EU enlarged to 28, now 27 post-Brexit, which increasingly triggered the question where the geographical limits to the 'European region' actually lie.²⁴ Even if it could build on a shared history, culture and perhaps some level of common European identity, the EU therefore did not start out with a clearly defined geographical region in mind. Neither was European integration driven as such by a need or desire to (re) unite a certain preconceived region.

For East-Africa, defining the region in statal, or even geographical, terms might not be the most correct or beneficial approach, at least not exclusively. To begin with, except for Rwanda, the states involved are relatively young and were largely shaped during colonial times. Latching regional integration to the 'contrived state',²⁵ therefore, risks basing regional integration on statal conceptions that may not match the East-African context but might rather entrench certain colonial legacies.²⁶ In addition, a focus on the state may exclude other conceptions of the region, which may also be important, for example along historical, cultural or tribal lines, which do not follow straight lines on a map. An overly statal conception of the region may, therefore, imbue the entire project of regional integration with an unintended bias that may exclude some key dimensions of how East Africa does or wants to define itself as a region.

Different from the EU, moreover, and confirming the limits of the statal approach to defining a region, there is a stronger, if complex, understanding of a pre-existing East African identity. In this sense, East Africa might even be said to have a stronger pre-existing notion as a region than the EU. This leads to the question how this pre-existing conception of a region should be connected to the East African regional project and poses a challenge to decolonial thought to direct some attention to the study of pre-existing concepts around cooperation that were diminished with the rise of coloniality. Should a regional integration project, moreover, serve existing

24 Of course, the 'European' Convention on Human Rights has a far broader membership. See *The Council of Europe in Brief: Our Member States*, COUNCIL OF EUR., <https://www.coe.int/en/web/about-us/our-member-states> (last visited Apr. 5, 2023).

25 Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113, 1134 (1995).

26 See also Christof Hartmann, *Sub-Saharan Africa*, in THE OXFORD HANDBOOK OF COMPARATIVE REGIONALISM 178-202 (Tanja A. Börzel & Thomas Risse eds., 2016).

conceptions of the region, or should it help create new regional identities that fit with the political realities and organization of political power, so as to make them viable and effective? Makau Mutua strongly proposes that the only way to address the problems of 'European Africa' is to redraw the map of Africa.²⁷ Would addressing geopolitical wrongs better serve the aims of the region? Are there ways to incorporate non-statal dimensions of being 'a region' into state-based forms of regional organization, as long as these other regions stay within the external boundaries of the region as set by its statal members? Ahmed An-Na'im, for example, asserts that pre-existing nations do not need to overthrow the state to exercise their right to self-determination, and can instead use constitutional devices like autonomy regimes.²⁸ Mutua, on the other hand, believes that the postcolonial state must be dismantled before any precolonial ideals of community, social organisation and democratisation can take place, as the precolonial state is 'a fundamentally undemocratic entity in concept and reality.'²⁹

These are questions that need further debate and action. The centrality of the state in East African integration has inevitably led to a focus on questions around democracy, hierarchies of law, and governance structures. It seems as though by adopting the EU model, the EAC has adopted these incidental questions that are Eurocentric at their core. Though important, these questions risk further embedding colonial legacies attached to the creation of the state, and overlook the seeking and answering of questions falling outside the postcolonial state. Part of this debate should then also revolve around the conception or role of the state itself and whether it should be reconsidered, for example, considering the state more as an administrative unit and less as a political or identity anchor.

Lastly, East-Africa also faces the challenge that the states that have been created now represent certain vested national interests and have also acquired a level of sovereign pride, inter alia linked to post-colonial independence. Regional integration that is primarily defined along statal lines may entrench such nationalistic sentiments as well as the existing elites that control the current states. This connection between the conception of the region itself and the parties that participate in or derive power from regional integration also brings us to the issue of actors in regional integration.

3. Actors in regional integration

The definition of the region, including a focus on the state, also has a strong impact on the actors that are considered relevant for regional integration, both as agents and 'customers' of integration. A statal definition of the region, and of regional integration,

27 Mutua, *supra* note 25, at 1162.

28 Abdullahi Ahmed An-Na'im, *The National Question, Secession and Constitutionalism: The Mediation of Competing Claims to Self-determination*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 105, 109 (Douglas Greenber et al. eds., 1993).

29 Mutua, *supra* note 25, at 1162.

logically leads to a focus on states and statal institutions as the key actors, together with any institutions created at the regional level.

In the EU, the statal focus meant that most key actors have a strong link to Member States, either directly or indirectly. Several institutions and bodies directly represent the Member States, being the Council of Ministers, the European Council, and national ambassadors in COREPER. What is more, much of the preparatory work for EU legislation is done by committees of national civil servants, and most of the members of the European Parliament campaign as part of a national political party, tying their election to a significant extent to the national political process as well. In the search for more democratic legitimacy, moreover, the EU is increasingly looking for ways to incorporate national parliaments into EU decision-making further connecting the EU to the existing state mechanisms of legitimacy. Of course, non-state actors also play an important role in European integration, for example via the Economic and Social Committee, which represents the interests of employers and labour at the EU level. What is more, several societal groups manage to have significant influence on EU integration, for example the round table of industrialists during the formative years of the establishment of the internal market or other lobby groups. The power of these actors, however, does not come close to those of state actors (although of course some societal actors can influence these state actors at the national level as well, and hence influence EU policy indirectly). Attempts by the EU to better include societal actors, for example by introducing a citizens' initiative, seem only to have a very limited impact. By and large, therefore, the EU is still strongly focussed on state actors, and struggling to actively engage with non-state actors.³⁰

For East Africa, a statal focus therefore also implies a certain risk of preselecting state actors as the most relevant and dominant actors as seen in the operations of Summit and the Council of Ministers. Obviously, state actors will always be relevant for any form of far-reaching integration as they have the kind of authority and administrative capacity required for deep integration. The question, however, is how dominant or exclusive state actors should be³¹ given, especially, the contested idea of the state.

