RATIFICATION OF AFRICAN UNION TREATIES BY MEMBER STATES: LAW, POLICY AND PRACTICE

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The African Union ('AU') seeks to achieve its policy goals through the adoption of treaties. The realisation of these goals requires that the treaties be signed, ratified and implemented by the member states. As an institution, the AU lacks powers to compel member states to ratify its treaties and comply with their provisions. This article assesses the practice of AU member states in relation to treaty ratification, against the context of competing conceptual theories explaining state behaviour and decision-making with respect to treaty ratification; in particular, rationalism, constructivism and liberalism. The article surveys the constitutional and legislative procedures of AU member states on treaty ratification. By focussing on the basic ratification–signature correlations of these treaties, the article seeks to identify the type of treaty policy areas in which AU members have recorded high, standard and low treaty commitment. The article also examines the major factors that impede expeditious ratification of AU treaties and makes recommendations on how to overcome them. The article suggests that the legal, political and statistical information offered in the discussion can be used as indicators of future treaty success within the AU, and to predict policy areas and the type of treaties that will be maximally or minimally accepted by member states. A general conclusion of this article is that treaties that do not create any tension with the domestic legal regime and structure, and only require minimal changes to existing national law, stand a better chance of getting ratified.

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I INTRODUCTION

The ability of the African Union ('AU')[1] to advance enduring substantive policy goals through treaties adopted under its auspices depends on two interrelated factors: the political will of its member states and their ability to translate treaty undertakings into binding norms. As with most international organisations, the AU has provided its members with a forum, through which they have collectively adopted policies and positions on a wide variety of issues. These issues include economic integration, conservation and management of natural resources, environmental protection, counter-terrorism, peace and security, non-proliferation of nuclear weapons, refugees and internally displaced persons, democracy, human rights, corruption, non-aggression and defence. While some of these policy goals and positions are couched in the resolutions, declarations and decisions that have been adopted over the years at various levels by the AU and its predecessor, the Organization of African Unity ('OAU'), the more important or significant of these are enshrined in treaties to which the great majority of AU member states are signatory.

At the time of writing, 42 treaties have been adopted by AU member states under the aegis of the organisation.[2] Twenty-three of these treaties were adopted under the auspices of the OAU between 1965 and 2002.[3] The remaining 19 treaties have been adopted by the AU since 2002.[4] The 23 pre-2002 treaties have been subsumed under the treaty regime of the AU. Moreover, the Chairperson of the AU Commission has taken over the function previously performed by the OAU Secretary-General as depositary of these treaties.

African states have adopted almost as many treaties as members of the AU within the relatively short period of 10 years as they had adopted as OAU member states over a period of 37 years. The high adoption rate under the AU must be understood in its proper context. First, it should be noted that the negotiations and preparatory drafts of the first 6 instruments adopted in 2002 and

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[1] The African Union ('AU') was established by the *Constitutive Act of the African Union*, opened for signature 11 July 2000, 2158 UNTS 3 (entered into force 26 May 2001) ('*Constitutive Act*'). The *Constitutive Act* was adopted by the Assembly of Heads of State and Government of the Organization of African Unity ('OAU') on 11 July 2000 in Lomé, Togo, to replace the OAU. The *Constitutive Act* entered into force on 26 May 2001, but under the terms of art 33, the OAU continued in existence for a transitional period, until the formal inauguration of the AU in Durban, South Africa, on 9 July 2002. All 53 previous member states of the OAU are members of the AU. The new state of South Sudan became the 54th member state when it was officially admitted on 15 August 2011. This discussion does not include South Sudan. Apart from acceding to the *Constitutive Act*, as at the time of writing, South Sudan has not signed or acceded to any other OAU/AU treaties.

[2] As at 31 January 2012. This discussion does not include any developments relating to adoption, signature and ratification of OAU/AU treaties occurring after this date. Cameroon deposited its instrument of ratification in respect of the *African Charter on Democracy, Elections and Governance*, opened for signature 30 January 2007 (entered into force 15 February 2012) ('*Democracy Charter*') on 16 January 2012, and became the 18th member state to ratify. In conformity with art 48 of the *Democracy Charter*, it shall enter into force 30 days after the deposit of 15 instruments of ratification. Consequently, the *Democracy Charter* entered into force on 15 February 2012, making it the 43rd OAU/AU treaty in force. For full texts of all the OAU/AU treaties discussed or referred to in this article, see African Union Commission, *OAU/AU Treaties, Conventions, Protocols & Charters* African Union <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>.

[3] See below Appendix I.

[4] See below Appendix II.

2003, out of the 19 instruments adopted under the aegis of the AU as at the conclusion of this study, were undertaken under the auspices of the OAU.[5] Secondly, another five of these treaties adopted in the subsequent years are either protocols amending earlier treaties or new revised treaties intended to replace existing OAU treaties.[6] Again, in some cases the proposals for the amendments and revisions date back to the OAU era. Effectively, therefore, only 8 of the 19 treaties represent new substantive instruments fully conceived, negotiated and adopted under the AU itself.[7] Viewed in this context, the accelerated pace of treaty adoption under the AU in the relatively short period of its existence does not, as such, suggest a significant explosion in substantive international lawmaking by the new continental organisation. That said, it can be argued that because of the reinvigorated agenda to deepen and accelerate the project of African regional integration — which provided the rationale for the transformation of the OAU into the AU in 2002 — there has been a change in attitude among member states towards multilateral treaty adoption under the organisation. The relatively higher pace of adoption of treaties by the AU and their subject matter reflect the realisation that these treaties are critical to the acceleration of African economic and political integration. Collectively, these treaties establish the common normative frameworks and institutional structures that are both relevant and necessary for the integration process.

To date, 18 out of the 23 treaties adopted under the OAU and 7 of the 19 treaties adopted under the auspices of the AU have entered into force.

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[5] *Protocol relating to the Establishment of the Peace and Security Council of the African Union*, opened for signature 9 July 2002 (entered into force 26 December 2003) ('*Peace and Security Council Protocol*'); *African Convention on the Conservation of Nature and Natural Resources (Revised Version)*, opened for signature 11 July 2003 (not yet in force) ('*Revised Nature Convention*'); *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, opened for signature 11 July 2003, OAU Doc CAB/LEG/66.6 (entered into force 25 November 2005) ('*Protocol on the Rights of Women*'); *Protocol of the Court of Justice of the African Union*, opened for signature 11 July 2003 (entered into force 11 February 2009) ('*Protocol of the Court of Justice*'); *Protocol on Amendments to the Constitutive Act of the African Union*, opened for signature 11 July 2003 (not yet in force); *African Union Convention on Preventing and Combating Corruption*, opened for signature 11 July 2003, 43 ILM 5 (entered into force 5 August 2006) ('*Convention on Corruption*').

[6] *Protocol to the OAU Convention on the Prevention and Combating of Terrorism*, opened for signature 8 July 2004 (not yet in force) ('*Protocol to the Convention on Terrorism*'); *Charter for African Cultural Renaissance*, opened for signature 24 January 2006 (not yet in force) ('*Renaissance Charter*'); *Protocol on the Statute of the African Court of Justice and Human Rights*, opened for signature 1 July 2008, 48 ILM 337 (not yet in force) ('*Protocol on the African Court Statute*'); *Constitution of the African Civil Aviation Commission (Revised Version)*, opened for signature 16 December 2009 (entered into force 11 May 2010) ('*Revised Civil Aviation Constitution*'); *African Maritime Transport Charter (Revised Version)*, opened for signature 26 July 2010 (not yet in force) ('*Revised Maritime Charter*').

[7] *African Union Non-Aggression and Common Defence Pact*, opened for signature 31 January 2005 (entered into force 18 December 2009) ('*Non-Aggression Pact*'); *African Youth Charter*, opened for signature 2 July 2006 (entered into force 8 August 2009) ('*Youth Charter*'); *Democracy Charter*; *Statute of the African Union Commission on International Law* (signed and entered into force 4 February 2009) ('*AUCIL Statute*'); *African Charter on Statistics*, opened for signature 4 February 2009 (not yet in force) ('*African Charter on Statistics*'); *Protocol on the African Investment Bank*, opened for signature 4 February 2009 (entered into force 27 January 2012) ('*Investment Bank Protocol*'); *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, opened for signature 23 October 2009 (not yet in force) ('*Kampala Convention*'); *African Charter on the Values and Principles of Public Service and Administration*, opened for signature 31 January 2011 (not yet in force).

Furthermore, three additional treaties are currently in force provisionally, in conformity with the provisions of the respective treaties that allow for provisional entry into force.[8] There has been a significantly higher rate of adoption of new treaties under the AU during the period under review than was the case under the OAU (approximately 2.0 and 0.6 agreements per year, respectively), with the most number of treaties in a single year being adopted in 2003 and 2009 (five in each year). Yet the proportion of these treaties entering into force, relative to the time period in which they have been in existence, is not radically different, and the overall picture presents a rather uneven and slow record of treaty signature and ratification by the member states. The proliferation of new treaties under the AU has not been significantly matched by a corresponding acceleration in the rate and frequency of entry into force of these treaties.

Thus, unsurprisingly, at a meeting of experts convened to review OAU/AU treaties[9] in 2004, the Chairperson of the AU Commission observed that 'it was worrying to note the slow pace of signature and ratification [of these treaties] by Member States, bearing in mind the process of integration that the Member States had embarked on'.[10] This concern was subsequently taken up by the AU Executive Council at its fifth ordinary session held from 30 June – 3 July 2004 in Addis Ababa, Ethiopia. The Executive Council encouraged member states to become parties to OAU/AU treaties, and appealed to all member states who had not yet signed and ratified, or adhered to, all treaties adopted under the aegis of the OAU/AU, to proceed to do so.[11] In subsequent years, in its annual report on the status of OAU/AU treaties presented to the Executive Council, the AU Commission has reiterated its appeal and continued to lament the fact that, although there are significant attempts to sign the various OAU/AU treaties, few member states have ratified them or taken the necessary legislative measures to enable the provisions of those treaties to become applicable within their

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[8] See *Constitution of the Association of African Trade Promotion Organizations*, opened for signature 18 January 1974, OAU Doc CAB/LEG/23.2 (entered into force 1 February 2010) ('*Trade Constitution*') (which, in accordance with art XV(3), comes into force after ratification by 12 signatory states); *African Maritime Transport Charter*, opened for signature 15 June 1994 (not yet in force) ('*Maritime Charter*') (which, pursuant to art 28(1), comes into force after being signed by at least 20 member states); *Revised Civil Aviation Constitution* (which, pursuant to art 19(4), entered into force provisionally upon its signature by 15 countries). The last of these, when it enters into force definitively, is intended to replace the *Constitution of the African Civil Aviation Commission*, opened for signature 17 January 1969 (entered into force 15 March 1972) ('*Civil Aviation Constitution*'). Similarly, the AU Assembly of Heads of State and Government ('AU Assembly') adopted the *Revised Maritime Charter* on 26 July 2010, which, upon its entry into force, is intended to replace the *Maritime Charter* of 1994. The *Revised Maritime Charter* does not provide for its provisional entry into force; it requires 15 ratifications to enter into force. See *Report of the AU Commission on the Status of OAU/AU Treaties*, 20th sess, AU Doc EX.CL/707(XX) Rev. 1 (16 January 2012) [2], [33], [79], [165], [169].

[9] The designation 'AU treaties' will also be used interchangeably with the term 'OAU/AU treaties' in this discussion, to refer to both the agreements adopted previously by member states of the OAU and those adopted by them as members of the AU.

[10] See *Summary Report of the Meeting of Experts on the Review of the OAU/AU Treaties*, AU Doc OAU–AU Treaties/Exp-PRC/Rpt. (I) Rev.I (18–20 May 2004).

[11] See *Decision on the Status of OAU/AU Treaties*, EX CL Dec 128 (V), 5th sess, Agenda Item 36, AU Doc EX/CL/94(V) (30 June – 3 July 2004) para 3.

territories.[12] On its part the Executive Council continues to reiterate its appeal to member states to ensure that they initiate the process of ratification of new treaties within a period of one year after their adoption.[13] It goes without saying that no matter how admirable the AU's policy goals and objectives on any issue addressed by a treaty may be, the treaty is nothing more than an expression of the member states' aspirations until it is ratified and becomes binding.

This article examines the constitutional and legislative procedures for ratification of treaties in AU member states and presents and analyses historical data regarding the adoption, signature and ratification of OAU/AU treaties.[14] This data is valuable in at least two ways. First, it can be used to predict future trends in the practice of AU member states relating to the adoption and ratification of, or accession to, OAU/AU treaties. Secondly, it is suggested that the ability to predict the policy areas which are likely to yield high positive ratification–signature ratios is critical to understanding the legitimacy and authority of the AU. This is because whenever a member state fails to ratify an AU treaty, such failure arguably has the potential to undermine the political credibility and standing of the organisation in the public perception, in both the organisation's member states and the international community generally. The article also seeks to identify factors impeding the expeditious ratification of OAU/AU treaties and suggests ways of addressing these impediments. The discussion relies upon both primary and secondary sources of information. These include relevant provisions of the national constitutions of AU member states and information contained in official communications received from member states relating to their treaty-making and ratification procedures and practices.[15]

The discussion is more of an overview of state behavioural patterns than an inquiry into why an individual member state has ratified or not ratified a

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[12] See, eg, *Report of the AU Commission on the Status of OAU/AU Treaties*, AU Doc EX.CL/707(XX) Rev. 1, [172].

[13] See *Decision on the Status of Signature and Ratification of OAU/AU Treaties and the Harmonization of Ratification Procedures*, EX CL Dec 459 (XIV), 14th sess, Agenda Item 7, AU Doc EX.CL/458(XIV) (30 January 2009). See also *Decision on the Status of Signature and Ratification of OAU/AU Treaties*, EX CL Dec 571 (XVII), 17th sess, Agenda Item 16, AU Doc EX.CL/605(XVII) (25 July 2010) para 4. For the first time, under the latter decision, the AU Executive Council called upon member states to sign and ratify or accede to the following specific treaties as a matter of priority: at para 3. See also *Treaty Establishing the African Economic Community*, opened for signature 3 June 1991, 30 ILM 241 (entered into force 12 May 1994) ('*Economic Community Treaty*'); *Peace and Security Council Protocol*; *Revised Nature Convention*; *Youth Charter*; *Renaissance Charter*; *Democracy Charter*; *Protocol on the African Court Statute*; *African Charter on Statistics*; *Investment Bank Protocol*; *Kampala Convention*.

[14] For a limited comparative discussion, see Alexandra R Harrington, 'Signed, Sealed, Delivered, and Then… : An Evaluation of the Correlation between Policy Areas, Signing, and Legal Ratification of Organization of American States' Treaties by Member States' (2006) 6 *Richmond Journal of Global Law and Business* 1. I partly borrow from Harrington's framework and approach in the discussion on the ratification–signature correlation of OAU/AU treaties in Part IV below. See also Table Two.

[15] All AU member states were requested to provide information to the AU Commission on the applicable ratification procedures in their countries, by the Note Verbale from the AU Commission to AU member states (Doc No BC/OLC/24.18/5/Vol 1, AU Commission, 3 May 2007) (copy on file with author). Only 21 states responded to the request: Benin, Burkina Faso, Cameroon, the Central African Republic, Comoros, the Democratic Republic of Congo, Côte d'Ivoire, Ethiopia, Gabon, Kenya, Lesotho, Malawi, Mali, Niger, Rwanda, Senegal, Sudan, Swaziland, Tanzania, Zambia and Zimbabwe (copies of these responses are on file with the author).

particular treaty. Part II contains a summary discussion of the notion of treaty ratification and a brief survey of the major theories of state behaviour relating to treaty ratification. Part III discusses the constitutional provisions and practices relating to ratification procedures in selected countries representing the different legal traditions and postcolonial constitutional practices and experiences of some AU member states. Part IV discusses the ratification–signature correlation of OAU/AU treaties. In this Part, I categorise the 25 treaties that have entered into force definitively into seven policy areas and examine the statistical information regarding the ratification–signature ratio of each treaty falling within each of these specific policy areas. Part V identifies some factors that impede the ratification of OAU/AU treaties and discusses measures to encourage ratification of these treaties. Part VI concludes the discussion.

