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## **Book Review: Unified Business Laws for Africa: Common Law Perspectives on OHADA**

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## BOOK REVIEWS

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***Unified Business Laws for Africa: Common Law Perspectives on Ohada.***

By Martha Simo Tumnde, Mohammed Baba Idris, Jean Alain Penda, M. John Ademola Yakubu, and Claire Moore Dickerson. London; Philadelphia: GMB Publishing Ltd., 2009. Pp. vii, 169. ISBN 978-1-84673-150-1. US\$110.00.

This slim volume analyzes OHADA (Organisation pour l'harmonisation en Afrique du droit des affaires), the international organization that has unified business laws among its 16 member states located in central and western Africa.

<sup>1</sup> The analysis in the book constitutes 110 of the volume's 173 pages, with the remainder consisting of appendices and prefatory matter. Legal scholars from Nigeria, Cameroon, and the United States drafted the seven chapters in the book. The goal of the collection is "to provide information about OHADA that readers can use to assess what their own country and its business people could gain from participation in this project." In the book, the authors describe the institutions of OHADA, analyze the uniform business laws approved by OHADA, and describe the legal system that enforces these laws, particularly the Common Court of Justice and Arbitration. As the subtitle of the book suggests, the authors provide a common law perspective on the OHADA system, which is based on French commercial law. All sixteen member states are Francophone nations with civil law systems except for Cameroon, which is bijural with its Anglophone provinces following a common law system and its Francophone provinces utilizing a civil law system.

The articles provide useful insights into the OHADA system. For instance, one author notes that OHADA member states, much like the European Union member states, have ceded a portion of their sovereignty to OHADA, particularly that portion dealing with business law. The OHADA Council of Ministers approves uniform acts governing business and investment by unanimity. Once the Council enacts a uniform law, it becomes law in all member states. Another author notes insightfully that OHADA is "an African answer to the challenge of globalization in the area of business law." By creating and enforcing uniform business laws across the 16 member

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<sup>1</sup> OHADA members include Benin, Bissau Guinée, Burkina Faso, Cameroon, Central Africa, Chad, Comoros, Congo, Equatorial Guinea, Gabon, Guinea, Ivory Coast, Mali, Niger, Senegal, and Togo. The Democratic Republic of Congo is in the process of joining OHADA.

states, OHADA hopes to decrease transaction costs, create more legal certainty for investors, and encourage investment in OHADA nations.

The authors criticize certain aspects of OHADA. First, several point out the “democratic deficit” of enacting uniform laws. The Council of Ministers approves these laws, not the national parliaments or legislatures. Given that the members of the Council are appointed by the executives of the OHADA nations, the laws are not directly enacted by the people’s representatives. Second, French is the only working language of OHADA and the only authoritative version of the OHADA Treaty is the French version.<sup>2</sup> Anglophone Cameroon must rely on unofficial English translations. With French as the only working language, expansion of OHADA to non-Francophone countries, such as Nigeria, is hindered. Third, while the CCJA interprets OHADA uniform acts, there exists a tension between the national court systems and the CCJA over the jurisdiction of cases involving the OHADA uniform acts. In her concluding chapter to the book, Professor Claire Dickerson recommends several improvements to OHADA, such as a greater institutional role for the Permanent Secretariat and the introduction of English as a working language. In the same vein, the authors praise OHADA’s successes. The uniform acts have provided legal certainty to business transactions in the OHADA states. The creation of a personal property registry has been innovative and increased the possibility for collateral-based lending.

This volume provides a concise treatment of OHADA from a common law perspective and a readable overview of OHADA and its institutions. The discussion of OHADA institutions in Chapters 3 and 4 is repetitive. One chapter is needed to provide this background, not two. The authors describe the challenges of implementing OHADA, but there is little analytical discussion of the positive effects of OHADA. The book omits discussion of how OHADA has improved foreign investment in member states, which would be enlightening and would give nations contemplating OHADA membership some incentive to join if foreign investment has indeed increased as a result of membership in OHADA.

The book includes as appendices a bibliography of scholarly material on OHADA, the text of the 1993 OHADA Treaty, the text of the 2008 revisions to the OHADA treaty, and selections from the Uniform Acts. A detailed index is also included. Academic law libraries with a strong international focus and law firm libraries with clients in Africa would find this volume

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<sup>2</sup> A 2008 revision of the OHADA Treaty adds English, Spanish and Portuguese as official languages among other changes. The revision is currently proceeding through the approval process in the various OHADA nations.

useful in their collections. Scholars of comparative law would also be interested in this volume.

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*War, Commerce, and International Law*. By James Thuo Gathii. Oxford, New York: Oxford University Press, 2010. Pp. 304. ISBN: 978-0-19-534102-7. UK£45.00; US\$65.00.

### CHALLENGING OLD LEGAL TRUTHS

The explicit purpose of *War, Commerce, and International Law* by James Thuo Gathii<sup>3</sup> is, as the title indicates, to challenge the presumption in law that war and commerce are two distinctly different concepts.<sup>4</sup> In his book, Gathii argues that war, defined by the use of force, and commerce, understood as the absence of force, are not distinctively different from each other.<sup>5</sup> He also argues that the distinction law makes between the two is possible to challenge as false, and that in the end law cannot even sustain its own legal distinction.<sup>6</sup> Gathii's book also has a wider purpose, which is to challenge international law itself by describing it as Western and power serving.<sup>7</sup>

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<sup>3</sup> Governor James Pataki Distinguished Professor of International Commercial Law at Albany Law School.

<sup>4</sup> The work of Professor Johan Galtung comes to mind, especially Galtung's developed understanding of aggression and violence as being more than direct physical harm. This is Galtung's definition: "drives towards change, even against the will of others." J.Galtung, *A Structural Theory of Aggression*, *Journal of Peace Research*, Vol. 1, No. 2 (1964), p. 95.

<sup>5</sup> See generally Gathii, *War, Commerce, and International Law* (Oxford, New York: Oxford University Press, 2009) pp. 105-107.

<sup>6</sup> Professor Martti Koskeniemi's work on the deconstruction of normative and material legal arguments is a theoretical work that comes to mind when following Gathii's legal method. See generally M. Koskeniemi, *From Apology to Utopia, The Structure of International Legal Argument* (Cambridge University Press, 2006); JT Gathii, *War, Commerce, and International Law* (Oxford University Press, New York, 2009) p. 191.

<sup>7</sup> The critical approach to international law is one of the core elements of TWAIL (Third World Approaches to International Law) scholarship as expressed by Professor