To begin with, an overly exclusive focus on state actors again reinforces the role of the state, with all the risks outlined in section 2. It also means that non-state actors and organizations, which can play an important role in African societies, are relatively excluded. This may weaken the legitimacy and inclusiveness of regional integration and rob East African regional collaboration of some of its unique potential. Even

30 Cf. Armin Cuyvers, *The Institutional Framework of the EU*, in EAST AFRICAN COMMUNITY LAW: INSTITUTIONAL, SUBSTANTIVE AND COMPARATIVE EU ASPECTS 79-103 (Emmanuel Ugirashebuja et al. eds., 2017).

31 For the current framework, which is very state centred, and especially president-centred, see Wilbert T.K. Kaahwa, *The Institutional Framework of the EAC*, in EAST AFRICAN COMMUNITY LAW: INSTITUTIONAL, SUBSTANTIVE AND COMPARATIVE EU ASPECTS 43-79 (Emmanuel Ugirashebuja et al. eds., 2017).

worse, it may even enable state actors to undermine the influence of these non-state actors at the national level. For example, once a law is adopted by state actors at the regional level, national societal organizations will no longer be able to use their national tools to affect the content or adoption of this law. The Anyang' Nyong'o case in the East African Court of Justice is a good illustration.³² Here, the claimants contested the manner in which candidates were chosen in the East African Legislative Assembly (EALA). The EAC Treaty requires that an election be carried out when constituting the membership of EALA.³³ Seats were instead divided according to political parties' strength in the national parliament, and one reason for this, according to the claimants, was to control the domestic legislative agenda.³⁴ Even though the court sided with the claimants, the backlash birthed a successful attempt at undermining the role of non-state actors in East African integration. In order to chip away at the influence of the court, the Kenyan government orchestrated an underhanded amendment process, outrightly excluding civil society and private sector, and any attempts made to undo this failed.³⁵

Regionalism, if done wrong, can therefore be a means to exclude national counterforces. Similarly, a strong role for state actors generally means more power for those in government over those in opposition, as it tends to be those in government that represent states at the regional level and control regional institutions. Especially where the government is controlled by one societal faction, tribe, and/or party, this risks locking other groups out of regional decision-making. An overly exclusive focus on state actors may therefore undermine the position of the opposition in general, and minorities in particular, again eroding the legitimacy and inclusiveness of integration. This is particularly problematic where certain groups or minorities are spread over multiple states, and risk losing their voice at the regional level because they are not effectively represented at the government level in any of the states. The members of the Kenyan opposition in the Anyang' Nyong'o case claimed that the procedure used to essentially appoint EALA members contrary to the requirements of the EAC Treaty was an attempt by the Kenyan government to evade any national power-sharing commitments made with the opposition.³⁶ If this scenario had been allowed to play out, it would have given the relevant state actors the opportunity to strengthen their position at the expense of the opposition using regional apparatus.

32 Peter Anyang' Nyong'o v. Att'y Gen. of Kenya, Reference No. 1 of 2006, E. Afr. Ct. of Just., (Mar. 30, 2007), https://www.eacj.org/wp-content/uploads/2012/11/EACJ_Reference_No_1_2006.pdf.

33 Treaty for the Establishment of the East African Community art 50 (1), Nov. 30, 1999, <https://www.eacj.org/wp-content/uploads/2012/08/EACJ-Treaty.pdf> [hereinafter EAC Treaty].

34 Karen J. Alter, James T. Gathii & Laurence R. Helfer, *Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences*, 27 EUR. J. INT'L L. 293, 301 (2016).

35 James T. Gathii, *Mission Creep or a Search for Relevance: The East African Court of Justice's Human Rights Strategy*, 24 DUKE J. COMPAR. & INT'L L. 249, 268-71 (2013).

36 Alter et al., *supra* note 34, at 301.

Thirdly, empowering state actors through regional integration also risks empowering those societal groups who have a strong hold on national government already, for example certain business interests. Especially where the aim of regional integration may be to overcome national capture and monopolies, and to enable a free flow of trade to benefit consumers, this is obviously undesirable.

All in all, a focus on state actors, precipitated by a focus on states, may lead to the transference of the problems of the state. An even deeper hole may be dug through the regionalisation of corruption, the regionalisation of the disregard for the rule of law, the regionalisation of discrimination, and ultimately through either mimicking large parts of EU law or replicating inherited Eurocentric state practices, in short, the regionalisation of coloniality.

When designing EAC institutions, especially for the envisioned EAC (con)federal constitution, it is therefore important to design a regional model and institutional system that fits its own context and aims. If insights from the EU are used, moreover, it is vital to decolonize the EU model, with its very strong focus on state entities, or, in any event, to provide checks and balances for the effects such a statal bias might have in East-Africa. For example, one may consider tools to include the national opposition in regional decision-making, as well as representation of other societal groups. Going one step further, one could explore where non-state actors could be given actual, well delineated, powers to act, for example on very concrete and specific terrains such as education, health or social protection.³⁷ Similarly, the construction of and participation in EAC institutions could be based less on state connections, but also on other concepts of representation.

Such an exercise of broadening the range and powers of non-state actors should be of great interest to the EU as well. The EU might also benefit from broadening and diversifying its perspective on relevant actors, for example to better include not just the opposition in Member States but also those parts of society currently not reached or constructively engaged by European integration. As again illustrated by Brexit, there seems to be an increasingly large group that feels 'left out' by European integration and globalization. Instead of ignoring or disqualifying this group, there is a need to incorporate their views and interests more, which requires a rethink on the relevant actors and institutional design for regional integration, also in the EU. European integration might also provide an opportunity for smoother legal and political processes in respect of rising 'independentism' in Europe.³⁸ The last three decades have seen the emergence of several new states on the continent, some of which have joined the EU.³⁹ Moreover, discourse on independence referendums is

³⁷ See also *infra par.* 4 below on the objectives of regional integration.