II TREATY RATIFICATION: SOME CONCEPTUAL AND PROCEDURAL ISSUES

In all AU member states, the power to negotiate and enter into treaties and international agreements is assigned to the executive. In most of these states, the executive is also empowered to ratify treaties. However, in the majority of cases, treaty ratification involves the legislature, which may be constitutionally required to approve all treaties or some categories of treaties before they are ratified by the executive. Alternatively, the legislature may be required to enact enabling legislation to precede ratification. In a handful of cases, the legislature alone is empowered to ratify treaties. In a small minority of jurisdictions, the judiciary may also play a limited role, for example where there is a constitutional requirement for a judicial body, usually a constitutional court or a supreme court, to determine the compatibility of the provisions of a treaty with the country's constitution prior to its ratification. In some states, this task is performed by other constitutional bodies, for example a constitutional council or council of state (*conseil d'état*).[16] There is also another category of states, a small minority of mostly former British colonies, which do not have any written constitutional provisions governing the negotiation, signing and ratification of treaties, leaving these to be governed largely by unwritten customs and conventions.[17]

A *Consent to Be Bound by a Treaty: Signature, Ratification, Acceptance, Approval and Accession in OAU/AU Treaty Practice*

A state's consent to be bound by a treaty can be expressed in several ways, the most common being: definitive signature, ratification, acceptance, approval and accession.[18] Except for definitive signature, all these refer to activities undertaken at the international level requiring the execution of an instrument and

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[16] For full texts of the constitutions of AU member states discussed or referred to in this article, see below Table One.

[17] These former British colonies are: Gambia, Guinea, Kenya, Lesotho, Libya, Mauritius, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Sierra Leone, Somalia, Swaziland, Tanzania, Uganda and Zambia.

[18] The *Vienna Convention on the Law of Treaties* provides that '[t]he consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed': *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 11 ('*Vienna Convention*').

the deposit of such an instrument with the depositary of the treaty.[19] Sometimes, all these actions are generally, but perhaps misleadingly, referred to as 'ratification'. Brief remarks will be made on these actions with illustrative references to relevant OAU/AU treaties and practice.

1 *Definitive Signature*

Generally speaking, OAU/AU treaties do not provide for their entry into force upon definitive signature alone. Five treaties offer an exception in AU treaty practice by providing for their provisional entry into force either immediately upon adoption:[20]

- *Constitution of the African Civil Aviation Commission* ('*Civil Aviation Constitution*');[21]

or upon signature alone

- *Constitution of the Association of African Trade Promotion Organizations* ('*Trade Constitution*');[22]
- *Agreement for the Establishment of the African Rehabilitation Institute* ('*Rehabilitation Institute Agreement*');[23]
- *African Maritime Transport Charter* ('*Maritime Charter*');[24]
- *Constitution of the African Civil Aviation Commission (Revised Version)* ('*Revised Civil Aviation Constitution*').[25]

The *Civil Aviation Constitution* is unique in providing for provisional entry into force on the very day of its adoption. Since it was only open for signature on that day, its provisional entry into force was logically not contingent upon its being signed by any negotiating state.[26] By contrast, the *Revised Civil Aviation Constitution* entered into force provisionally, upon signature by 15 states.[27]

2 *Ratification, Acceptance and Approval*

OAU/AU treaties typically explicitly provide for states to express their consent to be bound by signature subject to ratification, acceptance or

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19 Ibid art 1(b).

20 Both the *Civil Aviation Constitution* and the *Rehabilitation Institute Agreement* have since entered into force definitively.

21 *Civil Aviation Constitution*, opened for signature 17 January 1969 (entered into force 15 March 1972).

22 *Trade Constitution*, opened for signature 18 January 1974, OAU Doc CAB/LEG/23.2 (entered into force 28 March 2012).

23 *Agreement for the Establishment of the African Rehabilitation Institute*, opened for signature 17 July 1985 (entered into force 2 December 1991) ('*Rehabilitation Institute Agreement*').

24 *Maritime Charter*, opened for signature 11 June 1994 (not yet in force).

25 *Revised Civil Aviation Constitution*, opened for signature 16 December 2009 (entered into force 11 May 2010).

26 See *Civil Aviation Constitution* art 14.

27 The *Revised Civil Aviation Constitution* entered into force provisionally on 11 May 2010, upon its signature by 15 countries (pursuant to art 19(4)).

approval.[28] Providing for signature subject to ratification allows states time to seek approval for the treaty at the domestic level or determine the domestic implications of the treaty and, where applicable, enact the necessary enabling legislation, prior to undertaking the legal obligations under the treaty at the international level. Once a state ratifies a treaty, the ratification remains effective unless it is withdrawn or revoked. This is rare and has only happened once in the history of the OAU and the AU.[29]

3 *Accession*

Under art 15 of the *Vienna Convention*,[30] a state may also express its consent to be bound by a treaty by accession.[31] However, unlike ratification, acceptance or approval, accession does not need to be preceded by signature; it only requires the deposit of an instrument of accession. Nevertheless, there have been instances in which some states have also signed OAU/AU treaties at the time of depositing an instrument of accession or, in some cases, well after such deposit.[32] Normally, treaties permit accession from the day after they close for signature. But a treaty may also provide that it shall be open for accession at any time, or after it enters into force, or without specifying when the act of accession may be undertaken. Some AU member states have deposited instruments of accession in respect of a number of OAU/AU treaties while these treaties were still open for signature and before their entry into force.[33]

4 *Provisional Application of a Treaty before Its Entry into Force*

The treaty practice of the AU (and previously that of the OAU) suggests that the adoption of treaties with provisional application is an exception to the general rule. As noted above, only five such treaties have been adopted, and of these

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[28] The most notable exception is the *AUCIL Statute*, which is characterised by the AU Commission as a 'treaty' although, in terms of art 27, it entered into force immediately upon its adoption by the 12th ordinary session of the AU Assembly on 4 February 2009, without requiring signature and ratification by the parties. Within the context of AU treaty practice, it is a sui generis legal instrument that was negotiated and adopted in accordance with established treaty-making procedures and practice by AU member states, but does not satisfy all the formal characteristics of a treaty for its entry into force.

[29] In 1991, Mauritius withdrew its ratification of the *Rehabilitation Institute Agreement*.

[30] *Vienna Convention*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

[31] *Vienna Convention* art 15.

[32] Niger offers an example of this phenomenon: according to the information on file at the AU Commission, Niger purportedly acceded to the *Trade Constitution* on 27 November 1978, and deposited the instrument of accession on 27 December 1978 (prior to the *Trade Constitution*'s entry into force), before signing it some two and a half years later, on 4 June 1981. The treaty formally came into force on 24 April 1984. Another instructive example involves Togo's accession to the *Rehabilitation Institute Agreement*, which entered into force on 2 December 1991. Togo acceded to it on 3 October 1996 and deposited its instrument of accession on 9 December 1996. Nevertheless, it still proceeded to sign the treaty more than 12 years later, on 12 February 2009. More careful scrutiny of the status lists of signatures, accessions and ratifications of OAU/AU treaties reveals a few more instances of this nature: African Union Commission, *OAU/AU Treaties*, above n 2. Since a state that was not an original signatory to a treaty becomes a party to the treaty upon accession (in accordance with the terms of the treaty), subsequent signature of the treaty by that state is neither legally required nor relevant.

[33] See, eg, ibid.

only three are currently still in force provisionally: the *Trade Constitution*,[34] the *Maritime Charter*[35] and the *Revised Civil Aviation Constitution*.[36] These represent anomalous instances that are unlikely to be replicated in future multilateral treaties adopted under the aegis of the AU.

B *Why Do States Ratify Treaties?*

As indicated above, ratification is the first step towards the achievement by the states parties of the policy goals and objectives enshrined in a treaty. Despite the self-evident nature of this proposition, the question may still be asked: why do states ratify treaties?[37] This question is relevant to the central objective of this article, namely the examination of the law and practice of AU member states relating to the ratification of OAU/AU treaties. There have been relatively few studies focused on why states bind themselves to treaties[38] or, indeed, why states make agreements at all.[39] Within this limited literature, most of the studies have focused on state behaviour and motivations underlying ratification of, and compliance with, human rights treaties.[40] All the same, some of the findings of these studies and the general conclusions they yield are equally applicable to other types of treaties. The different theories of international relations invoked in this discourse include rationalism, realism, constructivism, liberalism and

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[34] Article XV(3) of the *Trade Constitution* provides that '[t]his Constitution shall provisionally come into force upon signature by twelve States and shall formally come into force upon ratification or approval by twelve States signatory to this Constitution'.

[35] Article 28 of the *Maritime Charter* provides:

> (1) This *Charter* shall provisionally enter into force Thirty (30) days after being signed by at least Twenty (20) Member States of the Organization of African Unity.
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> (2) It shall finally enter into force Thirty (30) days after the Secretary General of the Organization of African Unity has received the instruments of ratification, acceptance or approval of Two-thirds of Member States of the Organization of African Unity.

[36] This treaty is intended to replace the original *Civil Aviation Constitution*. See also sources cited at above n 8.

[37] See generally Thania Sanchez and Matthew S Winters, 'Ties That Do Not Bind: A Model of Treaty Ratification and Compliance' (Paper presented at the Annual Meeting of the American Political Science Association, Chicago, 30 August – 2 September 2007); Emily R Hencken, 'Explaining the Adoption of International Human Rights Treaties' (Paper presented at the Annual Meeting of the International Studies Association, San Diego, 22 March 2006); Uta Oberdörster, 'Why Ratify? Lessons from Treaty Ratification Campaigns' (2008) 61 *Vanderbilt Law Review* 681. See also Beth A Simmons, 'Compliance with International Agreements' (1998) 1 *Annual Review of Political Science* 75. A related question, not addressed in this article, asks why states sometimes sign and ratify treaties, and then fail to implement or comply with them. This question points to the issue of the 'compliance gap' and seeks to address the puzzle why states would not comply with treaties to which they chose to bind themselves.

[38] Among these are: Oberdörster, above n 37; Louis Henkin, *How Nations Behave: Law and Foreign Policy* (Columbia University Press, 2nd ed, 1979) 51–3; Mark A Chinen, 'Game Theory and Customary International Law: A Response to Professors Goldsmith and Posner' (2001) 23 *Michigan Journal of International Law* 143, 160.

[39] See, eg, Andrew T Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press, 2008) 119–81.

[40] See, eg, Oona A Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 *Yale Law Journal* 1935. See also Oona A Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (2005) 72 *University of Chicago Law Review* 469; Sanchez and Winters, above n 37; Hencken, above n 37.

institutionalism, to mention only a few examples.[41] Of these, rationalism, constructivism and liberalism have received the most attention[42] and arguably offer the most plausible explanations for the ratification policies and practices of most countries, including AU member states.

Rationalism is rooted in the assumption that states follow consistent, well-ordered preferences to engage in a cost–benefit analysis of their actions.[43] When applied to treaty ratification, rationalism suggests that a state will ratify a treaty only when ratification yields material benefits to it (economically, politically, diplomatically or otherwise); or when a more powerful state or group of states coerce it to do so, for example, either 'by escalating the benefits of conformity or the costs of nonconformity through material rewards and punishments';[44] or 'through economic sanctions, [embargoes] or military force'.[45] In sum, most commentators agree that rationalism advances the view that a state commits itself to international legal obligations by ratifying a treaty only if there is a clear objective reward or self-serving outcome.[46] At the same time, as Oberdörster rightly observes, '[ultimately], rationalism predicts that a powerful state will ratify a treaty that promotes its interests, and a weaker state will ratify it if pressured by a greater power'.[47] Rationalism shares the cost–benefit approach to treaty ratification with realism. As typically formulated, traditional realist arguments also posit that states act only in their own interest,

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41 For examples of the use of international relations theory in mainstream international law scholarship over recent years, see Ryan Goodman and Derek Jinks, 'Toward an Institutional Theory of Sovereignty' (2003) 55 *Stanford Law Review* 1749; Andrew T Guzman, 'A Compliance-Based Theory of International Law' (2002) 90 *California Law Review* 1823; James Fearon and Alexander Wendt, 'Rationalism v Constructivism: A Skeptical View' in Walter Carlsnaes, Thomas Risse and Beth A Simmons (eds), *Handbook of International Relations* (Sage, 2002) 52; Anne-Marie Slaughter, 'International Law in a World of Liberal States' (1995) 6 *European Journal of International Law* 503; Oona A Hathaway and Ariel N Lavinbuk, 'Rationalism and Revisionism in International Law' (2006) 119 *Harvard Law Review* 1404; Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' in Walter Carlsnaes, Thomas Risse and Beth A Simmons (eds), *Handbook of International Relations* (Sage, 2002) 538; Jutta Brunnée and Stephen J Toope, 'International Law and Constructivism: Elements of an International Theory or International Law' (2000) 39 *Columbia Journal of Transnational Law* 19.

42 See, eg, Oberdörster, above n 37, 685–94.

43 Robert O Keohane, 'Realism, Neorealism and the Study of World Politics' in Robert O Keohane (ed), *Neorealism and its Critics* (Columbia University Press, 1986) 1, 7–8. For a discussion of the application of rational choice theory and assumptions to international agreements between states, see generally Guzman, above n 39.

44 Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004) 54 *Duke Law Journal* 621, 633.

45 Laurence Boisson de Chazournes, 'Economic Countermeasures in an Interdependent World' (1995) 90 *American Society of International Law Proceedings* 337, 339–40.

46 See, eg, Abraham Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press, 1995) 7; Helen V Milner, *Interests, Institutions and Information: Domestic Politics and International Relations* (Princeton University Press, 1997) 63; George W Downs, David M Rocke and Peter Barsoom, 'Is the Good News about Compliance Good News about Cooperation?' (1996) 50 *International Organization* 379. See also Oberdörster, above n 37; Guzman, above n 39.

47 Oberdörster, above n 37, 687.

and that they will only ratify agreements that directly serve that interest, however that interest may be defined.[48]

In contrast to the advocates of rationalist–realist theories, constructivists argue that a state may also ratify a treaty if it has a normative reason to do so.[49] This theory has been much invoked in relation to the ratification of human rights treaties. In this context, it has been argued by some observers that it is perfectly possible for a state to ratify such treaties if it believes that it is normatively right to do so, even if there is no direct material benefit to be gained from protecting human rights domestically or, in some cases, even in the absence of any serious intention to implement the norms.[50] Crucially, constructivism suggests that state power and interests — the focus of realism and rationalism — are not the only, or even central, influences on states, but rather that normative arguments and considerations can, and often do, shape state behaviour.[51] As Risse and Sikkink point out, a state may ratify a treaty in part because of its commitment to the norms or ideas embodied in the treaty.[52]

It has further been argued that by ratifying the treaty under the circumstances and for the motivations described above, the state joins a network of other states that may be similarly motivated by a desire to adopt the norm in question. In turn, once a certain threshold or critical mass of states supporting or adopting the norm has been attained, other states may be motivated to enhance their legitimacy, reputation and esteem among their peers or even in the wider international community, by also adopting the norm through their own ratification of the treaty in question and avoiding the stigma of being left out as a non-ratifying state. Simply put, ratification of a treaty by some states, based on their commitment to the norm embodied in the treaty, may provide a motivation for further ratifications by other states wishing to align themselves with the particular treaty norm and avoid being branded as outliers.[53]

Somewhat related to the constructivist argument is the suggestion that, ultimately, states might ratify treaties — and this too is mostly true of international human rights treaties — to express a political position.[54] In this sense, ratification serves as a form of political expression when states intend to send a signal to a perceived audience: either other states in the international system or a domestic political constituency. It has been argued that by ratifying a treaty, a state may be seeking to benefit from the positive reaction and

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48 However, Hencken observes that this argument 'does not easily explain why states ratify human rights treaties unless the idea of benefits can be redefined so that they outweigh the costs': Hencken, above n 37, 3.