³⁸ GRAHAM AVERY, EUROPEAN POLICY CENTRE, INDEPENDENTISM AND THE EUROPEAN UNION POLICY BRIEF (2014), https://www.epc.eu/content/PDF/2014/Independentism_and_the_EU.pdf.

³⁹ *Id.*

continuing, with Scotland planning a second one in late 2023,⁴⁰ a looming possibility of one in Belgium as regards Flanders and Wallonia,⁴¹ not forgetting the contentious events in Catalonia in 2017.⁴² Such possible divisions of member states present new challenges for the EU to navigate in terms of membership and decision-making, for example. Observing how the EAC potentially engages with state counterforces could provide valuable lessons for the EU in dealing with independence seeking groups in any transitional processes and potential risks of underrepresentation nationally and regionally.

As indicated, a strong role for state actors will likely always remain, while states remain key organizational units for regional integration. Yet when using the EU model, the very state-centred implications of this model should be recognized and where possible counter balanced. Naturally the relevance and feasibility of involving non-state or non-traditional actors also depends on the concrete objectives being pursued by regional integration, which is the next key dimension to consider when decolonizing the EU model.

4. The objectives of regional integration

Regional integration is not an end in itself. Therefore, it is vital to have a clear idea about the specific objectives of any regional organization project when designing it. The EU model, moreover, tends to reflect the objectives underlying EU integration. Copying the EU model hence usually means implicitly incorporating the objectives behind EU integration, or failing to sufficiently serve those objectives that are not part of the EU objectives. As Arewa puts it, '[t]his mismatch between source and target of borrowing has contributed to a gap between law on the books and law in practice.'⁴³

Since its inception, two main EU objectives have been peace and prosperity through economic integration.⁴⁴ The idea thereby was that economic integration and prosperity were not just ends in themselves but also tools for the objective of peace. By creating prosperity, and making this prosperity dependent on collaboration, future conflict could be avoided. Simply put, it would become economically almost impossible to fight. On a more positive note, the institutional and personal habit of consultation

40 Akash Paun, Jess Sargeant & Duncan Henderson, *Scottish independence*, INST. FOR GOV'T (Oct. 9, 2018), <https://www.instituteforgovernment.org.uk/explainers/scottish-independence>.

41 Chinyere Obasi, *Belgium: The Case of Flanders and Wallonia*, HARV. POL. REV. (July 22, 2021), <https://harvardpolitics.com/flanders-and-wallonia/>.

42 Katy Collin, *Order from Chaos: The referendum in Catalonia, explained*, BROOKINGS (Sept. 29, 2017), <https://www.brookings.edu/blog/order-from-chaos/2017/09/29/the-referendum-in-catalonia-explained/>.

43 Olufunmilayo B. Arewa, *DISRUPTING AFRICA: TECHNOLOGY, LAW, AND DEVELOPMENT* 43 (2021).

44 Consolidated Version of the Treaty on European Union, 2012 O.J. (C326/13) art. 2, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF; Paul Craig & Gráinne de Búrca, *EU LAW: TEXTS, CASES, AND MATERIALS* 1-32 (7th ed. 2020).

and collaboration created by integration would also foster cooperation and reduce the chances of conflict.

The initial focus on peace was largely determined by the history of the German-French conflict. But the fundamental logic of preventing conflict by increasing its economic costs, or even making conflict impossible because production chains for essential goods require inputs from other states, is more generally valid. In Africa as well, economic interdependence might foster a more collaborative approach, even if the nature of this interdependence might differ. Similarly, a habit of consultation and collaboration, across different levels of government, might also benefit stability and cooperation, especially where tensions and the risk of misunderstandings increase.

It is important to understand, however, that even the seemingly general integration objective of peace through prosperity was and is based on specific social objectives and economic realities in the EU. One key fact is that the economies in the EU were diverse enough to benefit from intra-EU trade. In other words, removing barriers to trade leads to more intra-EU trade and wealth. In addition, the assumption was that all economies involved were strong enough to survive open competition. As a result, those that were outcompeted would be able to switch to another economic activity where they would have a relative advantage, improving the overall competitiveness of the EU economy, and contributing to a net increase in overall EU wealth (leaving distributional effects aside).

On top of these two foundational objectives, the EU has of course over time incorporated multiple other objectives, ranging from transport policy and science to the environment and foreign affairs. In fact, there are very few areas left where the EU does not at least have a supporting objective, and almost none where EU law does not affect remaining national competences.⁴⁵ Over time the underlying aim of peace seemed to have lost some of its significance or legitimizing potential, especially for younger generations in Western Europe that no longer seemed to perceive war as a realistic threat. However, in the wake of the ongoing Russian invasion of Ukraine which began on 24 February 2022 Europe can no longer define its reality on a 'post-war' basis.⁴⁶ Despite the addition of new objectives and the fluctuation of the relevant weight of different objectives over the course of European integration, however, the two initial aims of peace and prosperity remain deeply and systematically engrained in the EU model. What is more, many of the other aims are often connected to economic objectives of the EU and build on the EU's competences in external trade

⁴⁵ See famously Koen Lenaerts, *Constitutionalism and the Many Faces of Federalism*, 38 AM. J. COMPAR. L. 205 (1990).

⁴⁶ CORINA STRATULAT, EUROPEAN POLICY CENTRE, WAR HAS RETURNED TO EUROPE: THREE REASONS WHY THE EU DID NOT SEE IT COMING (Apr. 28, 2022), https://www.epc.eu/content/PDF/2022/War_has_returned_to_Europe_DP.pdf.

or the internal market. For that reason, as far as the objectives of the EU model are concerned, this contribution focuses on the implicit incorporation of the peace and economic objectives when other regions use the EU as a model.

For East Africa, the objective of preserving peace and stability of course remains highly relevant, certainly with the accession of South-Sudan, the Democratic Republic of Congo, and the ongoing tensions in these regions. A recent crisis that has seen intervention from the EAC involves the clashes between the rebel movement, M23, and DRC's armed forces in the east of the country. The EAC has been instrumental in leading peace talks between representatives of the rebel groups and the DRC government, and leading military efforts.⁴⁷ EAC leaders, led by a peace envoy, Kenya's former president Uhuru Kenyatta, undertook to deploy a regional force to counter the rebels.⁴⁸ The EAC's capacity in handling peace and security in the region will be tested here, especially because it is the first time that the bloc has sent troops to a partner state.⁴⁹ The opposite is true for its counterpart, the Economic Community of West African States (ECOWAS), which has conducted a number of military operations in West Africa, a notable success story being its intervention in The Gambia in 2017 which ousted long-time ruler Yahya Jammeh.⁵⁰ The strategy of increasing economic interdependence to boost stability therefore also remains relevant. Even small contributions to stability should be appreciated here. One should, furthermore, also not underestimate the practical effect of frequent personal contact enabled by regional integration, both at the leader level and the lower echelons.

The more problematic underlying objective, however, is that of economic integration. At face value, both the EU and the EAC share the same need and desire to boost prosperity and to that end create an effective internal market. Economic conditions, however, differ strongly. For example, many East African states produce similar goods. This can be traced back to colonialism, which, on top of legal imperialism, involved the creation of economies structured to be uncompetitive.⁵¹ After all, the motivations of colonial policies revolved around extraction for external benefit rather than internal improvement of the occupied nations.⁵² The production of similar goods, first of all, means that there is limited scope for intra-regional trade, and hence less benefits

47 Koffi Sawyer, *Can the East African Community stabilise eastern DRC?*, INST. SEC. STUD. (Nov. 1, 2022), <https://issafrica.org/iss-today/can-the-east-african-community-stabilise-eastern-drc>.

48 Nelleke van de Walle, *East Africa's DR Congo Force: The Case for Caution*, INT'L CRISIS GRP. (Aug. 25, 2022), <https://www.crisisgroup.org/africa/great-lakes/democratic-republic-congo/east-africas-dr-congo-force-case-caution>.

49 *Id.*

50 Thomas Lowe, *Bracing Against the Tide: ECOWAS and Recent Military Coups in West Africa*, YALE REV. INT'L STUD. (Mar. 2022), <http://yris.yira.org/comments/africa-comments/5657>.

51 Arewa, *supra* note 43, at 93.

52 *Id.* at 16.

for removing barriers to trade.⁵³ Second, it means that they may see each other as competitors, selling the same goods to third countries. Third, the underlying problem is that they tend to sell basic raw materials and foodstuffs, as a result of which they only gain a small part of the added value in the overall value chain.⁵⁴ Fourth, African undertakings might often not be competitive enough to face open competition with world markets immediately, meaning that opening up can lead to foreign competitors taking over and undermining the long-term growth potential of local businesses.

Even if one wants to include economic objectives in African regional integration, one needs to therefore carefully define which economic objectives suit the need of the region, what form of economic integration is required to achieve these objectives, if any, and subsequently adapt the EU model to these specific economic aims. For example, instead of removing barriers to intra-community trade, one may first want to support more developed and diversified national economies, which could then benefit from intra-community trade in the longer run. In line with this objective, one could focus on stimulating and fostering economic activities that capture a larger share of the added value in the respective Member States. Both of these objectives, however, require almost the opposite of the EU model: to first protect and shelter economic actors instead of exposing them to intra-community or even global competition.⁵⁵ Such sheltering, however, also brings the risk of unwarranted protectionism or protection based on political contacts rather than economic merit. As a result, such forms of 'protective' or 'Green-house' integration may need forms of protection against such negative side effects that were not necessary in the EU and hence not included in the EU model.

The African Continental Free Trade Area (AfCFTA) has taken considerable steps to address some of these challenges through including specific objectives as to the development and promotion of regional and continental value chains, and the enhancement of socio-economic development, diversification and industrialisation across the continent.⁵⁶ Through its 'Special and Differential Treatment' clause, it also provides flexibilities to countries based on their level of economic development to ensure comprehensive and mutually beneficial trade.⁵⁷ The Guided Trade Initiative (GTI), launched in October 2022, is said to be designed to allow intra-African

53 Afr. Union, *Action Plan for Boosting Intra-African Trade*, at 8, https://au.int/web/sites/default/files/newsevents/pressreleases/26498-pr-action_plan_for_boosting_intra-african_trade_f-english.pdf.

54 *Id.*

55 Compare in this regard also the more developmental school of regional integration in the new wave of integration in Latin-America. See, e.g., Andrea C. Bianculli, *Latin America*, in *THE OXFORD HANDBOOK OF COMPARATIVE REGIONALISM* 154-78 (Tanja A. Börzel & Thomas Risse eds., 2016).

56 Agreement Establishing the Africa Continental Free Trade Area: Protocol on Trade in Goods art. 2(e) & (f), Mar. 21, 2018, https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf.

57 *Id.* at art. 6.

trade in a commercially meaningful and sustainable way.⁵⁸ The initiative aims to test the AfCFTA's operational, institutional, legal and trade policy environment.⁵⁹ Even though it may seem at the outset that the framing of the AfCFTA objectives are Eurocentric in their overall approach, it may not necessarily mean that they are not relevant to the African context. It is hoped that these additional measures go far enough to adequately contextualise economic integration in Africa.

Once one starts modifying the objectives of economic integration, moreover, other objectives might gain relevance. For starters, conquering a higher percentage of the added value will require education and investment, and a well-designed system for collaboration and joint ventures with foreign undertakings. Attracting FDI must then also not be seen as an objective in itself, but as a tool to contribute to this more structural improvement of the economy. Similarly, collaboration on basic infrastructure and innovation will become more important, as East Africa will have to select those sectors for development where it can leapfrog ahead. The Cotonou Agreement, for instance, between African, Caribbean and Pacific countries and the EU provides some leeway in selecting priority areas to collaborate on depending on a region's level of development.⁶⁰ In addition, one could use regional integration to fill gaps in training and education in a way that was never necessary, or possible, in the EU.