49 See generally Simmons, above n 37; Oberdörster, above n 37, 689–92.

50 Hathaway, 'Between Power and Principle', above n 40, 477.

51 Thomas Risse and Kathryn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction' in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 1, 7.

52 Ibid. See also Hathaway, 'Between Power and Principle', above n 40. See generally Oona A Hathaway, 'The Cost of Commitment' (2003) 55 *Stanford Law Review* 1821.

53 This has been referred to as a 'norm cascade', which results when a critical mass of states' behaviour reaches a 'tipping point': see Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 887.

54 See Hathaway, 'Do Human Rights Treaties Make a Difference?', above n 40.

perceptions of other states in the system towards the act of ratifying the treaty in question. For example, a state may ratify a treaty in order to obtain a gain in international reputation,[55] or primarily to satisfy the demands and expectations of politically significant groups or constituencies within its own population. Furthermore, it has been observed that at the international level, this kind of 'signal-sending' suggests that states learn from the ratification status of other states; but it also means that by ratifying a treaty, one state may consequently change the circumstances of the international system for other states.[56] Thus the higher the number of ratifying states, the higher the reputational cost for non-ratifying states, especially if a consensus has emerged that it is normatively desirable to ratify the treaty in question.

In addition, it would seem that a state's own appreciation and calculations about the relative legal and political importance of certain treaties, especially when viewed through the prism of peer perception by other states in the international system, play a significant role. This can be seen from the fact that AU member states have sometimes shown a greater willingness to sign and ratify United Nations treaties on certain policy issues, while holding back from signing and ratifying corresponding OAU/AU treaties dealing with more or less the same subject matter, despite the fact that they may have participated in the negotiation and adoption of the latter. A good example of this phenomenon is provided by the comparative ratification–signature data for the *Convention on the Rights of the Child* ('*CRC*')[57] and the *African Charter on the Rights and Welfare of the Child* ('*Child Charter*').[58] The latter was adopted by the OAU within seven months of the adoption of the former, as a regional counterpart to the universal treaty. Yet while all AU member states have signed and, with the sole exception of Somalia, ratified the UN instrument,[59] the *Child Charter* has only secured 44 ratifications to date. Moreover, although two-thirds of AU member states were already signatories to the *CRC*, and a good number of them had ratified it, when it entered into force on 2 September 1990, within less than one year of its adoption,[60] most of those states did not sign the *Child Charter*, let alone ratify it, for a much longer period after its adoption. In fact, the latter only entered into force on 19 November 1999, some nine years after its adoption, and had attracted only 20 signatures and 7 ratifications during the first five years of its existence.

Finally, advocates of liberalism focus particularly on the role of domestic politics and constituencies. They argue that individuals and private groups are the key actors in state behaviour and that while states themselves remain significant, '[state] preferences are determined by domestic politics rather than

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55 See generally Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999).

56 Ibid.

57 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*CRC*').

58 *African Charter on the Rights and Welfare of the Child*, opened for signature 11 July 1990, OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999) ('*Child Charter*').

59 Excluding the SADR, which is not a member of the UN.

60 It had been signed by 35 AU member states and ratified by 14 of them. For the ratification status of the *CRC*, see United Nations, *Status of Treaties: Convention on the Rights of the Child* (2012) United Nations Treaty Collection <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en>.

… material factors like relative [state] power'.[61] A liberal theory of ratification thus predicts that states ratify treaties when powerful domestic actors lobby for ratification and where those actors are more readily able to express preferences to their governments.[62] The assumption here is that the more responsive states are to the preferences of their citizens and domestic interest groups, the greater the likelihood that they will ratify (or not ratify) the treaty in accordance with those preferences.

Oberdörster has succinctly summarised the essential meanings and assumptions of the three major theories as follows:

> Rationalism predicts that states ratify treaties when ratification offers material benefits or when coerced by a more powerful state. Constructivism posits that states ratify treaties when they share the values embodied in the treaty. If a state does not share these values initially, it may be persuaded by normative arguments. Liberal theories expect that states ratify treaties when domestic actors support and lobby for ratification and predict that if powerful domestic actors oppose ratification, then ratification is unlikely.[63]

As noted earlier, these are only the more common among the different theories that have been advanced to explain state behaviour in response to the question: why do states ratify treaties? Moreover, they have been outlined here only in summary form. It bears pointing out that beyond any explanatory theories and conceptual analyses, the acts of signing and ratifying treaties must ultimately be understood as exercises in sovereign power and discretion. Unsurprisingly, it has been suggested by some commentators that given that states have a sovereign choice to sign or not to sign a treaty after its adoption, and to ratify or not to ratify it, the place to seek answers to this question is primarily the domestic political arena.[64] The argument goes thus: while international factors play a part in the decision-making process of whether to sign or ratify a treaty, domestic considerations remain paramount and key to understanding treaty compliance. Attention must therefore be directed at the modes of domestic political decision-making and the dynamics of domestic politics to discern the motivations for treaty ratification and post-ratification compliance. For example, Sanchez and Winters[65] focus on the need, as a first step, to disaggregate the state

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61 Kenneth Abbott, 'International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts' (1999) 93 *American Journal International Law* 361, 366, quoted in David Schleicher, 'Liberal International Law Theory and the United Nations Mission in Kosovo: Ideas and Practice' (2005) 14 *Tulane Journal of International and Comparative Law* 179, 192.

62 Andrew Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics' (1997) 51 *International Organization* 513, 513–14; Oberdörster, above n 37, 693.

63 Oberdörster, above n 37, 694.

64 For commentators who have highlighted the role of domestic politics and the actors in the domestic political arena as critical factors in treaty ratification and compliance by states, see, eg, Xinyuan Dai, *International Institutions and National Policies* (Cambridge University Press, 2007); Slaughter, 'International Law, International Relations and Compliance', above n 41. Most recently, in a study focussing on the ratification of human rights treaties, Richard Nielsen and Beth Simmons have also concluded that, more than any other factor, domestic politics provides an alternative lens for understanding treaty ratification: Richard Nielsen and Beth A Simmons, 'Rewards for Rights Ratification? Testing for Tangible and Intangible Benefits of Human Rights Treaty Ratification' (7 February 2012) Social Science Research Network, 26–9 <http://ssrn.com/abstract=1451630>.

65 See Sanchez and Winters, above n 37.

into its component units in order to understand what role each branch of government (in particular the executive and legislative branches) plays in the decision to adopt a treaty and in determining what is in the state's interest. Since, in their view, not all domestic political actors play a role in the decisions to sign, ratify and implement treaties, examining the pathway of a treaty through the state's multiple (and sometimes competing) institutions will shed light on the processes through which different preferences with regard to the treaty are filtered. They also argue that such an examination may explain the strategic choices of the actors, including the decision not to ratify a treaty. Sanchez and Winters propose a model of treaty ratification and compliance that suggests three types of state behaviour: 'buck-passing', 'hand-showing' and 'fear of compliance failure'.[66] In my view, of these three types, buck-passing most aptly describes the behaviour of the majority of AU member states that have signed but not ratified most OAU/AU treaties.

Buck-passing is said to occur when one branch of government (such as the executive) has the incentive to let another branch of government (such as the legislature) take the blame for failing to ratify a treaty.[67] Thus, where the executive is responsible for negotiating and signing treaties — as is the case under the constitutions of all AU member states — it may happily do so and publicly advocate for its ratification even when it is aware that the branch responsible for authorising ratification, the legislature, is not likely to do so, for one domestic political or strategic reason or another. In such a scenario, it is easy to understand why the executive may simply want to gain international support and credit for an effort that will predictably not muster domestic support, while in the process successfully buck-passing the blame to the legislature.

It is argued that buck-passing is a possible outcome where one actor has the incentive to support the adoption of a treaty and sign it for external appearances, while making another actor take responsibility for its demise by failing to take the necessary measures to secure its domestic ratification.[68] In such a situation, the executive — hence the state — appears to be acting in concert with its peers in the international arena by signing up to a multilateral treaty without paying any price or suffering any opprobrium domestically for doing so if the treaty remains unratified. Such a situation allows the executive to gain reputational advantage at no or very little cost. In the absence of strong pressure from domestic political actors (in particular, the legislature) and other stakeholders, executive authorities may be content to sign treaties with little or no expectation that they will be ratified or implemented; or, indeed, without any serious intention of securing their ratification. This seems to be the fate of the little more than one-third of the OAU/AU treaties that remain unratified. Most of these treaties have never been presented to national legislatures for ratification, despite the fact that they have been duly signed by the executive. This phenomenon lies at the bottom of a problem, which has given rise to the concern reiterated periodically by the AU Commission, about the slow pace of ratification of these treaties.

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66 Oberdörster, above n 37, 2, 8–13, 21–6.
67 Ibid 27.
68 Ibid.

III RATIFICATION PROCEDURES OF AU MEMBER STATES: A BRIEF OVERVIEW

Before turning to an examination of the ratification–signature correlation of OAU/AU treaties in the next section, a brief word on the constitutional ratification procedures of AU member states would be in order. Only a general overview, rather than a detailed discussion, of each member state's constitutional provisions and practices is intended here. To be sure, individual states have different ratification procedures that are in large measure determined by colonial heritage. Yet a closer examination of these procedures does not seem to suggest that one procedure confers any advantage over another. Furthermore, for the most part, there are no discernible practical reasons, other than the accident of colonial history and the consequence of inherited legal tradition, as to why some states prefer one method over another.

The constitutional and legislative provisions, conventions and practices of AU member states vest the power to ratify treaties in different branches of government, either exclusively in the executive or the legislature, or in both branches as a shared function.[69] In some countries, upon a request by the executive or legislative authorities, the judiciary is also accorded the role of vetting the constitutionality of treaties prior to their ratification. Broadly speaking, the constitutional and legislative provisions and policies of AU member states may be divided into two major groups, representing states sharing certain identifiable trends and commonalities in ratification practices. A study of the relevant constitutional provisions and practices in the various countries reveals that, with a few exceptions, the different approaches adopted in these countries are based on the constitutional and legal heritages of their former metropolitan colonial powers. The two principal categories are thus constituted by the former colonies of continental European powers (France, Portugal and Spain) and former British colonies, representing the civil law and the common law traditions respectively, with a much smaller group comprising states that combine aspects of both colonial legal traditions.[70] The great majority of countries with civil law-derived legal systems have tended to enshrine provisions on ratification of treaties in their constitutions, incorporating provisions derived almost verbatim from *La Constitution du 4 octobre 1958* ('*French Constitution*').[71] Two general observations may be offered here. First, in most of the former French African colonies, a distinction is made between two types of ratification: direct ratification by the President (so-called 'executive ratification'); and ratification by Parliament or an equivalent legislative body

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69 The *United States Constitution* affords the best example of this shared function. The constitution gives the President the 'Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur': *United States Constitution* art II § 2. Although the founding fathers intended for the President and the Senate to collaborate in negotiating and ratifying treaties, the responsibility for treaty-making in the US has rested with the executive branch. Contrary to popular parlance, the Senate does not actually 'ratify' treaties presented to it by the President; rather, it gives its consent to the President for the latter to ratify, by signing an instrument of ratification. If the Senate refuses to consent to the treaty, the President cannot ratify it: see, eg, David J Bederman, *International Law Frameworks* (Foundation Press, 3rd ed, 2010) 168.

70 States that combine aspects of both colonial legal traditions include Djibouti, Egypt, Ethiopia, Equatorial Guinea and Mozambique.

71 *La Constitution du 4 octobre 1958* [Constitution of 4 October 1958] ('*French Constitution*').

(so-called 'parliamentary ratification').[72] Secondly, in all these colonies, the President is empowered to negotiate and ratify treaties but, in an echo of art 53 of the *French Constitution*, the ratification of certain categories of treaties requires a specific act of parliament: for example, peace treaties, commercial treaties, treaties relating to international organisations, and treaties that necessitate amending a statute.

Similarly, the ratification policies, procedures and practices of the majority of former British African colonies have historically been derived from those of the former colonial power. Until recently in the United Kingdom, the power both to negotiate and ratify treaties was one of the few remaining prerogatives vested in the British Crown.[73] Until recently, there was no constitutional requirement for Parliament to approve a treaty prior to ratification. A constitutional convention dating back to 1924 required that all treaties subject to ratification, with limited exception, be laid before Parliament for 21 sitting days before ratification. This was in accordance with what was known as the 'Ponsonby Rule', the purpose of which was to afford the legislature the opportunity to consider commitments into which the government proposed to enter.[74] Following recommendations accepted by the British Government in 2000, a new law was finally enacted in 2010, granting a statutory right for Parliament to control the ratification of treaties for the UK.[75] These new statutory provisions have replaced the Ponsonby Rule. Ironically, the British African colonies that had inherited the pre-2010 British constitutional convention and practice continue to follow the Ponsonby Rule, in some cases in modified form, without written constitutional or legislative

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[72] See, eg, *Constitution de la République du Benin* [Constitution of the Republic of Benin] art 145. A full description of the process is set out in Note Verbale from the Embassy of Benin to the AU Commission (Doc No 193/AMPB/CM/PC/SA, AU Commission, 24 August 2007) (copy on file with author). Among these states are: Burkina Faso: *Constitution du Burkina Faso* [Constitution of Burkina Faso] arts 148–50; the CAR: *Constitution de la République Centrafricaine 2004* [Constitution of the Central African Republic of 2004] arts 69, 71; Chad: *Constitution de la République du Tchad du 31 mars 1996 révisée* [Constitution of Chad of 31 March 1996 (Revised)] arts 219–20; the DRC: *Constitution de la République du Congo du 20 janvier 2002* [Constitution of the Democratic Republic of Congo of 20 January 2002] art 172; Côte d'Ivoire: *Constitution de la République de Côte d'Ivoire du 23 juillet 2000* [Constitution of the Côte d'Ivoire of 23 July 2000] arts 84–6; Madagascar: *Constitution de la République de Madagascar* [Constitution of Madagascar] arts 56(3), 82(VIII); Mali: *Constitution du Mali* [Constitution of Mali] arts 114–15; Mauritania: *Constitution de la République Islamique de Mauritanie* [Constitution of the Islamic Republic of Mauritania] art 36; Senegal: *Constitution de la République du Sénégal du 22 janvier 2001* [Constitution of Senegal of 22 January 2001] arts 95–7. For full texts of the constitutions of these countries and all other constitutions of AU member states discussed or referred to in this article, see below Table One.

[73] For an early discussion of the British Crown's Royal Prerogative regarding treaty-making and treaty ratification, see Robert B Stewart, 'Treaty-Making Procedure in the United Kingdom' (1938) 32 *American Political Science Review* 655.

[74] For a full description of the origin and scope of the Ponsonby Rule, see Foreign and Commonwealth Office, *The Ponsonby Rule* (January 2001) <http://www.fco.gov.uk/resources/en/pdf/pdf4/fco_pdf_ponsonbyrule>.

[75] *Constitutional Reform and Governance Act 2010* (UK) c 25. For a discussion of this legislative development, see Jill Barrett, 'The United Kingdom and Parliamentary Scrutiny of Treaties: Recent Reforms' (2011) 60 *International & Comparative Law Quarterly* 225.

provisions to govern treaty-making and ratification. Botswana, Kenya, Lesotho and Mauritius offer the most instructive examples.[76]

A handful of other former British colonies have followed divergent approaches. Notably, they have departed from the British approach, by enshrining written provisions relating to treaty-making and treaty ratification powers in their constitutions. For the most part, these are new constitutions, which have been adopted to replace earlier constitutions inherited at independence (Malawi),[77] or those promulgated by previous military regimes (Ghana),[78] or by previous minority racist regimes that have since been replaced by democratically elected governments (South Africa).[79] Within this group of former British colonies, the power to negotiate and sign treaties belongs to the executive, but Parliament must 'agree to' or 'approve' ratification of the treaty before the President can execute and sign the instrument of ratification. In fact, the *Republic of Malawi (Constitution) Act 1994* is more explicit: whilst under art 89(6) the President negotiates, signs and adheres to international treaties, art 211(1) provides that 'parliament has the authority to ratify' them.