Again, such modifications to the EU model are also highly relevant for the EU itself. As the euro crisis has shown, the discrepancy in competitiveness between Member States has grown dramatically in the EU, certainly with its gradual expansion South and East. In addition, the EU now also has to consider how to function in a more multi-polar world with, inter alia, an ascending China. What is more, partially due to these developments, the EU is increasingly confronted with the need to deal with the distributional effects of economic integration: it is very well to grow European GDP by 5%, but if this leads to net economics benefits of 10% for Western and Northern Member States and a net loss of 5% of GDP for other Member States or certain social groups, the overall social impact may still be negative.⁶¹ Here experiments in other regions to ensure equitable distribution of the benefits of integration may be valuable.

58 Pavithra Rao, *AfCFTA's Guided Trade Initiative takes off, set to ease and boost intra-African trade*, U.N. AFR. RENEWAL (Oct. 12, 2022), <https://www.un.org/africarenewal/magazine/october-2022/afcfata%E2%80%99s-guided-trade-initiative-takes-set-ease-and-boost-intra-african-trade>.

59 *Id.*

60 Cotonou Partnership Agreement of 23 June 2000, art. 35(3), 2000 O.J. (L317) 3, https://eur-lex.europa.eu/resource.html?uri=cellar:eebc0bbc-f137-4565-952d-3e1ce81ee890.0004.04/DOC_2&format=PDF.

61 See on the fundamental challenge this distribution means for globalization more generally JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS REVISITED: ANTI-GLOBALIZATION IN THE ERA OF TRUMP* (2017).

Even on seemingly neutral objectives such as economic growth or trade, therefore, it is important for East-Africa to unpack and deconstruct the underlying objectives and assumptions when using the EU model. For the EU, moreover, it is also essential to reassess some of its explicit and implicit objectives as a now very diverse Union of 27 enters a 21st century in which the economy and geopolitical reality are very different from the post WWII era. Ultimately, moreover, all these factors operate steadfastly within, and are judged against, free-market capitalist structures originating from western philosophies. Perhaps a venture outside this particular box can also contribute to the development of new economic and social systems that can provide tools more relevant to the EAC in a digitalizing 21st century.

5. The order, pace and scope of regional integration

EU integration followed a particular order, at a certain pace, and has by now achieved a very broad scope, partially by design and partially due to 'events' such as the fall of the Berlin wall. There are very few reasons why other regions should in principle follow this order, pace and scope of integration. In fact, considering the high context dependency of the EU's integration trajectory, this might be one domain where different regions can and should make very different choices. As this is a very broad topic, however, covering over six decades of EU integration, we will focus here on the order, pace and scope of economic integration.

The evolution of EU integration is generally captured within Bela Balassa's theory of integration.⁶² The EU has weaved through the various stages of integration from free trade area, customs union, common market, and economic union through to total integration, with the introduction of a single currency.⁶³ Economic integration is complemented by federal aspects even though the likelihood of full federation has long diminished⁶⁴ Economic integration was initially characterised by free movement of goods, focussing first on removing tariff barriers, such as customs duties, and then non-tariff barriers (NTBs) such as differing product standards. Subsequently, the EU started to focus more on economically active persons and services, and only more recently on digital services. This sequencing made sense as at the start of European integration goods made up more than 70% of all European trade, and hence the biggest obstacles to trade concerned goods.⁶⁵ At the time, for example, services were even considered a residual category of economic activities.

62 BELLA BALASSA, *THE THEORY OF ECONOMIC INTEGRATION* 2 (2011).

63 EUR. PARLIAMENT, *THE EUROPEAN UNION AND REGIONAL ECONOMIC INTEGRATION: CREATING COLLECTIVE PUBLIC GOODS—PAST, PRESENT AND FUTURE* 2 (2021), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689369/EPRS_BRI\(2021\)689369_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689369/EPRS_BRI(2021)689369_EN.pdf).

64 *Id.*

65 Stefaan Van den Bogaert et al., *Free movement of services, establishment and capital*, in *THE LAW OF THE EUROPEAN UNION* 539-586 (Pieter Jan Kuijper et al. eds., 5th ed. 2018).

In terms of timing, moreover, much depended on bumpy periods of stagnation followed by leaps. After a period of 'Euro sclerosis' in the '70s and early '80s, for example, during which political decision-making was largely blocked, the internal market programme at the beginning of the '90s revived the internal market leading to a sudden boost in economic integration. Similarly, the fall of the Berlin wall led to a boost in expansion and deeper political integration, including the introduction of the euro as very much a political decision to cement European integration.⁶⁶

As to scope, European economic integration has by now affected almost all sectors of public authority, including social security, health care, criminal justice, and migration, to name some of the more sensitive ones. This is to a large extent due to the legal doctrine of effectiveness, which holds that any national rule that might potentially restrict free movement, and hence economic integration, falls under the scope of EU free movement law, and hence EU law.⁶⁷ As almost any national rule can directly or indirectly affect some aspect of free movement, this means that the scope of European economic integration has become almost universal. Even where there is no EU legislation on a specific field, for example because it concerns a national competence, all national laws in this field still have to comply with EU Treaty rules as soon as they might impact on free movement.

Neither the order, pace nor scope of European integration should necessarily guide the integration project in East Africa. To start with the order, we now live in a very different economic reality than in the 1950s and 1960s. Starting economic integration with goods, therefore, is not necessarily the optimal approach, especially not when one includes the different objectives behind economic integration in East Africa and the structure of East African economies. Instead, it may make much more sense to start, for example, with digital services, financial services, telecom and capital. These are not just economically more important these days, but they may also allow for faster growth, do not require the same institutional, political and real-world infrastructure, and may provide the financial context required to stimulate the production of more complex and valuable goods.