In sum, ratification procedures of former British African colonies thus present a more mixed picture than those of Francophone Africa, which enjoy significant constitutional homogeneity.

IV RATIFICATION–SIGNATURE CORRELATION OF OAU/AU TREATIES

The AU does not classify its treaties into any categories.[80] However, in order to better appreciate the breadth and significance of the subject matter of the OAU/AU treaties that have entered into force definitively (leaving aside the three treaties that have entered into force only provisionally),[81] I have categorised them into the following seven policy areas, created solely for this purpose:

A foundational legal instruments and institutions (the AU's basic documents);
B trade, economic and technical cooperation;
C privileges and immunities of the organisation;

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76 The written constitutions bequeathed by Great Britain to its former African colonies at independence in the early and mid-1960s typically provided for explicit separation of powers between the executive, legislature and judiciary, and established for the executive some of the Royal Prerogatives enjoyed by the British crown under UK constitutional law. However, as under the UK constitutional law, some of these prerogatives, such as the power to negotiate, sign and ratify treaties, were not enshrined in written constitutional provisions or specific legislation. Some of these former colonies have since incorporated provisions on treaty-making and treaty ratification in subsequently adopted new or revised constitutions: see, eg, the post-independence *Republic of Malawi (Constitution) Act 1994* (Malawi) ('*Constitution of Malawi*') arts 89, 211(1).

77 *Constitution of Malawi*.

78 *Constitution of the Republic of Ghana 1992* (Ghana).

79 *Constitution of the Republic of South Africa Act 1996* (South Africa) ('*Constitution of South Africa*').

80 For the full listing of OAU and AU treaties in chronological order, see below Appendix I and Appendix II, respectively. See also the full list of treaties and treaty texts at African Union Commission, *OAU/AU Treaties*, above n 2.

81 For the three treaties that have entered into force only provisionally, see sources cited at above n 8.

D human rights (including women's rights and children's rights) and refugees;
E environment;
F international security and crimes; and
G culture.

These are not neat, mutually exclusive categories. Moreover, some treaties touch on more than one policy area and could thus be placed in one or other policy category. For the purposes of this discussion, such treaties have been categorised under the policy area which, in my view, is substantively closest to them. Thus, for example, I discuss the *Protocol relating to the Establishment of the Peace and Security Council of the African Union* ('*Peace and Security Council Protocol*')[82] under the first category because it establishes one of the principal organs of the organisation. Yet it could just as well be discussed under category six, which deals with international security and crimes.

As was seen above, treaty law and practice presuppose that treaties go through two main stages: signature, following the adoption of the negotiated text, and ratification.[83] In determining the ratification–signature correlation ratio for each of these treaties, I have measured the number of ratifications for each treaty

[82] *Peace and Security Council Protocol*, opened for signature 9 July 2002 (entered into force 26 December 2003).

[83] See *Vienna Convention* arts 2(1)(b), 14(1), 16. The term 'ratification' is used in this part of the discussion in its broader sense to include 'accession'. Officially, the AU Commission does not distinguish in its published list of 'status of ratifications' between the two. This explains why in some cases a treaty may have more ratifications than signatures, because, strictly speaking, some of the ratifications are in reality instances of accession by states that were not original signatories to the treaty.

against the number of signatories to the treaty.[84] The correlation ratio indicated is thus the number of ratifications as a percentage of the total number of signatures for each individual treaty, not the total membership of the AU.[85] The question of whether or not a treaty has received a high or low number of ratifications can best be appreciated within the context of the number of states signatory to the particular treaty, and not in relation to all the members of the organisation. As descriptive markers, I have adopted the following categories for the ratification–signature correlation ratios: high positive correlation (85 per cent upwards); medium positive correlation (65 per cent to 84 per cent); low positive correlation (35 per cent to 64 per cent); and substandard positive correlation (below 35 per cent).

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[84] According to the *Report of the AU Commission on the Status of OAU/AU Treaties*, AU Doc EX.CL/707(XX) Rev. 1, [12], [46], the *Additional Protocol to the OAU General Convention on Privileges and Immunities* and the *Cultural Charter for Africa* do not require signatures: *Additional Protocol to the OAU General Convention on Privileges and Immunities*, opened for signature 3 July 1980, CM/1034(XXXIV) Rev.3 (not yet in force) annex I ('*Additional Protocol*') art 10; *Cultural Charter for Africa*, opened for signature 5 July 1976 (entered into force 19 September 1990) ('*Cultural Charter*'). This view is certainly justified with respect to the former treaty, but is at odds with the provisions of the latter. Article 33(a) of the *Cultural Charter* explicitly states that: '[t]his *Charter* shall be open for signature to all Member States of the Organization of African Unity and shall be ratified by the signatory States in accordance with their respective constitutional processes'. There is no other provision in the *Charter* suggesting that signature is optional. The reality is that, for some unknown reason, the AU Commission does not have in its custody the original copy of the treaty with a list of states that may have signed it, either at the time of its adoption or in the immediate period thereafter. It would appear that in the absence of the official record confirming earlier signatures over the years, the OAU General Secretariat and subsequently the AU Commission, as a practical matter, adopted the position that member states should be allowed to deposit instruments of ratification as if they had signed it, thus conveniently dispensing with the requirement for signature embodied in art 33(a) of the *Cultural Charter*. On the other hand, the *Additional Protocol* does not in fact provide for its signature; rather, art 10(1) simply provides that '[this] *Protocol* is submitted to every Member of the Organization of African Unity for accession'. Article 10(2) of the *Additional Protocol* further provides that '[the] *Protocol* shall come into force as regards such Member on the date of the deposit of its instrument of accession'. Thus, the official assumption made by the AU Commission for these two treaties, and followed in this study, is that all member states are to be regarded as signatory states. The ratification–signature correlation ratios for these treaties have been computed on this basis: see below Table Two. The more recently adopted *AUCIL Statute* is more explicit in not requiring signature and/or ratification for its entry into force (pursuant to art 27): see the treaty text in African Union Commission, *OAU/AU Treaties*, above n 2.

[85] Sometimes there are discrepancies in respect of some treaties, between the data and information on signatures and ratifications or accessions given in the *Report of the AU Commission on the Status of OAU/AU Treaties* submitted to the Executive Council, and those indicated in the status lists of signatures and ratifications or accessions for each treaty posted at African Union Commission, *OAU/AU Treaties*, above n 2. These discrepancies may be either due to inadvertent oversight or delays in updating the AU website. In case of such discrepancies, this study has relied upon the data and information presented in the report.

A *Foundational Legal Instruments and Institutions*

The first policy area, which deals with foundational instruments and institutions, contains six treaties:

- *Treaty Establishing the African Economic Community* ('*Economic Community Treaty*');[86]
- *Constitutive Act of the African Union* ('*Constitutive Act*');[87]
- *Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament* ('*Economic Community Protocol*');[88]
- *Peace and Security Council Protocol*;
- *Protocol of the Court of Justice of the African Union* ('*Protocol of the Court of Justice*');[89] and
- *Statute of the African Union Commission on International Law* ('*AUCIL Statute*').[90]

The *Economic Community Treaty* has been ratified by all member states except Djibouti, Madagascar and Somalia, which remain only signatories, and Eritrea, which has never signed it. This represents a 94 per cent positive ratification–signature correlation ratio. The *Constitutive Act* has been signed and ratified or acceded to by all member states, thus enjoying a 100 per cent positive ratification–signature correlation ratio. The *Economic Community Protocol* has been signed by 49 states and ratified or acceded to by 47, representing a ratification–signature correlation ratio of 96 per cent. The *Peace and Security Council Protocol* enjoys a ratification–signature correlation ratio of 92 per cent, with 51 signatures and 47 ratifications or accessions. All these basic legal instruments, establishing the foundational institutions, enjoy the highest positive ratification–signature correlation ratios. This is clearly a reflection of the overwhelming consensus that African countries share on the need for strengthening political unity, peace, security and economic integration, through the creation of these structures. By contrast, at the time of writing, the ratification–signature correlation ratio for the *Protocol of the Court of Justice* stands at a low 38 per cent, based on 16 ratifications out of 42 signatures. It is apt to note here that only a year after its adoption, the AU Assembly of Heads of State and Government ('AU Assembly') decided to merge the Court of Justice of the African Union with the African Court on Human and Peoples' Rights.[91] An

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86 *Economic Community Treaty*, opened for signature 3 June 1991, 30 ILM 241 (entered into force 12 May 1994).

87 *Constitutive Act*, opened for signature 11 July 2000, 2158 UNTS 3 (entered into force 26 May 2001).

88 *Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament*, opened for signature 2 March 2001 (entered into force 14 December 2003).

89 *Protocol of the Court of Justice*, opened for signature 11 July 2003 (entered into force 11 February 2009).

90 *AUCIL Statute*, opened for (signed and entered into force 4 February 2009).

91 See *Decision on the Seats of the African Union*, Assembly Dec 45 (III), 3rd sess, Agenda Item 13, AU Doc Assembly/AU/Dec.45(III) (8 July 2004). See also *Decision on the Merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union*, Assembly Dec 83 (V), 5th sess, Agenda Item 11, AU Doc Assembly/AU/6(V) (5 July 2005) ('*Courts Merger Decision*'). See also sources cited at below n 109.

instrument on the merger of the two courts was subsequently adopted at the AU Assembly's eleventh ordinary summit held in Sharm El-Sheikh, Egypt on 1 July 2008.[92] Given this development, it is unlikely that this treaty will garner any more ratifications, as attention is now more likely to be directed at securing ratification of the new *Protocol of the Court of Justice* for the merger of the two courts. As noted earlier, the *AUCIL Statute* does not require signature or ratification.[93]

B *Trade, Economic and Technical Cooperation*

The second policy area, on trade, economic and technical cooperation, encompasses three treaties:

- *Civil Aviation Constitution*;
- *Rehabilitation Institute Agreement*; and
- *Convention of the African Energy Commission* ('*Energy Convention*').[94]

The *Civil Aviation Constitution* has been signed by 43 states but ratified or acceded to by 44, thus giving it a ratification–signature correlation ratio of over a 100 per cent, at 102 per cent. The *Rehabilitation Institute Agreement* has the lowest number of signatory states in this category. It has 29 signatures. However, with 26 ratifications or accessions against the 26 signatures, it enjoys a 90 per cent ratification–signature correlation ratio, making it one of the highest.[95] The last and most recent treaty adopted in this policy area is the *Energy Convention*. In the 11 years since its adoption in 2001, it has attracted 44 signatories. Twenty-nine of these signatory states have ratified the *Energy Convention*, giving it a ratification–signature correlation ratio of 66 per cent. In fact, it has secured more signatures than the two other treaties, adopted some 32 and 20 years earlier.

C *Privileges and Immunities of the Organisation*

The third policy area, relating to privileges and immunities of the organisation, has only two treaties:

- *General Convention on the Privileges and Immunities of the OAU* ('*General Convention*');[96] and

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92 *Protocol on the African Court Statute*; *Decision on the Single Legal Instrument on the Merger of the African Court on Human and Peoples' Rights and the African Court of Justice*, Assembly Dec 196 (XI), 11th sess, Agenda Item 4, AU Doc Assembly/AU/13(XI) (1 July 2008).

93 See sources cited at above n 28.

94 *Convention of the African Energy Commission*, opened for signature 11 July 2001 (entered into force 13 December 2006) ('*Energy Convention*').

95 Mauritius withdrew its ratification in 1991, thereby becoming the first state party to renounce an OAU/AU treaty. Morocco has never formally renounced any of the OAU treaties which it had ratified prior to its withdrawal from the organisation in 1982, although to all intents and purposes it no longer acts as a state party to them. See also discussion at above n 29.

96 *General Convention on the Privileges and Immunities of the Organization of African Unity*, 1000 UNTS 393 (signed and entered into force 25 October 1965) ('*General Convention*').

- *Additional Protocol to the OAU General Convention on Privileges and Immunities* ('*Additional Protocol*').[97]

These two treaties (along with the bilateral *Headquarters Agreement between the AU and the Government of Ethiopia of 2008*,[98] which replaced the *Headquarters Agreement between the OAU and the Government of Ethiopia of 1965*)[99] could be described as institutional housekeeping agreements. Agreements governing the relationship between international organisations and the host countries where the organisations' headquarters are located, and agreements setting out the functional privileges and immunities enjoyed by the organisations in the territories of their member states, are typically the first to be adopted following the establishment of the organisations. Unsurprisingly, the *General Convention* was the first multilateral treaty adopted by the OAU member states in 1965. It was complemented in 1980 by the *Additional Protocol*, the objective of which was to extend these privileges and immunities to the specialised agencies of the OAU. Both treaties are still in force and applicable to the AU and its agencies, as successors to the OAU and its agencies. Despite its longevity, however, the *General Convention* has only been signed by 39 member states and ratified or acceded to by 36, giving it a ratification–signature correlation ratio of 92 per cent. Yet in truth, in its 37 years of existence, the OAU always enjoyed all the privileges and immunities provided for in the *General Convention* within the territories of all its member states, including those that had neither signed nor ratified or acceded to it. Similarly, members states have routinely respected the privileges and immunities of the OAU (and now AU) agencies stipulated in the *Additional Protocol*, despite the fact that it has attracted only six ratifications (or accessions) in 30 years, giving it the lowest correlation ratio of 11 per cent. This seems to suggest that AU member states regard the privileges and immunities of international organisations as part of settled African state practice, and international and regional customary international law. Hence, the fact that they have not signed or ratified these treaties seems not to present any obstacle to their acceptance of the privileges and immunities pertaining to the OAU/AU.[100]

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97 *Additional Protocol*, opened for signature 3 July 1980, CM/1034 (XXXIV) Rev.3 (not yet in force) annex I.

98 *Headquarters Agreement between the AU and the Government of Ethiopia of 2008* (signed and entered into force 25 April 2008).

99 *Headquarters Agreement between the OAU and the Government of Ethiopia of 1965* (signed and entered into force 25 October 1965).

100 Typically, whenever the AU organises an official meeting, activity or operation (such as convening a ministerial meeting or summit or opening an AU office) on the territory of a member state, it enters into a 'hosting agreement' which incorporates, through specific reference to the *General Convention*, the privileges and immunities stipulated therein and the respective rights and obligations of the organisation and the member state for the duration of the meeting, activity or operation. Such agreements are routinely entered into with each host state irrespective of whether or not it is a party to the *General Convention*.

D *Human Rights and Refugees*

The fourth policy area, on human rights and refugee rights, comprises the following five treaties:

- *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* ('*OAU Refugee Convention*');[101]
- *African Charter on Human and Peoples' Rights* ('*Human and Peoples' Rights Charter*');[102]
- *Child Charter*;[103]
- *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights* ('*Human and Peoples' Rights Court Protocol*');[104] and
- *Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa* ('*Protocol on the Rights of Women*').[105]

The *OAU Refugee Convention* is one of the oldest African regional treaties. It also enjoys a higher number of ratifications and accessions than signatures (45 and 39 respectively), and thus a ratification–signature correlation ratio of 115 per cent. This is the second highest correlation ratio, after that of the *Human and Peoples' Rights Charter*, which stands at 126 per cent. The latter treaty has been signed by 42 states but has been ratified or acceded to by all the 53 AU member states, a distinction it shares only with the *Constitutive Act*.[106] The third

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101 *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, opened for signature 10 September 1969, 1001 UNTS 45 (entered into force 20 June 1974) ('*OAU Refugee Convention*').

102 *African Charter on Human and Peoples' Rights*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) ('*Human and Peoples' Rights Charter*').

103 *Child Charter*, opened for signature 11 July 1990, OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999).

104 *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, opened for signature 9 June 1998, OAU Doc OAU/LRG/AFCHPR/PROT(III) (entered into force 25 January 2004) ('*Human and Peoples' Rights Court Protocol*').

105 *Protocol on the Rights of Women*, opened for signature 11 July 2003, OAU Doc CAB/LEG/66.6 (entered into force 25 November 2005).

106 The universal ratification of the *Human and Peoples' Rights Charter* by AU member states is not surprising. Recent discourse and literature on international human rights have shown that there is near-universal acceptance of the major international and regional human rights treaties, though this does suggest that there is similar near-universal compliance with the treaties or the normative frameworks they establish. In large part the universal acceptance of the *Human and Peoples' Rights Charter*, as with other human rights treaties, can be explained in terms of the conceptual theories of state compliance advanced above, in particular the constructivist theory: the emergence of an international consensus on the need for the promotion and protection of human rights and their regulation through treaties, compels states to sign and ratify the treaties in question because doing so is regarded as a *normatively good thing*. As a result, even states that do not necessarily follow up the ratification with appropriate legislative measures to domesticate the treaty or to ensure compliance with their obligations do not see any problem in ratifying it. Simply put, the reputational cost of remaining a non-ratifying state explains the universal acceptance and ratification of the *Human and Peoples' Rights Charter* although implementation and compliance remain a problem among some of the parties.

substantive treaty in this policy area, the *Child Charter*,[107] also shares the distinction of securing slightly more ratifications (or accessions) than signatures (46 against 42), and thus a correlation of 110 per cent. The remaining two treaties in this category, both Protocols to the *Human and Peoples' Rights Charter*, have not fared as well. The *Human and Peoples' Rights Court Protocol* has 51 signatures but only 26 ratifications, earning a ratification–signature correlation ratio of 51 per cent. The *Protocol on the Rights of Women* has fewer signatures, 46, and 31 ratifications; this gives it a slightly higher ratification–signature correlation ratio of 67 per cent.

The disparate positive correlation ratios between the various treaties in this category indicate two things. First, there is an undoubtedly high level of acceptance by almost all member states of the need to recognise human rights generally. Secondly, the declining rates of ratifications between, on the one hand, the *OAU Refugee Convention* and *Child Charter* (45 each), and, on the other, the *Protocol on the Rights of Women* (27), suggest an imbalance in the priorities that some states place on these specific categories of rights and issues, at least as seen through the prism of their regulation in these particular treaties.[108] The much lower correlation ratio for the *Human and Peoples' Rights Court Protocol* signifies the ambivalence of most member states toward the idea of a pan-continental judicial body empowered to stand in judgment over alleged human rights violations by these states. Opposition to and reticence about the establishment of this court has been particularly strong among some AU member states,[109] despite the universal ratification of the *Human and Peoples' Rights Charter* by all AU member states.

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107 *Child Charter*, opened for signature 11 July 1990, OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999).

108 It is instructive to note that some of the African states that have been slow or reluctant to ratify these three treaties have ratified the counterpart UN treaties dealing with similar issues. Thus Djibouti, Namibia, São Tomé and Príncipe and Somalia have either not signed or ratified/acceded to the *OAU Refugee Convention* but are parties to the *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954). Similarly, the CAR, DRC, Djibouti, São Tomé and Príncipe, Swaziland and Tunisia have either not signed or ratified/acceded to the *Child Charter* but have all ratified the *CRC*. Finally, an even greater number of AU member states that have neither signed nor ratified the *Protocol on the Rights of Women* are parties to the *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981): Algeria, Botswana, Burundi, Cameroon, CAR, Chad, DRC, Côte d'Ivoire, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Guinea, Kenya, Madagascar, Mauritius, Niger, São Tomé and Príncipe, Sierra Leone, Swaziland, Tunisia and Uganda.

109 The *Human and Peoples' Rights Court Protocol* was adopted on 10 June 1998. Foot-dragging and opposition from some states to the idea of the court ensured that it did not secure enough ratifications to enter into force until almost six years later, in 2004. Nevertheless, its entry into force did not stop the AU Assembly from taking a decision to merge the court with the Court of Justice of the African Union, provided for under the *Constitutive Act*, into a single court: see *Decision on the Seats of the African Union*, AU Doc Assembly/AU/Dec.45(III) and *Courts Merger Decision*, AU Doc Assembly/AU/6(V). The move was widely viewed by most human rights advocates and observers in Africa as an attempt to dilute the impact of a judicial organ established solely for the purpose of dealing with human rights issues. The instrument on the merged court, the *Protocol on the African Court Statute*, was adopted by the AU Assembly at its 11th ordinary session held in Sharm El-Sheik, Egypt, on 1 July 2008. See above nn 91–2.

E *Environment*

Under the fifth policy area, which deals with the environment chapeau, there are two treaties in force:

- *African Convention on the Conservation of Nature and Natural Resources* ('*Nature Convention*');[110] and
- *Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa* ('*Bamako Convention*').[111]

Although the first agreement was adopted some 42 years ago, to date it has been signed by only 43 member states and ratified by 30, yielding a ratification–signature correlation ratio of 70 per cent. In 2003, the AU adopted a new treaty (not yet in force) to replace it.[112] It is, therefore, most unlikely that it will attract any more signatures and ratifications. The second treaty in this category has attracted even fewer signatures and ratifications: 34 and 24 respectively. However, this still gives the *Bamako Convention* a marginally higher correlation ratio of 71 per cent.

F *International Security and Crimes*

In the sixth policy area, relating to international security and crime, five treaties are currently in force:

- *OAU Convention for the Elimination of Mercenarism in Africa* ('*Convention on Mercenarism*');[113]
- *African Nuclear-Weapon-Free Zone Treaty* ('*Treaty of Pelindaba*');[114]
- *OAU Convention on the Prevention and Combating of Terrorism* ('*Convention on Terrorism*');[115]
- *African Union Convention on Preventing and Combating Corruption* ('*Convention on Corruption*');[116] and
- *African Union Non-Aggression and Common Defence Pact* ('*Non-Aggression Pact*').[117]

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110 *African Convention on the Conservation of Nature and Natural Resources*, opened for signature 15 September 1968, OAU Doc CAB/LEG/24.1 (entered into force 16 June 1969) ('*Nature Convention*').

111 *Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa*, opened for signature 30 January 1991, 2101 UNTS 177 (entered into force 22 April 1998) ('*Bamako Convention*').

112 The new treaty adopted was the *Revised Nature Convention*.

113 *OAU Convention for the Elimination of Mercenarism in Africa*, opened for signature 3 July 1977 (entered into force 22 April 1985).

114 *African Nuclear-Weapon-Free Zone Treaty*, opened for signature 11 April 1996 (entered into force 15 July 2009) ('*Treaty of Pelindaba*').

115 *OAU Convention on the Prevention and Combating of Terrorism*, opened for signature 14 July 1999 (entered into force 6 December 2002) ('*Convention on Terrorism*').

116 *Convention on Corruption*, opened for signature 11 July 2003, 43 ILM 5 (entered into force 5 August 2006).

117 *Non-Aggression Pact*, opened for signature 31 January 2005 (entered into force 18 December 2009).

The first treaty is also one of the older OAU/AU treaties, adopted more than 30 years ago. Yet with only 33 signatory states, the *Convention on Mercenarism* has the third lowest number of signatories, but its 30 ratifications and accessions give it a high correlation ratio of 90 per cent. The other three treaties in this category are much more recent, and enjoy low to medium positive ratification–signature correlation ratios: 67 per cent for the *Treaty of Pelindaba* (34 ratifications or accessions against 51 signatures), 82 per cent for the *Convention on Terrorism* (40 ratifications or accessions against 49 signatures); and 71 per cent for the *Convention on Corruption* (32 ratifications and 45 signatures). The last treaty in this category is the most recent and least subscribed to. In the five years since its adoption in 2005 the *Non-Aggression Pact* has been signed by 40 states and ratified by 18 only, giving it a ratification–signature correlation ratio of 45 per cent, the second-lowest of all OAU/AU treaties.

G *Culture*

The seventh category, on culture, has two treaties:

- *Cultural Charter for Africa* ('*Cultural Charter*');[118] and
- *African Youth Charter* ('*Youth Charter*').[119]

The former is one of the AU's most slowly ratified treaties, whilst the latter was adopted much more recently. Adopted in 1976, it did not enter into force until 1990, following the deposit of instruments of ratification or accession from two-thirds of the then members of the OAU, in accordance with its art 34. In the intervening 20 years since its entry into force, the treaty has secured only 1 more instrument of ratification, bringing the total number to 34, and a positive correlation ratio of 64 per cent.[120] By contrast, in the five years since its adoption, the *Youth Charter*, which provides a political and legal framework for youth empowerment at the national and continental levels, has been signed by 39 states and ratified or acceded to by 28, producing a slightly higher positive correlation ratio of 72 per cent.

H *Conclusion on the General Policy Area Trends*

Overall, the general policy area trends show that the treaties that have both been signed and ratified by the greatest number of member states and secured high positive ratification–signature correlation are the constituent instruments establishing the foundational institutions and general human rights issues. Treaties on more focused and narrow policy areas generally seem to attract fewer signatures, and correspondingly fewer ratifications, arguably because these are the types of treaties that require changes to domestic legislation for their post-ratification implementation. Moreover, as the AU Commission itself has acknowledged:

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118 *Cultural Charter*, opened for signature 5 July 1976 (entered into force 19 September 1990).

119 *Youth Charter*, opened for signature 2 July 2006 (entered into force 8 August 2009).

120 As regards the AU Commission's view that this treaty does not require signature, see above n 28. With the recent adoption by the AU of a new treaty (not yet in force) dealing with the same subject matter and much more besides, 30 years after the promulgation of the *Cultural Charter*, it is unlikely that the latter will attract any more ratifications. See also *Renaissance Charter*.

> treaties that enter into force more quickly tend to be those that … deal with noncontroversial subjects, whose negotiation did not attract a substantial number of reservations, and those that are not perceived as affecting state sovereignty. This would then seem to suggest that Member States are still wary of any proposals that affect or are perceived to impact on their sovereignty.[121]

This conclusion is generally on point. Yet one may have a few quibbles with the aspect relating to reservations. The overwhelming majority of OAU/AU treaties have been adopted without reservations. In fact, as shown in Appendix III below, only seven out of all the OAU/AU treaties, all relating either to human rights or human rights-related issues such as corruption and terrorism, or to the AU Peace and Security Council, have attracted reservations:

- *Human and Peoples' Rights Charter* (Zambia and Egypt);[122]
- *Child Charter* (Botswana, Egypt, Mauritania and Sudan);[123]
- *Human and Peoples' Rights Court Protocol* (Burkina Faso, Malawi, Mali and Tanzania);[124]
- *Convention on Terrorism* (Mauritius, Mozambique, South Africa and Tunisia);[125]
- *Peace and Security Council Protocol* (Egypt);[126]
- *Convention on Corruption* (South Africa);[127] and
- *Protocol on the Rights of Women* (South Africa, Uganda, Kenya).[128]

All these treaties, with the sole exception of the *Child Charter*, entered into force within five years of their adoption; this is strikingly expeditious in the context of the history and practice of OAU/AU treaties, and contradicts the assumption that the presence of a 'substantial number of reservations' slows down the entry into force of these treaties. The only treaty that has attracted a reservation (from South Africa) and is not yet in force is the *Protocol to the OAU Convention on the Prevention and Combating of Terrorism*,[129] which was only adopted in 2004.[130]

In her study on the Organization of American States ('OAS') treaties, Harrington has made an instructive observation that can be applied equally to the OAU/AU treaties in more or less exact terms. Harrington argues that

> the OAS should focus its treaty attention on subject areas addressing ways in which the OAS and its subsidiaries can act as agents of change or reform. The OAS should also continue to look towards aspirational treaties and international

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121 *Report of the AU Commission on the Status of OAU/AU Treaties*, AU Doc EX.CL/707/Rev.1 (16 January 2012) [6].

122 Ibid [54].

123 Ibid [74].

124 Ibid [88].

125 Ibid [93].

126 Ibid [111].

127 Ibid [116].

128 Ibid [121]. A previous report also included Gambia as having made a reservation to this treaty. No explanation has been given for its omission in the current report. See *Report on the Status of OAU/AU Treaties*, 15th sess, EX.CL/499(XV) (27 May 2009) [119].

129 *Protocol to the Convention on Terrorism*, opened for signature 8 July 2004 (not yet in force).

130 See also *AU Commission Treaties Report 2012*, AU Doc EX.CL/707(XX) Rev. 1, [136].

> law ideals for treaties rather than attempting to fashion treaties which are in tension with, or offensive to, the existing domestic legal structures of at least a simple majority of the member states.[131]

As with the OAS treaties and those of other regional organisations, the OAU/AU treaties most likely to be ratified and successfully implemented are those that are least disruptive of the domestic legal structure and preferences of member states. On the other hand, treaties addressing policy areas that are in direct tension with the domestic law and policies of member states, or require substantive changes to national legislation to be successfully ratified, are far less likely to be ratified by the national legislatures, despite the fact that they may have been initially signed by the executive branch of these member states. This is one major conclusion that may be drawn from the data on the ratification practices of AU member states. But as has been shown above, there are also situations whereby states do not sign treaties but nevertheless proceed to 'ratify' them in due course once they have entered into force. In such situations, the purported ratification is in reality an act of accession. At the same time, on some occasions some states have also purportedly ratified treaties that they have not previously signed even while those treaties are not yet in force. This phenomenon should be understood within the context of the theories explaining state behaviour in the area of treaty ratification discussed earlier. Sometimes, such acts of ratification or accession are undertaken more for external peer reputational value than as an outcome of well-deliberated national policy within the domestic political realm.

Another level at which to assess the ratification–signature correlation is that of member state by member state correlation ratios for each individual treaty. The data presented in Appendix III below shows the status of signatures and ratifications of all the OAU/AU treaties that are currently definitively in force. The data in Table Two below shows the correlation of ratified treaties as a percentage of the actual number of treaties signed by each member state among the current treaties in force. It will be noticed that, on the basis of the categories suggested above, 18 countries score high positive ratification–signature correlation ratios (85 per cent and above), 14 score low positive correlation ratios (35 per cent to 64 per cent) and the rest lie in the medium category (65 per cent to 84 per cent), with the unsurprising exception of São Tomé and Príncipe and Somalia, which score a strikingly low 18 and 23 per cent respectively. However, these figures must be seen in their proper context in order to avoid drawing misleading conclusions. The high correlation category, for example, includes states with a 100 per cent correlation ratio: Mali, which has signed and ratified all the 23 treaties in force, and Malawi and Mozambique, which have both signed slightly fewer treaties but ratified all of them (18 and 21, respectively). Per Table Two below, other high correlation states[132] include: Burkina Faso (96 per cent; 23), Libya (96 per cent; 23), Rwanda (91 per cent; 22), Senegal (96 per cent; 23), Tanzania (95 per cent; 21) Algeria (95 per cent; 19), Gabon (91 per cent; 23), Gambia (91 per cent; 22), Niger (91 per cent; 23), Togo (91 per cent;

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131 Harrington, above n 14, 44.

132 The percentage indicated in parentheses for each state in the discussion that follows is based on the number of treaties ratified by that state against the total number of treaties it has signed, also indicated in parentheses.

23) and Tunisia (90 per cent; 20), all of which have in actual fact signed and ratified more treaties than Malawi. Until recently, this high correlation category also included São Tomé and Príncipe, which had only signed 5 treaties but ratified all of them,[133] and still includes Cape Verde, which has a ratification–signature correlation ratio of 90 per cent based on its signing of a total of 10 treaties only (not too far behind is Eritrea, with a ratification–signature correlation ratio of 75 per cent based on its signing of only eight treaties). In both quantitative and qualitative terms, the observation that Cape Verde, for example, has a better ratification–signature correlation ratio than, say, Nigeria (87 per cent) becomes meaningless without taking into account the fact that the former has only signed 10 treaties against the latter's 23 treaties.