In several of these areas, moreover, the *pace* of integration can also be very different from the EU. First of all, because one can build on existing experiences and models, certain regulatory frameworks can be established much faster and better. Some stages of integration may be done away with altogether, whereas in other areas East Africa can leapfrog ahead. For example, creating a good digital infrastructure and decentralised grids may avoid the need for more costly and old-school investments in

66 LUUK VAN MIDDELAAR, *THE PASSAGE TO EUROPE: HOW A CONTINENT BECAME A UNION* (Liz Waters trans., 2013).

67 Armin Cuyvers, *General Principles of EU Law*, in *EAST AFRICAN COMMUNITY LAW: INSTITUTIONAL, SUBSTANTIVE AND COMPARATIVE EU ASPECTS* 217-228 (Emmanuel Ugirashebuja et al. eds., 2017).

infrastructure. At the same time, considering the economic objectives of East-African integration, some other forms of integration might be pursued at a slower pace. An even more gradual approach to the liberalisation in certain goods, for example, could be emphasised to protect particular vulnerable or essential industries, and not just those that serve powerful political interests.⁶⁸ As another example, some of the key benefits of monetary integration might be achieved without a full monetary union, postponing the necessity of such a major, complex and risky leap in East African integration.⁶⁹

An important way in which the EAC already incorporates flexibility is in the form of variable geometry⁷⁰ where integration follows a 'differentiated (instead of uniform) treatment of members of the same region, in terms of time, issue areas and members'.⁷¹ This flexibility is precipitated by political and economic factors; political in that there are divergent and competing sovereign interests present in the Partner States, and economic in relation to the practicalities surrounding the integration process, such as the distribution of responsibilities, resources and benefits.⁷² The EAC has employed flexible integration in several instances throughout its history. For example, subgroups of partner states have pursued policy changes at slower speeds, there has been equitable distribution of regional institutions and organisations to avoid concentration in one partner state, and preferential allocation of industries, and credit and investment from regional banks.⁷³ However, as pointed out, more can be done towards a strategic shift that focuses on the practical aspects of what can be jointly achieved without the delays caused the large political cost of committing to more complex regional relationships.

The order and pace of integration are also closely connected to the scope of integration. As indicated the EU model is a generalist model whereby in principle the entire economy is integrated, and all areas connected to this economic integration are affected by regional law as well. This approach has clear advantages, but also carries huge costs. For example, it requires deep institutionalization, effective national and regional legal systems and stable political collaboration. For the East African context, therefore, one could seriously consider if a more lean, smart approach to integration is possible, for example, zooming in on those areas of economic integration, like digitization and finance, where fast gains at relatively low cost are possible. One could

68 NICOLE KOENIG, JACQUES DELORS INST., A DIFFERENTIATED VIEW OF DIFFERENTIATED INTEGRATION 7 (July 23, 2015), <https://institutdelors.eu/wp-content/uploads/2020/08/differenciadedintegrationjdibjuli2015-3.pdf>.

69 Constantine V. Vaitsos, *Crisis in Regional Economic Cooperation (Integration) Among Developing Countries: A Survey*, 6 WORLD DEV. 719, 739 (1978).

70 EAC Treaty, *supra* note 33, at art. 7(1)(e).

71 TIMOTHY MASIKO, FLEXIBLE REGIONAL ECONOMIC INTEGRATION IN AFRICA: LESSONS AND IMPLICATIONS FOR THE MULTILATERAL TRADING SYSTEM 134-37 (2022).

72 *Id.*

73 *Id.* at 66.

also think of new sectors where national regulation is not yet fully comprehensive, for example in intellectual property rights, data protection, fintech or platforms, so that regional integration can fill a gap instead of competing with existing national rules. One possible source of inspiration here is ASEAN, which is exploring the concept of harmonizing particular value chains instead of the entire economy in order to enhance the region's participation in global value chains.⁷⁴ A more focused approach to economic integration, be it in certain sectors, value chains or along other organizational lines, could offer faster benefits at lower integration costs. It could also have the additional benefit of focusing on sectors where national opposition to collaboration, for example because of entrenched interests, is relatively low. This would also reduce the challenge of regional integration to national sovereignty and political elites, while at the same time establishing a practise of integration and collaboration that can slowly spread to other, more contentious sectors.

If the EU model must be used, therefore, East-African integration projects should be careful to assess the assumptions on order, pace and scope of integration that are implied by the EU approach. In its turn, moreover, the EU could greatly benefit from other, modern and more lean attempts at regional integration. As demonstrated by Brexit and gradually rising Euroscepticism in many Member States, an increasing number of EU citizens is asking if European integration could take place in a more efficient way and with a lower cost to national sovereignty. This may not be possible, but it is certainly worth carefully observing if some other regions might find more efficient and effective means of integrating, certainly in modern sectors of the economy, than the EU model. After all, the law of the inhibiting lead may equally apply to regional integration.

6. The questions we ask and the advice we give ...

Based on the above, admittedly short and limited, assessment, it becomes clear that the EU model is based on many assumptions and contextual elements that simply do not apply to other regions, including those in Africa. In addition, adopting a Eurocentric approach unquestioningly amounts to a failure to historicise the violent origin of some of its principles.⁷⁵ This does not mean that we should always ignore the EU example when pondering and planning integration in other regions. It does mean, however, that we should thoroughly chart and assess the nature of each specific region, the objectives of integration in that particular region, and the actors, order, pace, and scope of integration that fit with those objectives.

74 ASEAN-JAPAN CTR., GLOBAL VALUE CHAINS IN ASEAN: A REGIONAL PERSPECTIVE 16 (Jan. 2019), https://www.asean.or.jp/en/wp-content/uploads/sites/3/GVC_A-Regional-Perspective_Paper-1-Revised_2019_full_web.pdf.

75 Bardo Fassbender & Anne Peters, *Towards a Global History of International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW (Bardo Fassbender & Anne Peters eds., 2012).

Consequently, when designing East African regional integration, we should make sure that we start with the right questions on the needs and context of the region itself. We should thereby dig deeply into each objective, as superficial overlaps in objectives such as 'economic integration' or 'free trade' can hide underlying differences that require radically different approaches to regional integration. Only once we have established the specific needs and context can we then ask which tools of EU integration might be usefully tweaked or translated. As is more often the case, therefore, giving good advice starts by asking a lot of good questions. One consequence for research is that we should do a better job of charting and asking these questions per region. There is a logical tendency to start from the research questions that are relevant for the EU experience, such as democratic legitimacy, which may not be relevant (yet) for other regions. Ideally, therefore, we would be able to draw up a joint research agenda with the different regions, treating the formulation of the correct questions as valuable research output in itself. We can also contribute on this point by providing the knowledge infrastructure required to ask and answer these questions. For example, we can do more work to use comparative regional integration to unearth the implicit assumptions underlying the EU project, and combine these findings in textbooks and class materials on the use of comparative examples in regional integration.

Such a critical assessment of the EU through comparisons with other regions, moreover, could also help to improve our understanding of the EU, and perhaps to find some solutions to the increasingly urgent challenges facing the EU itself. What were the choices made, sometimes unconsciously, in the EU, and what were the roads not taken? What might new innovations be and what options for effective regional integration has the EU not incorporated yet, so it may not remain stuck in 4G regional integration where 5G variants may already be available? The mere fact that the EU is considered (by the dominant standard) the most successful and effective form of regional integration in the world so far does of course not mean that it will remain the best possible or most efficient form, or that it may not be in need of a major update. Decolonializing EU law, therefore, does not just mean accepting that the EU model may not be good for other regions. It also means accepting that the EU will not remain the gold standard for ever. Perhaps the equivalent of a floating currency for regional integration may be invented somewhere else in the world, as all nations and peoples face the challenge of how to organize their political coexistence in an increasingly interdependent world.

On an even more fundamental level, moreover, knowledge of the context can thereby help break the habit of accepting as universal whatever the established hegemonic structures of the time considers as truth, fact or objectivity. It also breeds the confidence needed to explore different ways of knowing, while claiming space for good ideas without the need to impose, universalise or gatekeep, on the way to confronting epistemic injustice

As alluded to in the beginning, all knowledge originates locally, and through hegemonic expansion, European knowledge has acquired a global quality. It is also understood that this 'global' or 'universal' knowledge is often recontextualised after interacting with different local elements as it is accommodated into local cultures, knowledges or beliefs.⁷⁶ Unlearning the 'sanctity' of the western yardstick allows an appreciation for relocalised or recontextualised versions of 'global' models. Improving these mixed models through innovative solutions based on the correct questions is a step forward, even though it does not immediately subvert the contested macrostructures. Giving credence to relocalised models is a move towards elevating important elements of non-hegemonic epistemology.

76 de Souza, *supra* note 14.

References

- Acharya, A. (2016). Regionalism Beyond EU-Centrism. In T. Börzel, & T. Risse, *The Oxford Handbook of Comparative Regionalism*. Oxford: Oxford University Press.
- Alter, K., Gathii, J., & Helfer, L. (2016). Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences. *European Journal of International Law*, 293-328.
- An-Na'im, A. A. (1993). The National Question, Secession and Constitutionalism: The Mediation of Competing Claims to Self-determination. In D. Greenberg, S. Katz, M. Oliviero, & S. Wheatley, *Constitutionalism and Democracy: Transitions in the Contemporary World* (pp. 105-125). Oxford: Oxford University Press.
- Arewa, O. (2021). *Disrupting Africa: Technology, Law, and Development*. Cambridge : Cambridge University Press.
- ASEAN. (2019, January). *Global Value Chains in ASEAN: A Regional Perspective*. Retrieved from ASEAN Japan Centre: https://www.asean.or.jp/en/wp-content/uploads/sites/3/GVC_A-Regional-Perspective_Paper-1-Revised_2019_full_web.pdf
- Avery, G. (2014, May 7). *Independentism and the European Union: Policy Brief*. Retrieved from European Policy Centre : https://www.epc.eu/content/PDF/2014/Independentism_and_the_EU.pdf
- Balassa, B. (2011). *The Theory of Economic Integration*. Oxon: Routledge Revivals.
- Bianculli, A. C. (2016). Latin America. In T. Börzel , & T. Risse, *The Oxford Handbook of Comparative Regionalism*. Oxford: Oxford University Press.
- Bilal, S. (2007, September). *Is the EU a Model of Regional Integration? Risks and Challenges*. Retrieved from European Centre for Development Policy Management: <https://ecdpm.org/wp-content/uploads/2013/11/EU-Model-Regional-Integration-Risks-Challenges-2007-.pdf>
- Bogaert, S., Cuyvers, A., & Antonaki, I. (2018). Free Movement of Services, Establishment and Capital. In P. Kuijper, F. Amtenbrink, D. Curtin, B. Witte, A. McDonnell, & S. Bogaert, *The Law of the European Union* (pp. 539-586). Deventer: Wolters Kluwer.
- Collin, K. (2017 , September 29). *Order from Chaos: The referendum in Catalonia, explained*. Retrieved from Brookings: <https://www.brookings.edu/blog/order-from-chaos/2017/09/29/the-referendum-in-catalonia-explained/>
- Colpani, G., Mascat , J., & Smiet, K. (2022). *Postcolonial responses to decolonial interventions*. *Postcolonial Studies*, 1-16.
- Craig, P., & Búrca, G. (2020). *EU Law: Text, Cases, and Materials*. Oxford: Oxford University Press.