Given the presence of some of Africa's major regional powers in the high correlation category — Algeria, Nigeria, Senegal, South Africa and Tanzania — it would be tempting to conclude that there is a demonstrable link between high ratification–signature correlation and the relative size and economic, diplomatic and political power of the member state. However, such an assumption would be negated by the presence in this category of other states that do not necessarily fit the characterisation of 'major regional powers', such as Lesotho (85 per cent; 20), in addition to others mentioned above, such as Burkina Faso, Gabon, Libya, Malawi, Niger, Togo and Tunisia. Rather, a more correct conclusion seems to be that the ratification trends among states with high correlation ratios reflect that certain member states are particularly dedicated to some policy areas which inform their choices. The prevalence of regional powers in the high correlation category may be explained by the desire of these states to lead by example in these policy areas, as part of their self-image as regional or continental leaders. These regional powers also tend to possess better technical capacity relevant for treaty negotiation and ratification. States that are more selective and deliberate in their choice of treaties for signature are more likely to ratify these treaties than states that sign all or any treaties willy-nilly and without much strategic consideration. Evidence suggests that some states tend to follow the 'bandwagon effect' of signing a treaty for no other reason than that they do not want to be seen as remaining outside the norm even when they have no strategic reason for doing so. And in some cases, states will sign a treaty, even when they have no intention of following up with ratification or any expectation that the domestic legislature will ratify or approve the treaty if so requested. Somalia provides a vivid illustration of this phenomenon: on a single day in 2006 alone, Somalia signed some 10 treaties, thereby putting it in the small category of a handful of states that have signed almost all OAU/AU treaties. Yet the

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133 In an apparent response to the AU Commission's repeated appeals for states to sign all outstanding treaties as a matter of priority by the end of the 10-month period prior to 31 December 2010, São Tomé and Príncipe had signed all OAU/AU treaties except the *Cultural Charter*, adopted in 1976, and the *Revised Civil Aviation Constitution*, adopted in 2009. Eleven treaties were signed en bloc on a single day: 1 February 2010. It remains to be seen whether the dramatic decision to sign almost all of these treaties in one fell swoop represents a new-found policy to commit itself to all these treaties or simply a desire to avoid the stigma of being characterised as a non-signing state. Unless followed up by the required ratification, it may not be unjustifiable to conclude the latter. Earlier, on 23 February 2006, the AU-recognised Transitional Federal Government of Somalia had made a similarly dramatic move by signing some 10 treaties on a single day, none of which has been ratified.

executive knows full well that the dysfunctional Parliament in Mogadishu, which has not been able to transact any real business during this entire period, is in no practical position to ratify them in accordance with the country's transitional constitution in the foreseeable future.[134] This is the buck-passing behaviour described above.

[134] Somalia is a signatory to 22 of the 23 treaties in force, but its ratification score remains abysmal: only 5 of these have been ratified over the last four and a half decades, which is not surprising for a country that has not had a functioning government for most of the latter half of the period under review (1965–2011). Prior to 1991, when the central government in Somalia effectively collapsed with the fall from power of the military dictator Siad Barre, Somalia had only ratified five OAU treaties, including the defunct *OAU Charter*: *Charter of the Organization of African Unity*, opened for signature 25 May 1963, 479 UNTS 69 (entered into force 13 September 1963). Since then it has ratified only one more instrument, the *Constitutive Act*. The Transitional Federal Parliament that ratified the *Constitutive Act* at the time (February 2001) was regarded as legitimate and constitutionally empowered to do so. Subsequent transitional parliaments and governments have been largely dysfunctional.

Table One: AU Member States with Constitutional Provisions that Grant the Power to Ratify Treaties to the Executive and/or Legislature

In a few cases, the constitutional provisions below also allow the involvement of the judiciary. Please note that some of the websites below are official government sites, while others are not. The unofficial sites do not in all cases purport to provide official translations of the constitutions in question from the original authentic texts. Unless indicated otherwise, I use the English translations as provided. The year indicates the year of promulgation or adoption of the constitution.

AU Member State	Constitutional Provision(s)	Online Source
Algeria (1989)	arts 77(9); 131	http://confinder.richmond.edu/admin/docs/local_algeria.pdf
Angola (1992)	arts 66(w), 88(k)	http://www.servat.uncle.ch/icl/ao00000_.html
Benin (1990)	arts 144, 145, 146	http://confinder.richmond.edu/admin/docs/benin.constitution.pdf
Burkina Faso (1991)	arts 148, 149, 150	http://www.sggcm.gov.bf/SiteSggcm/textes/constitution.html
Burundi (2005)	arts 289, 290, 296	http://confinder.richmond.edu/country.php
Cameroon (1972)	arts 36(1)(b), 43, 44	http://confinder.richmond.edu/admin/docs/Camroon.pdf
Cape Verde (1999)	arts 135, 178	http://www.stj.cv/constituicao.html
CAR (2004)	arts 69, 71	http://www.sangonet.com/actu.Snews/ICAR/Dsp/Constitution2004-qmout.html
Chad (1996)	arts 219, 220	http://www.chr.up.ac.za/images/files/documents/ahrdd/chad/chad_constitution_french.pdf
Comoros (2001)	arts 12	http://www.accpuf.org/images/pdf/cm/Comores/031-tf-txt_pdf
DRC (1992)	art 172	http://www.servat.unibe.ch/cl/cf00000_.html
Côte d'Ivoire (2000)	arts 84, 85, 86	http://confinder.richmond.edu/admin/docs/local_algeria.pdf
DRC (2005)	arts 213, 214, 216	http://www.presidentrdc.cd/constitution.html
Djibouti (1992)	art 37	http://www.pogar.org/publications/other/constitutions/dj-constitution-92-e.pdf
Egypt (1980)	art 151	http://confinder.richmond.edu/admin/docs/EgyptSp.pdf
Equatorial Guinea (1991)	arts 39(h), 64(h)	http://www.ceiba-guinea-ecuatorial.org/guineeang/nvelle_const.htm
Eritrea (1997)	arts 32(4), 42(6)	http://www.nitesoft.com/eccm/Eritrean_Constitution.htm#A032
Ethiopia (1995)	arts 51(8), 55(12)	http://www.ethiopiafirst.com/Election 2008/Constitution.pdf
Gabon (1991)	arts 113, 114	http://www.bdpgabon.org/gouvernement/constitution.shtml#Heading10
Ghana (1992)	art 75	http://www.psr.keele.ac.uk/docs/ghana.const.pdf
Guinea-Bissau (1984)	arts 64(1)(j), 72(1)(h)	http://confinder.richmond/edu/admin/docs/Guinea_Bissau_French.pdf

AU Member State	Constitutional Provision(s)	Online Source
Liberia (1986)	arts 34(f), 57	http://confinder.richmond/edu/admin/docs/liberia.pdf
Madagascar (1992)	arts 56(3), 82(VIII)	http://www.servat.unibe.ch/law/icl/ma00000_.html
Malawi (1994)	arts 89(6), 211(1)	http://www.africa.unpenn.edu/Govern_Political/mlwi_const.html
Mali (1992)	arts 114, 115	http://confinder.richmond/edu/admin/docs/Mali.pdf
Mauritania (1991)	art 36	http://www.servat.unibe.ch/law/icl/mr00000_.html
Mozambique (2005)	arts 162(b), 162(b), 179(2)(t)	http://www.Mozambique.mz/pdf.constituicao.pdf
Namibia (1990)	arts 32(3)(e), 63(2)(e)	http://www.oruvoso.com/namcon/constitution.pdf
Niger (1999)	arts 129, 130, 131	http://upan1.un.org/intradoc/groups/public/dcouments/CAFRAD/UNPAN002961.pdf
São Tomé and Príncipe (2003)	art 82(b)	http://www.parlamento.st/
Senegal, (2001)	arts 95, 96, 97	http://www.gouv.sn/textes/const_detail.cfm?numero=TITREIX.
Seychelles, (1993)	art 64(4)	http://droit.francophonie.org/df-web/publications.do?publicationsId=4303
South Africa (1996)	art 231	http://www.info.gov.za/documents/constitution/index.htm
Sudan (1998)	art 73(10(d)	http://www.Sudan.net/government/constituion/english.html
Rwanda (2003)	arts 189, 190, 191, 192	htt://droit.francophonie.org/df-web/publication.do?publicationId=4281
Togo (1992)	arts 137, 138, 139	http://www.assemblee–nationale.tg/charpente/index-fr.htm
Tunisia (1959)	art 32	http://confinder.richmond/edu/admin/docs/Tunisiaconstitution.pdf
Zimbabwe (1979)	arts 31H(4)(b), 111B(1)	http://www.aprlzim.gov.zw/cms/UsefulResources/ZimbabweConstitution.pdf

V MEASURES TO ENCOURAGE RATIFICATION OF OAU/AU TREATIES

Various factors determine the slow rate or complete failure of ratification of treaties. The phenomenon of buck-passing has already been discussed. This phenomenon may be a manifestation of both substantive and non-substantive problems that sometimes delay or prevent ratification of OAU/AU treaties. Among these problems are: lack of political will; administrative lethargy; inadequacy or lack of the necessary bureaucratic coordination and cooperation among relevant branches of government; and the lack of technical capacity.[135] The existence of unfavourable political factors may also be a determinant. Although situations will vary from one country to another, generally speaking, relevant political factors might include a change in government within the signatory state resulting in a change in policy towards a given treaty. In countries where the ratification process involves the participation of the legislature, a relevant factor could be the existence of a legislative body controlled by a political party ideologically opposed to the executive authority that negotiated and signed the agreement. Both scenarios would reflect the existence of significant domestic political opposition to the treaty or some aspects of it.

Situations will also vary from one treaty to another. Consider, for example, the issues encountered in the ratification campaign, during the period 2003–06, for the *Protocol on the Rights of Women*. One human rights advocate has noted that several factors can be attributed to the slow pace of its ratification.[136] In particular, Mohamed has identified three strands of critical factors. First, in conflict countries such as Burundi, the Democratic Republic of Congo, Somalia and Sudan, peace-making initiatives — and not ratification of the *Protocol* — were said to be the main priorities of their governments. Secondly, in countries that were preparing for national elections at the time, such as Ethiopia, Mozambique, Tanzania and Uganda, political campaigning was identified as the overriding priority for governments (with Mozambique ratifying the *Protocol* immediately after its elections). Finally, in some Muslim countries, or states with Muslim-dominated populations, such as Algeria and Niger (signatory states) and Egypt and Tunisia (non-signatory states), religious

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135 The issue of lack of technical capacity was prominent in discussions on the issue of ratification and domestication of OAU/AU treaties by government legal experts at a meeting convened by the AU Commission for the southern and central African regions attended by the writer. One of the major recommendations of that meeting was the establishment by the AU of a 'Fund for a Technical Assistance Programme for the Ratification and Domestication of OAU/AU Treaties': see Regional Workshop on the Ratification and Domestication of OAU/AU Treaties, *Summary Report of the Regional Workshop on the Ratification and Domestication of OAU/AU Treaties* (5–8 December 2011) [18], [38]–[40] (copy on file with author).

136 Rochelle Jones, Interview with Faiza Jama Mohamed (27 October 2006) <http://www.awid.org/Library/The-protracted-campaign-for-women-s-human-rights-in-Africa>. Faiza Jama Mohamed is the Africa Regional Director of Equality Now. The interview was concerned with the ongoing campaign for full ratification of the *Protocol on the Rights of Women*.

objections have been identified as the factors behind the continuing delay in either signing or ratifying the *Protocol on the Rights of Women*.[137]

On the technical side, as the discussion of the ratification procedures of some AU member states has shown, some countries have to contend with long and cumbersome legal and constitutional procedures that must be negotiated before a treaty is eventually approved or ratified. There may also be problems arising from lack of technical capacity, such as difficulties in drafting implementing legislation and lack of trained personnel to deal with ratification issues. For example, ratification of a highly technical treaty may be contingent upon the state's ability to put in place implementing legislation or arrangements for which it does not have the capacity. Treaty ratification campaigns undertaken by some non-governmental organisations in Africa have sometimes revealed that legislatures may be reluctant to ratify a treaty due to misconceptions, or a lack of appreciation of the legal and political import of the treaty, arising from the failure or inability of the bureaucrats in the relevant government department to provide the necessary technical advice.[138] These situations justify the argument

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[137] Ibid. To date, the Parliament of Niger remains the only legislature of a signatory state to have openly refused to ratify the *Protocol on the Rights of Women* on religious grounds. Yet it is instructive to note that other Muslim states, for example Comoros, Djibouti, Libya, Mauritania and Senegal, have ratified it without any reservations.

[138] The last two decades have witnessed an increase in the efforts of non-governmental organisations in Africa to campaign for sensitisation and ratification of treaties, particularly in the human rights arena. A common strand in these campaigns has been the dual challenge of sensitising policy makers, government officials and parliamentarians to the content and import of the treaties, and advising and advocating for their ratification. Examples of these campaigns include:

- First, the joint campaign by two Nairobi-based non-governmental organisations, Equality Now and Solidarity for African Women's Rights ('SOAWR'), for the ratification and implementation of the *Protocol on the Rights of Women*; in fact, SOAWR, itself a network of individuals and non-governmental organisations, was established specifically to achieve universal ratification of the *Protocol* and ensure its implementation: see Massan d'Almeida, Interview with Faiza Jama Mohamed (11 November 2011) <http://awid.org/News-Analysis/Friday-Files/African-Women-s-Organizing-for-the-Ratification-and-Implementation-of-the-Maputo-Protocol>.
- Secondly, the Pretoria-based Institute of Security Studies ('ISS') has been among the leading campaigners for the ratification and implementation of the *Rome Statute of the International Criminal Court* in African countries, running campaigns specifically aimed at sensitising political leaders and parliamentarians: see Lee Stone and Max du Plessis, 'The Implementation of the *Rome Statute of the International Criminal Court* in African Countries' (Interactive CD, ISS Africa, 1 March 2008) <http://www.issafrica.org/cdromestatute/pages/document.pdf>. See also *Rome State of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).
- Thirdly, starting in 2007 the ISS, in collaboration with the James Martin Center for Nonproliferation Studies (a research centre at the Monterey Institute of International Studies), also led a successful campaign for the ratification and entry into force of the *Treaty of Pelindaba*, providing advice and support for the treaty's ratification to African government officials and non-governmental organisations experts at specially convened meetings in Geneva, Monterey, New York and Vienna, and at numerous meetings and workshops on the African continent: see Liviu Horovitz, *African Nuclear-Weapon-Free Zone Enters into Force*

for enhancing the role of parliamentarians and the participation of civil society in treaty ratification campaigns and the need to equip governments with the necessary technical capacity and expertise on these issues. This would contribute towards raising awareness within the member states about treaties negotiated and signed by the executive among both the public and their political representatives who hold the responsibility for ratifying and implementing them.

As a general rule OAU/AU treaties, as is the case with other treaties, do not contain provisions calling for their speedy ratification or setting out a time frame within which they must be signed, ratified or acceded to. In this respect, it is important to emphasise that the issue of non-ratification of OAU/AU treaties is compounded by the fact that, as an intergovernmental organisation, the AU lacks the power to compel member states to ratify, domesticate and comply with treaty provisions. As has been noted earlier, the decision to ratify treaties ultimately remains within the sovereign purview of individual states. Moreover, the AU's ability to monitor post-ratification compliance is limited to the three treaties with treaty bodies: the *Child Charter*, the *Convention on Corruption* and the *Human and Peoples' Rights Charter*.[139] But, even here, the history of the monitoring function of the African Commission on Human and Peoples' Rights ('ACHPR') (the oldest of these three treaty bodies), along with the record of states' compliance with their treaty obligations and the ACHPR's recommendations, clearly reveal the limitations of the AU's power and capacity to compel compliance. As is well known, the issue of compliance — both with treaty obligations and organisational decisions — remains a huge problem in the practice of international organisations, and not just in the AU.[140]

Given that none of the OAU/AU treaties contain provisions to this effect, how can the objective of speeding up the ratification of these treaties be met?

The initial steps towards speeding up the ratification process of OAU/AU treaties might lie in the reassessment of the process of treaty-making within the AU. It can begin with identifying the policy context, to ensure that before a draft text is laid before the AU Assembly for adoption, debates at both the formal and informal levels have taken place, including consultations with relevant

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(12 August 2009) James Martin Center for Nonproliferation Studies <http://cns.miis.edu/stories/090812_africa_nwfz.htm>.

- Fourthly, in 2011, the Open Society Foundations African Initiatives (for East Africa, Southern Africa and West Africa) and their civil society partners in the respective regions launched a multi-level campaign aimed at political leaders and decision-makers in African countries to secure the ratification of the *Democracy Charter*, which had hitherto only secured four ratifications since its adoption in 2007; within a year the campaign resulted in the accelerated ratification and entry into force of the *Charter* on 16 January 2012: see Achieng Akena, *African Union: Mandating Democracy, One Ratification at a Time* (3 July 2012) Open Society Foundations <http://www.opensocietyfoundations.org/voices/african-union-mandating-democracy-one-ratification-time>.

139 See below nn 162–4.

140 See, eg, Frans Viljoen and Lirette Louw, 'State Compliance with Recommendations of the African Commission on Human and Peoples' Rights, 1994–2004' (2007) 101 *American Journal of International Law* 1.

subregional organisations,[141] relevant non-governmental organisations and other institutions and entities in both the private and public sectors. In other words, the process of negotiating a treaty should ensure the involvement of civil society at the appropriate level. This would help address concerns from interest groups, consider the resources involved and provide a clearer understanding of the issues at hand. It would also ensure that by the time the state commits its signature to the treaty and subsequently presents it to the domestic legislative organ for approval and/or ratification, there is some awareness of the subject matter of the treaty and its implications for the state and citizens. Such awareness would be beneficial in marshalling domestic political support for speedy ratification of the treaty.

The ratification of OAU/AU treaties is critical to the observance of the diverse treaty obligations that AU member states have assumed in various policy areas, for example: environment,[142] human rights,[143] refugees,[144] counter-terrorism,[145] economic integration,[146] technical cooperation,[147] and the advancement of continental unity.[148] These treaties are also significant for their role in standard-setting and norm-creation for the member states. The AU Commission, much more than the OAU General Secretariat before it, recognises the need for encouraging ratification of these treaties and seeks to achieve this objective through different means. Three mechanisms, in particular, have been developed.

First, the AU Commission has maintained the practice established earlier by the OAU General Secretariat of submitting a biennial report on the status of OAU/AU treaties to the Executive Council to enable member states to assess the progress made.[149] Consideration of these reports is always followed by the adoption of decisions by the Executive Council and the AU Assembly calling upon member states to sign and ratify the relevant treaties.[150] Secondly, the AU Commission posts the status of signature and ratification of OAU/AU treaties on

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141 Eight subregional organisations, commonly referred to as the Regional Economic Communities, have been recognised as the 'building blocks' of the African Union and formally cooperate with the AU on various policy issues under an agreement with the latter: Southern African Development Community ('SADC'), East African Community, Common Market for Eastern and Southern Africa, Intergovernmental Authority on Development, Economic Community of Central African States, Economic Community of West African States ('ECOWAS'), Arab Maghreb Union and Community of Sahel-Saharan States. Some of these, in particular SADC and ECOWAS, have had some experience in coordinating treaty ratification campaigns among their members in respect of some treaties adopted under their auspices. These experiences could prove beneficial to the AU in its quest to devise strategies for speeding up ratification of its treaties.

142 *Nature Convention*; *Bamako Convention*.

143 *Human and Peoples' Rights Charter*; *Child Charter*; *Human and Peoples' Rights Court Protocol*; *Protocol on the Rights of Women*.

144 *OAU Refugee Convention*.

145 *Convention on Terrorism*.

146 *Economic Community Treaty*.

147 *Civil Aviation Constitution*; *Trade Constitution*; *Rehabilitation Institute Agreement*; *Energy Convention*.

148 *Constitutive Act*; *Economic Community Protocol*.

149 See *Report of the Secretary-General on the Status of OAU Treaties*, CM Dec 425 (LXVIII), 68th sess, OAU Doc CM/2081(LXVIII) (7 June 1998).

150 See, eg, *Decision on the Status of Signature and Ratification of OAU/AU Treaties*, EX CL Dec 651 (XIX), 19th sess, Agenda Item 8, AU Doc EX.CL/664(XIX) (28 June 2011).

the AU website,[151] thus facilitating the access of member states to the most current information in this regard. Thirdly, the AU Commission holds an 'OAU/AU Treaty Signing Week' once a year to promote awareness on the need for member states to expedite the processes of signature and ratification of these treaties.[152]

The above mechanisms are exhortations to member states to sign and ratify these treaties. The slow pace of ratifications noted at the outset of this study underscores the need for a more effective mechanism than general exhortations. Such mechanisms have been employed by other international organisations. For example, in 1979, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a subsidiary body of the UN Commission on Human Rights (now the Human Rights Council) established the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments ('Working Group').[153] The mandate of the Working Group was to consider ways and means of encouraging acceptance of UN human rights treaties through signature, accession and ratification. The Working Group modelled its procedures on the methods used by the International Labour Organization ('ILO') to encourage its members to accede to labour standards embodied in the ILO conventions to which they were signatories.[154] The question is not whether an international organisation, such as the AU, should be involved in encouraging the ratification of treaties adopted under its auspices but rather how and to what extent it should do so.

International organisations exist to promote certain policy goals and objectives that are, in principle, shared by all their member states. Such organisations adopt treaties and conventions in pursuit of those goals and objectives. It is thus perfectly within their competence to promote their goals and objectives, by encouraging their members to ratify the instruments in which they are embodied. Such encouragement does not amount to undue interference with the state's freedom to ratify or not to ratify a particular treaty; au contraire, it simply serves to urge the state to exercise its sovereign discretion in a particular direction. Some international organisations, including the UN, have deployed measures that go beyond merely exhorting their member states to sign and ratify treaties adopted under their auspices. It may be instructive to recall briefly the experiences of two organisations that confirm the propriety and efficacy of this approach: the ILO and the League of Nations.

The *Constitution of the International Labour Organization* ('*ILO Constitution*') requires its members to submit all ILO conventions that they sign

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151 See African Union Commission, *OAU/AU Treaties*, above n 2. Recently, the AU Office of the Legal Counsel has instituted the practice of convening a press conference on the margins of AU summits to brief the media on legal matters, including the current status of OAU/AU treaties. This practice holds the potential for generating wider public awareness of these treaties within the domestic constituencies of member states, and could in turn lead to unprecedented public interest in these treaties and enhance the possibilities for their signature and ratification.

152 This is a recent development introduced under the tenure of the former Chairperson of the AU Commission, Mr Alpha Konaré (2003–08).

153 See *Report of the Sessional Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments*, UN Doc E/CN.4/Sub.2/453 (9 September 1980).

154 See David Weissbrodt, 'A New United Nations Mechanism for Encouraging the Ratification of Treaties' (1982) 4 *Human Rights Quarterly* 333.

to their domestic authorities for enactment of implementing legislation or other action within a period of 1 year (or exceptionally 18 months) following the adoption of such conventions.[155] Effectively, this is a general obligation requiring ILO members to ratify the conventions within a specified period, for the adoption of legislation or other measures to implement the conventions domestically assumes prior ratification of the instrument.

Furthermore, member states must report on their compliance with this procedure. The reports are examined by the International Labour Committee of Experts on the Application of Conventions and Recommendations ('Committee of Experts'), and the results are published annually, along with the Committee's comments and observations.[156] The Committee of Experts' role is to provide an impartial and technical evaluation of the application of international labour standards contained in the ILO conventions. It thus plays a direct role in both monitoring and assisting with the ratification of these conventions by identifying obstacles faced by participating states and making appropriate recommendations to overcome them. The ILO Governing Body sometimes selects certain conventions on which to focus attention and concentrate efforts at encouraging acceptance and ratification. The Committee of Experts may then periodically follow up with requests to governments to report on the difficulties that prevent or delay ratification of these conventions. These reports are also published, along with the experts' comments, and are used by the ILO in its efforts to overcome the problems and promote wider understanding of the difficulties faced by various countries in their attempts to ratify and implement the conventions.[157]

The League of Nations adopted a similar procedure for encouraging ratification of its conventions. Within a few years following its establishment in 1919, the League had become concerned over the lack of widespread ratification of its treaties. Consequently, the League's Assembly adopted a resolution in 1926 inviting the League's Council to consider biennial reports on the status of the treaties.[158] Subsequently, upon a recommendation of a committee established to investigate delays in ratification, the Assembly adopted another resolution in 1930.[159] This resolution required the Secretary-General to request signatories to League of Nations treaties that had not ratified them within one year following the closing of signatures to those treaties to report their intentions with respect to the treaties for consideration by the Assembly. Further, if ratification had not occurred after five years, the Secretary-General was to inquire again into the

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155 *Constitution of the International Labour Organization* art 19(5)(b) ('*ILO Constitution*').

156 These reports can be accessed at International Labour Organization, *Report III — Information and Reports on the Application of Conventions and Recommendations (1932–)* (26 October 2012) <http://www.ilo.org/public/libdoc/ilo/P/09661/>.

157 The reports are submitted to the annual conference of the ILO as Report of the Committee of Experts on the Application of Conventions and Recommendations: Summary of Reports on Unratified Conventions, (art 19 of the *ILO Constitution*), Report III (Part 2).

158 'Ratification of Agreements and Conventions Concluded under the Auspices of the League of Nations' [1926] 43 *League of Nations Official Journal Special Supplement* 27 (23 September 1926).

159 See 'Ratification of International Conventions Concluded under the Auspices of the League of Nations' [1930] 83 *League of Nations Official Journal Special Supplement* 12; Secretary-General of the League of Nations, Assembly of the League of Nations, 'Resolution on Delays in Ratification: 3 October 1930' (1930) 11 *League of Nations Official Journal* 1689.

position of the signatory state. An early commentator observed that this reporting procedure and the attention it focused on the importance of ratification resulted in a significant increase in the ratification of the various treaties.[160]

Despite its relative success, the system introduced by the League of Nations was not adopted by the UN at its creation in 1945. However, subsequent UN practice has developed mechanisms specific to certain treaties — principally the core human rights instruments — for monitoring compliance with their implementation. Treaty bodies have been established as monitoring mechanisms for these treaties, for example the Committee on the Rights of the Child for the *CRC*, and the Committee on the Elimination of Racial Discrimination, for the *International Convention for the Elimination of All Forms of Racial Discrimination*. Although the treaty bodies do not have specific powers to intercede with states on their ratification procedures or processes, they nevertheless play a critical role not only in monitoring compliance with the treaties, but also in advocacy and provision of technical advice aimed at encouraging wider acceptance of these treaties.[161]

Under the OAU/AU treaty system, the procedure of establishing a treaty body to monitor compliance with a specific treaty has only been adopted in three instances: the ACHPR,[162] the African Committee of Experts on the Rights and Welfare of the Child[163] and the Advisory Board on Corruption.[164] As with the UN treaty bodies, none of these bodies are vested with explicit powers to monitor ratification of the treaties as such. What practical measures, then, can be instituted to encourage more expeditious ratification of these and other OAU/AU treaties?

A number of recommendations and suggestions may be offered. In the first place, the AU Commission could institutionalise and expand the AU Treaty Signing Week. This could be achieved by getting the AU Assembly to adopt a decision formally committing member states to review their positions regarding any OAU/AU treaties that they have not yet signed, and to take appropriate measures to sign these treaties at all times, but especially during the AU Treaty Signing Week. Bearing in mind that signature is a necessary first step towards ratification of treaties, the content of such a decision should substantively go beyond the ritual pro forma appeal to member states to sign and/or ratify certain specified treaties. The period of sensitisation could also be increased from one

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160 See Francis O Wilcox, *The Ratification of International Conventions* (Allen & Unwin, 1935) 131, cited in Weissbrodt, above n 154, 347.

161 Sometimes the treaty bodies have also advocated for the ratification of treaties not falling within their immediate supervisory mandate. Thus, in 2004, CERD encouraged Ireland and Luxembourg to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003): see Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the* Convention*: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, 66th sess, 1699th mtg, UN Doc CERD/C/IRL/CO/2 (14 April 2005); Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the* Convention*: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Luxembourg*, 66th sess, 1697th mtg, UN Doc CERD/C/LUX/CO/13 (18 April 2005).

162 Established under the *Human and Peoples' Rights Charter* art 30.

163 Established under the *Child Charter* art 32.

164 Established under the *Convention on Corruption* art 22.

week to, say, one month. Secondly, the AU Commission should periodically request those member states that have not ratified certain OAU/AU treaties to forward relevant information about the circumstances which have prevented or delayed their acceptance or ratification of those treaties. This would enable the AU Commission to identify and address country-specific obstacles affecting ratification. Thirdly, in view of the fact that some treaties have failed to secure the required number of ratifications to enable them to enter into force more than two or three (and, in one case, four)[165] decades after their adoption, it would be appropriate for the AU Commission to undertake an audit of all OAU/AU treaties, with the aim of identifying treaties that require targeted advocacy and ratification campaigns to maximise their ratification. This would also afford an opportunity to member states to reassess the relative importance of these treaties, in the overall context of the AU's current policy goals. Such an exercise might well conclude that some of them have effectively fallen into desuetude. This would be an appropriate subject for study by the recently established AU Commission on International Law. A final recommendation is that the AU follow the example of the UN and other international organisations by establishing a technical assistance program aimed at helping governments of member states to overcome obstacles encountered in their efforts to ratify OAU/AU treaties. Training programs for personnel to deal with ratification issues and explain the significance of particular treaties to relevant domestic constituencies, including parliamentarians, would be one aspect of such technical assistance. Finally, although the subject matter and focus of this study is ratification, the question of compliance merits particular attention by the AU. There is a need to devise mechanisms that would enable the organisation to monitor states' compliance with the obligations voluntarily assumed under other OAU/AU treaties more effectively than just those with treaty bodies mentioned above. Without compliance, treaty ratification largely remains a procedural ritual of little or no practical benefit or consequence.

On their part, AU member states should also take effective measures on three fronts. First, they should develop national policies and strategies to address the obstacles identified in this article. A renewed commitment by states to respect and implement the international obligations enshrined in the OAU/AU treaties to which they are signatory by ratifying them expeditiously and adopting the necessary legislative and administrative measures to domesticate them would be a step in the right direction. Secondly, there is a need for them to review, on a continuous and periodic basis, the factors delaying or preventing the ratification of those treaties that they have already signed as well as their accession to treaties already in force. And finally, governments should also initiate national dialogues with relevant domestic stakeholders, including political leaders, parliamentarians and civil society in general, to sensitise them to the significance of particular OAU/AU treaties and the importance of ratifying them as part of each individual nation's commitment to join with other member states in advancing the policy goals adopted collectively under the aegis of the organisation.

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165 *Phyto-Sanitary Convention for Africa*, opened for signature 13 September 1967, OAU Doc CAB/LEG/24.4/11 (not yet in force).