- Cuyvers, A. (2013). The confederal come-back: Rediscovering the confederal form for a transnational world. *European Law Journal*, 711-738.
- Cuyvers, A. (2013). *The EU as a Confederal Union of Sovereign Member Peoples: Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU*. LUP.
- Cuyvers, A. (2017). The Road to European Integration. In E. Ugirashebuja, J. Ruhangisa, T. Ottervanger, & A. Cuyvers, *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (pp. 22-42). Leiden: Brill Nijhoff.
- Cuyvers, A. (2020). Brexit and the Real Democratic Deficit: Refitting National and EU Democracy for a Global Reality', in: In E. Ellian, & R. Blommestijn, *Reflections on democracy in the European Union*. The Hague: Eleven International Publishing.
- Dotson, K. (2011). Tracking Epistemic Violence, Tracking Practices of Silencing. *Hypatia*, 236-257.
- European Parliament. (2021). *The European Union and regional economic integration*. Retrieved from European Parliament: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689369/EPRS_BRI\(2021\)689369_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689369/EPRS_BRI(2021)689369_EN.pdf)
- Fassbender, B., & Peters, A. (2012). Towards a Global History of International Law. In B. Fassbender, & A. Peters, *The Oxford Handbook of the History of International Law* (pp. 1-24). Oxford: Oxford University Press.
- Gathii, J. (2012). Mission Creep or a Search for Relevance: The East African Court of Justice's Human Rights Strategy. Chicago, USA: Loyola University Chicago School of Law.
- Hartmann, C. (2016). Sub-Saharan Africa. In T. Börzel, & T. Risse, *The Oxford Handbook of Comparative Regionalism*. Oxford: Oxford University Press.
- Joseph S. Nye. (1968). Comparative Regional Integration: Concept and Measurement. *International Organization*, 855-880.
- Kaahwa, W. T. (2017). The Institutional Framework of the EAC. In E. Ugirashebuja, J. Ruhangisa, T. Ottervanger, & A. Cuyvers, *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (pp. 43-78). Leiden: Brill Nijhoff.
- Laursen, F. (2010). Regional Integration: some introductory reflections. In F. Laursen, *Comparative Regional Integration: Some Introductory Reflections*. Aldershot: Ashgate.
- Lenaerts, K. (1990). Constitutionalism and the Many Faces of Federalism. *The American Journal of Comparative Law*, 205-263.

- Lombaerde, P., Langenhove, L., Söderbaum, F., & Baert, F. (2010). Problems and Divides in *Comparative Regionalism*. In F. Laursen, *Comparative Regional Integration. Europe and beyond* (pp. 21-39). Aldershot: Ashgate.
- Lowe, T. (2022, March). *Bracing against the Tide: ECOWAS and Recent Military Coups in West Africa*. Retrieved from The Yale Review of International Studies,; <http://yris.yira.org/comments/africa-comments/5657>
- Makau Mutua. (1995). Why Redraw the Map of Africa: A Moral and Legal Inquiry . *Michigan Journal of International Law*, 1113-1176.
- Masinde, W., & Omolo, C. (2017). The Road to *East African Integration*. In E. Ugirashebuja, J. Ruhangisa, T. Ottervanger, & A. Cuyvers, *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (pp. 1-21). Leiden: Brill Nijhoff.
- Middelaar, L. v. (2020). *The Passage to Europe: How a Continent Became a Union*. New Haven: Yale University Press.
- N Koenig. (2015, July 23). A differentiated View of Differentiated Integration . *Policy Paper 140*. Berlin, Germany: Jacques BelorInstitut.
- Obasi, C. (2021, July 22). *Belgium: The Case of Flanders and Wallonia*. Retrieved from Harvard Political Review: <https://harvardpolitics.com/flanders-and-wallonia/>
- Paun,, A., Sargeant, J., & Henderson, D. (2022, October 25). *Scottish independence*. Retrieved from Institute for Government: <https://www.instituteforgovernment.org.uk/explainers/scottish-independence>
- Prof. Peter Anyang' Nyong'o and Others v Attorney General of Kenya and Others, Reference No. 1 of 2006 (East African Court of Justice March 30, 2007).
- Söderbaum, F. (2016). Old, New and Comparative Regionalism: The History and the Scholarly Development of the Field. In T. Borzel, & T. Risse, *The Oxford Handbook of Comparative Regionalism*. Oxford: Oxford University Press.
- Salaymeh , L., & Michaels, R. (2022). Decolonial Comparative Law: A Conceptual Beginning. *Rabels Journal for Foreign and International Private Law*, 166-188.
- Sawyer, K. (2022, November 1). *Can the EAC stabilize eastern DRC*. Retrieved from Institute for Security Studies: <https://issafrica.org/iss-today/can-the-east-african-community-stabilise-eastern-drc>
- Schimmelfennig, F. (2016). Europe. In T. Börzel, & T. Risse, *The Oxford Handbook of Comparative Regionalism*. Oxford: Oxford University Press.
- Souza, L. M. (2019). Glocal Languages, Coloniality and Globalization from below . In M. Guilherme, & L. Souza, *Glocal Languages and Critical Intercultural Awareness: The South Answers Back*. New York: Routledge.
- Stiglitz, J. (2017). *Globalization and its Discontents Revisited: Anti-Globalization in the*

Era of Trump (2017, Penguin). . New York: Penguin.

- Stratulat, C. (2022, April 28). *War has returned to Europe: Three reasons why the EU did not see it coming*. Retrieved from European Policy Centre: https://www.epc.eu/content/PDF/2022/War_has_returned_to_Europe_DP.pdf
- Timothy Masiko. (2022). *Flexible Regional Economic Integration in Africa: Lessons and Implications for the Multilateral Trading system*. Oxford: Hart Publishing.
- Ugirashebuja, E., Ruhangisa, J., Ottervanger, T., & Cuyvers, A. (2017). *East African Community Law: Institutional, Substantive and Comparative EU Aspects*. Leiden: Brill Nijhoff.
- United Nations. (2022, October 12). *AfCFTA's Guided Trade Initiative takes off, set to ease and boost intra-African trade*. Retrieved from Africa Renewal: <https://www.un.org/africarenewal/magazine/october-2022/afcfta%E2%80%99s-guided-trade-initiative-takes-set-ease-and-boost-intra-african-trade>
- Vaitsos, C. (1978). Crisis in Regional Economic Cooperation (Integration) Among Developing Countries: A Survey. *World Development*, 719–769.
- Walle, N. v. (2022, August 25). *East Africa's DR Congo Force: The Case for Caution*. Retrieved from International Crisis Group: <https://www.crisisgroup.org/africa/great-lakes/democratic-republic-congo/east-africas-dr-congo-force-case-caution>