VI CONCLUSION

Theories explaining state behaviour and decision-making with respect to treaty ratification indicate that the decision to ratify treaties is determined by multiple factors and considerations, including the domestic political interrelationships and interplay between the executive authorities and national legislatures. The data presented in this article confirms the concern expressed by the Chairperson of the AU Commission in 2004 — and routinely repeated in the annual *Report of the AU Commission on the Status of OAU/AU Treaties* — about the slow pace of ratification of OAU/AU treaties by AU member states.[166] All the same, the modest record of ratification of OAU/AU treaties by AU member states revealed by the data is a valuable indicator of the general policy areas in which treaties are more likely than not to secure domestic approval and support by national legislatures. As stated above, the general trend supports the conclusion that treaties that do not create any tension with the domestic legal regime and structure, and only require minimal changes to existing national law, stand a better chance of being ratified. This consideration is especially relevant in the context of OAU/AU treaties which, as a general rule, do not provide for reservations, and do not thereby afford the parties the option of ratifying a treaty while making exceptions aimed at accommodating domestic legal imperatives or political interests.[167]

This discussion has also sought to demonstrate that there is no single uniform approach to treaty ratification among AU member states. This lack of uniformity arises from differences in constitutional approaches and legislative practices, and reflects the diversity of the legal traditions of African states. These differences are themselves largely a product of the states' different colonial histories and political heritages. Generally speaking, African states have inherited the constitutional approaches, traditions and practices of their former metropolitan colonial powers in matters of treaty ratification. Thus, it has been noted that the majority of former British colonies have followed the old British constitutional convention which until recently regarded treaty-making and treaty ratification as exclusive executive prerogatives. The exceptions are former British colonies that have adopted new constitutions in more recent times, which depart drastically from the earlier constitutions that had been adopted at independence. Similarly, it is clear that the majority of former French African colonies have followed the *French Constitution*. This article has shown how closely the constitutional provisions of the majority of these states reproduce verbatim the corresponding provisions in the *French Constitution*. Finally, a limited number of AU member states have adopted approaches that follow either the British or French constitutional models, and in some instances aspects of both, irrespective of their colonial histories or despite the lack of previous connections to these erstwhile colonial powers.

In view of these differences, it may be unrealistic to expect that there can be a harmonisation of procedures for ratification of treaties and international

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166 See above n 135.

167 The notable exception among OAU/AU treaties which explicitly allows parties to enter reservations at the time of ratification is the *Human and Peoples' Rights Court Protocol*: see at art 34(6). Notwithstanding this sole exception, and as indicated above, some states have proceeded to ratify six other treaties subject to reservations. See above nn 122–30.

agreements across the continent for all AU member states, as has been mooted in some circles,[168] nor is such harmonisation desirable. A number of factors come into play. First, such harmonisation would require common revisions or amendments to constitutions and national legislation in all the 54 member states. Secondly, harmonisation presupposes prior agreement on a common standard or approach in order to achieve a universally acceptable formulation of the relevant constitutional and legislative provisions or procedures. Thirdly, even assuming that there was a consensus among all the members of the AU, differences in procedures for amending national constitutions and legislation would ensure that the outcome of any harmonisation project cannot be either certain or assured. Procedures for constitutional amendment are more rigorous and complex in some states than in others, and the domestic political dynamics operate differently from state to state. Fourthly, and more crucially, the status accorded to treaties within the domestic legal spheres of AU member states is not the same. Some constitutions, most notably those modelled on the *French Constitution*, explicitly provide that duly ratified treaties have a superior status and override national law. Other constitutions either require treaties to be specifically incorporated into the domestic legal regime through the adoption of a specific law to that effect, without thereby necessarily privileging the treaty over other national legislation, or are simply silent on the matter.

As was argued above, one of the factors that states have to weigh before ratifying a treaty is the very status of the treaty as binding law within the domestic jurisdiction following its ratification (internal binding force), quite apart from its nature as a source of binding obligations upon the state in its relations with other parties (external binding force). At the same time, however, the failure to sign and/or ratify OAU/AU treaties potentially undermines the political credibility and standing of the organisation. African nations have made a modest but significant contribution to the development of modern international law partly through the adoption of multilateral treaties in a number of areas under both the OAU and the AU. Enhanced commitment to current and future AU treaties through expeditious signature, ratification and effective implementation can only strengthen this contribution and ensure increased political credibility and the legitimacy of the organisation in the public imagination.

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168 See *Decision on the Status of OAU/AU Treaties and the Harmonization of Ratification Procedures*, AU Doc EX.CL/458(XIV).

Table Two: Ratification–Signature Correlation Ratios for Individual Member States

The middle column shows the correlation of ratified treaties as a percentage of the number of treaties signed by each member state. The outer column shows the actual number of treaties signed by each state out of the 23 treaties currently in force definitively (excluding the Additional Protocol*, which does not require signature, and the* AUCIL Statute*, which does not require signature or ratification).*

Member State	Percentage	No of Treaties
Algeria	90	21
Angola	67	21
Benin	70	23
Botswana	77	13
Burkina Faso	96	23
Burundi	76	21
Cameroon	74	23
Cape Verde	90	10
Central African Republic	35	20
Chad	57	23
Comoros	82	22
Congo	83	23
Côte d'Ivoire	64	22
Democratic Republic of Congo	45	22
Djibouti	43	23
Egypt	80	20
Equatorial Guinea	60	20
Eritrea	75	8
Ethiopia	74	23
Gabon	91	23
Gambia	91	22
Ghana	83	23
Guinea	70	23
Guinea-Bissau	70	20
Kenya	78	23
Lesotho	85	20
Liberia	55	22
Libya	96	23
Madagascar	62	21
Malawi	100	18
Mali	100	23
Mauritania	79	19
Mauritius	79	19
Mozambique	100	21
Namibia	67	18
Niger	91	23
Nigeria	87	23
Rwanda	96	23
Sahrawi Arab Democratic Republic	57	14
São Tomé and Príncipe	18	22
Senegal	96	23

Member State	Percentage	No of Treaties
Seychelles	76	17
Sierra Leone	45	22
Somalia	23	22
South Africa	88	17
Sudan	73	22
Swaziland	55	20
Tanzania	95	21
Togo	91	23
Tunisia	90	20
Uganda	92	22
Zambia	77	22
Zimbabwe	80	20

Appendix I: Treaties Adopted under the Auspices of the OAU (1963–2002)

Title	Year of Adoption	Year of Entry into Force
General Convention on the Privileges and Immunities of the OAU	1965	1965
Phyto-Sanitary Convention for Africa	1967	—
African Convention on the Conservation of Nature and Natural Resources	1968	1969
Constitution of the African Civil Aviation Commission	1969	1972
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	1969	1974
Constitution of the Association of African Trade Promotion Organizations	1974	*
Inter-African Convention Establishing an African Technical Cooperation Programme	1975	—
Cultural Charter for Africa	1976	1990
Convention for the Elimination of Mercenarism in Africa	1977	1985
Additional Protocol to the OAU General Convention on Privileges and Immunities	1980	**
African Charter on Human and Peoples' Rights	1981	1986
Agreement for the Establishment of the African Rehabilitation Institute	1985	1991
Convention for the Establishment of the African Centre for Fertilizer Development	1985	—
African Charter on the Rights and Welfare of the Child	1990	1999
Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa	1991	1998
Treaty Establishing the African Economic Community	1991	1994
African Maritime Transport Charter	1994	***
African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)	1995	2009
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	1998	2004
OAU Convention on the Prevention and Combating of Terrorism	1999	2002
Constitutive Act of the African Union	2000	2001
Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament	2001	2003
Convention of the African Energy Commission	2001	2006

Notes

* Article XV(3) entered into force provisionally on 18 January 1974 following its signature by 12 member states.

** Article 10(2) enters into force for each member state on the date of the deposit of its instrument of accession.

*** Article 28(1) entered into force provisionally 8 January 2004, 30 days after being signed by at least 20 member states.

Appendix II: Treaties Adopted under the Auspices of the AU (2002–10)

Title	Year of Adoption	Year of Entry into Force
Protocol relating to the Establishment of the Peace and Security Council of the AU	2002	2003
Revised African Convention on the Conservation of Nature and Natural Resources	2003	—
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	2003	2005
Protocol of the Court of Justice of the African Union	2003	2009
Protocol on Amendments to the Constitutive Act of the African Union	2003	—
African Union Convention on Preventing and Combating Corruption	2003	2006
Protocol to the OAU Convention on the Prevention and Combating of Terrorism	2004	—
African Union Non-Aggression and Common Defence Pact	2005	2009
African Youth Charter	2006	2009
Charter for African Cultural Renaissance	2006	—
African Charter on Democracy, Elections and Governance	2007	—
Protocol on the Statute of the African Court of Justice and Human Rights	2008	—
Statute of the African Union Commission on International Law	2009	2009
African Charter on Statistics	2009	—
Protocol on the African Investment Bank	2009	—
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	2009	—
Revised Constitution of the African Civil Aviation Commission	2009	*
Revised African Maritime Transport Charter	2010	—
African Charter on the Values and Principles of Public Service and Administration	2011	—

Note

* Article 19(4) entered into force provisionally on 11 May 2010 upon signature by 15 member states.

Appendix III: Chart of Ratifications of OAU/AU Treaties in Force (as at 31 December 2011)

Name of Country	Treaty																					
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Algeria	X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	S	X	X	X	S
Angola	S	S	X	X	X	S	X	X	X	S	X	S	S	X	X	X	X	X	S			X
Benin	X	S	X	X	X	X	X	S	X	X	X	X	S	X	X	S	X	X	X	S	S	S
Botswana		S	X	X			X	X	X		X	X	S	S	X		X					
Burkina Faso	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	S	X	X
Burundi	X	S	X	X	X		X		X	X	X	X	X	X	X	X	X	S	X	S	S	S
Cameroon	X	X	X	X	X	X	X	X	X	X	X	X	S	S	X	X	X	S	S	S	S	X
Cape Verde				X			X		X		X	S		X	X			X				X
CAR	X	X	S	X			X	S	S	S	X	S	S	S	X	S	S	S		S	S	S
Chad	S	S	X	X	X	S	X	X	X	S	X	X	S	X	X	S	X	S	S	S	X	S
Comoros	X	X	X	X		X	X	S	X	X	X	S	X	X	X	X	X	X	X	X	S	S
Congo	X	X	X	X	X	X	X	X	X	X	X	S	X	X	X	X	X	S	X	S	X	S
Côte d'Ivoire	X	X	X	X		S	X	X	X	X	X	X	X	S	S	S	X	S	S	S	S	X
DRC	X	X	X	X		X	X	S	S	X	X	S	S	S	S	S	S	X	S	S	S	S
Djibouti	S	X	S	S	X	S	X	S	X	S	S	S	S	X	X	S	X	X	S	S	S	X
Egypt	X	X	X	X	X	X	X	S	X	X	X	S	S	X	X	X	X			X		S
Equatorial Guinea	X	S	S	X		X	X		X		X	X	S	X	X	S	X	X	S	S	S	S
Eritrea			X				X		X			S		X			X					S
Ethiopia	X	S	X	X	X	X	X	X	X	X	X	X	S	X	X	X	X	S	X	S	S	S
Gabon	X	X	X	X	X	X	X	S	X	X	X	X	X	X	X	S	X	X	X	X	X	X
Gambia	X	S	X	X		X	X	S	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ghana	X	X	X	X	X	X	X	S	X	S	X	X	X	X	X	X	X	X	X	S	X	S
Guinea	X	S	X	X	X	X	X	X	X	S	X	X	S	X	S	X	X	S	S	S	X	X
Guinea-Bissau	S			X	X	S	X		X	S	X	X	S	X	X	S	X	X	X	S	X	X
Kenya	X	X	X	X	X	S	X	X	X	S	X	X	X	X	X	X	X	X	X	S	S	S
Lesotho		S	X	X		X	X	X	X	S	X	X	X	X	X	S	X	X	X	X		X
Liberia	X	X	X	X		X	X	S	X	S	X	S	S	S	X	S	S	X	X	S	S	S
Libya	X	S	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Name of Country	Treaty																					
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Malawi	X	X	X	X	X		X	X	X		X	X	X	X	X		X	X	X			X
Mali	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Mauritania	X	S	X	X		S	X	X	X	S	X	X	X	X	X		X	X	S		X	
Mauritius		S	X	S	X		X		X	X	X	X	X	X	X	X	X	S	S	X		X
Mozambique	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Namibia			X	S			X	X	X		X	S	S	S	X	X	X	X	X	S	S	X
Niger	X	X	X	X	X	X	X	X	X	X	X	S	X	X	X	X	X	S	X	X	X	X
Nigeria	X	X	X	X	X	X	X	X	X	S	X	X	X	X	X	X	X	X	X	S	S	X
Rwanda	X	X	X	X	X	X	X	X	X	S	X	X	X	X	X	X	X	X	X	X	X	X
SADR							X		S		X	S	S	X	X	X	X	S	S		X	S
São Tomé/Príncipe	S	S	S	S		S	X	S	S	S	X	S	S	S	S	S	X	S	S	S	S	S
Senegal	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	S	X	X
Seychelles		X	S	X	X	X	X		X		X	S	S	X	X		S	X	X			X
Sierra Leone	X	S	X	X		S	X	S	X	S	X	S	S	S	X	S	X	S	X	S	S	S
Somalia	X	S	X	S	X	S	X	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
South Africa			X	X			X		X		X	X	X	X	X	S	X	X	X	X	S	X
Sudan	X	X	X	X	X	X	X		X	X	X	S	S	X	X	X	X	S	S	X	S	S
Swaziland	X	X	X	X		S	X	X	S	S	X	X	S	S	X	S	X	S	S	S		
Tanzania	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X		S
Togo	S	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	S	X	X
Tunisia	X	X	X	X	X	X	X		S	X	X	X	X	X	X	X	X			X	S	X
Uganda	X	X	X	X	X	S	X	X	X	X	X	S	X	X	X	S	X	X	X	S		X
Zambia	S	X	X	X	X	X	X	X	X	S	X	X	S	S	X	X	X	X	X	S		X
Zimbabwe			S	X	X	X	X	X	X	X	X	X	S		X	X	X	X	X	S	S	X

Key

x — Ratification or accession.

s — Signature not yet followed by ratification.

Letter	Title	Year
A	*General Convention on the Privileges and Immunities of the OAU*	1965
B	*African Convention on the Conservation of Nature and Natural Resources*	1968
C	*Constitution of the African Civil Aviation Commission*	1969
D	*OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*	1969
E	*Cultural Charter for Africa*	1976
F	*OAU Convention for the Elimination of Mercenarism in Africa*	1977
G	*African Charter on Human and Peoples' Rights*	1981
H	*Agreement for the Establishment of the African Rehabilitation Institute*	1985
I	*African Charter on the Rights and Welfare of the Child*	1990
J	*Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa*	1991
K	*Treaty Establishing the African Economic Community*	1991
L	*African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)*	1996
M	*Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*	1998
N	*OAU Convention on the Prevention and Combating of Terrorism*	1999
O	*Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament*	2001
P	*Convention of the African Energy Commission*	2001
Q	*Protocol relating to the Establishment of the Peace and Security Council of the African Union*	2002
R	*Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*	2003
S	*African Union Convention on Preventing and Combating Corruption*	2003
T	*Protocol of the Court of Justice of the African Union*	2003
U	*African Union Non-Aggression and Common Defence Pact*	2005
V	*African Youth Charter*	2006

Note

In the above table, year indicates the year of adoption. The list of states does not include South Sudan (officially admitted as an AU member state on 15 August 2011) and does not include the following treaties in force:

(i) *Constitutive Act of the African Union* (2000), which has been signed and ratified by *all* AU member states;

(ii) *Additional Protocol to the OAU General Convention on Privileges and Immunities* (1980), which does not require signature and enters into force upon the deposit of an instrument of accession only in respect of the acceding states. Currently only six states have acceded to it: Cameroon, Ethiopia, Gabon, Liberia, Mozambique and Nigeria;

(iii) *Constitution of the Association of African Trade Promotion Organizations* (1974), *African Maritime Transport Charter* (1994) and *African Civil Aviation Commission Constitution (Revised Version)* (2009), which have entered into force only provisionally; and

(iv) *Statute of the African Union Commission on International Law* (2009), which does not require signature or ratification. Article 27 came into force upon its adoption by the AU Assembly on 4 February 2009.