



Newsletter – January 2011

A Word from the President

Dear colleague,

Our previous Newsletter focused on Europe, its institutions and the close relations of the International Union of Judicial Officers with the various European organizations.

It is thus quite natural for the present letter to turn to Africa.

Still haloed by the success of the second African and European meetings which took place in October 2010 in Yaoundé (Cameroon), the African continent occupies a central place within the International Union where it is represented in all its diversity and its richness by many countries.

It would be presumptuous to try to explain Africa, but it inevitable to make it known.

You will find in the following pages the description of the African institutions as well as the actions carried out by the UIHJ on this continent which combines customs and innovations, tradition and modernity.

You might be amazed by the dynamism and the capacity of adaptation (I think here in particular about the Ohada) of the African countries.

The whole world has its eyes turned towards Africa.

We will hold our next congress in Cape Town (South Africa) in May 2012 showing once more that our profession is always in adequacy with the socio-economic evolutions worldwide.

And now let's embark to Africa.

Have a nice trip!

Leo Netten
President UIHJ



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I. The OHADA: an example of harmonization

The Organization for the harmonization of Business Law in Africa (Ohada) was created by the treaty on the harmonization of Business law in Africa signed on October 17th, 1993 in Port-Louis and amended in Quebec (Canada), on October 17th, 2008.

The treaty is opened to any member State of the Organization of African Unity (OAU) as well as any other State non-member of the OAU invited to join with the common agreement of all the States.

To date, sixteen States are members of Ohada: Benin, Burkina-Faso, Cameroon, Central Africa, Chad, Congo, Comoros, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Ivory Coast, Mali, Niger, Senegal and Togo.

This treaty has as main objective to restore the legal and judicial security in the member States.

This legal insecurity denounced by the economic operators limits the development of Africa.

The Ohada Law is based on Uniform Acts. Seven texts are directly applicable in the 16 Ohada Member States, creating the Ohada area:

- General commercial law;
- Company law;
- Securities;
- Enforcement proceedings;
- Bankruptcy law;
- Arbitration law
- Accountancy law.

Thanks to the Ohada treaty and the modernization and the harmonization of the resulting legal provisions, where legal decisions remained “dead letter”, the uniform Act organizing simplified recovery procedures and measures of execution enabled to work out a true code, thus trust was restored, bringing back the security necessary to economic exchanges.

Ohada is made up of four institutions:

- the Council of Ministers of justice and finances, which meets once a year to adopt “the uniform acts” applicable in each internal law of the member States;
- the permanent Secretariat, attached to the Council of Ministers and responsible for the preparation of all the acts and the annual program of harmonization business law. Its headquarters is in Yaoundé. A delegation of the UIHJ accompanied by the first secretary of the Hague Conference on Private International Law, Christophe Bernasconi, was received at the time of the UIHJ Africa Europe meetings by the



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Permanent Secretariat of Ohada. On this occasion, the adhesion of the countries of the Ohada zone to the 1965 Hague Convention was approached.

- the Higher Regional School of Judges (ERSUMA)
- the Common Court of Justice and Arbitration (CCJA) made up of seven judges elected for seven years and renewable once, among the nationals of the member States.

We cannot refer to Ohada without evoking the Ufohja: the Training Unit of African judicial officers.

For over ten years now, the International Union continuously works to train African judicial officers with the National School of Procedure of Paris at its sides.

The Ohada acts being strongly inspired by French enforcement proceedings, training courses are organized every year in one of the countries of the Ohada zone with the assistance of French and African experts, at the rate of twice a year.

Ufohja is very popular with our fellow-members and we can announce that the next session will take place in Mali at a date to be confirmed.

II. The UEMOA (Western African economic and monetary Union: a restricted harmonization)

The Western African Economic and Monetary Union (UEMOA) was created by a Treaty signed in Dakar on January 10th, 1994 by the heads of state and government of the seven countries of West Africa (Benin, Burkina-Faso, Ivory Coast, Mali, Niger, Senegal and Togo, Guinea Bissau having joined the group later) having the use of a common currency, the CFA Franc.

In the objectives of the UEMOA are those of the European Union in their economic aspects like the introduction of a Common Market based on freedom of movement of people, goods, services, capital and the right of free establishment for people carrying on an independent or paid activity, this with a view to increase the economic competitiveness of the Member States.

Obviously the harmonization of the legislations of the Member States remains one of major concerns of this organization.

III. The African Union: a widened harmonization

The African Union is a supranational organization of 53 Member States created in 2002 which includes in particular:



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- The Assembly: meeting of the heads of state and government, decisional body of the Union;
- a Commission, executive authority (President Jean Ping)
- a Pan African Parliament with advisory role
- the Peace and Security Council
- a Court of Justice
- An African Court on Human and Peoples' Rights

Its objectives are the promotion of democracy, human rights and the sustainable development through Africa helped in that by the creation of a central bank for development.

Today the Court of justice and the African Court on Human and Peoples' Rights merged to become the African Court on Human Rights.

This court, made up of 16 judges, will be charged through its two sections to deal in particular at the same time with disagreements relating to the application of the founding treaty and other texts of the AU, of the provision, decisions, regulations and directives of the bodies of the AU, and of any legal question.

It is somehow the equivalent of the Court of Justice of the European Union and therefore looks very promising for lawyers...

IV. SADC (Southern African Development Community): an economic harmonization

The Southern African Development Community is an organization which aims at promoting the economic development of Southern Africa.

It includes 15 States: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe, South Africa, Madagascar, and Seychelles.

The SADC's institutions are inspired by the European model:

- A Summit which lays down the policy of the organization
- The Council of Ministers: composed of the minister of each Member State in charge with the SADC, it supervises the process and the functioning of the SADC, to implement effectively the policies of the organization and to prepare the Summit's meetings.
- Integrated committee of the ministers: it supervises and coordinates the activities in the various sectors
- Secretariat: body of harmonization and strategic piloting of the process of the SADC



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- National committees of the SADC: they are in charge in each Member State to contribute to the development of the regional policies and to coordinate and supervise their transposition at national level.

If the main objective is economic, it is based all the same on the respect of the Rule of Law.

Conclusion

The will of union and harmonization of the African States is undeniable. It finds its perfect expression through these various institutions.

But nothing is perfect...

Harmonization can still go further.

On the one hand the UIHJ proposes a harmonized statute of the African judicial officer in echo with the standardization initiated by the Ohada.

In addition, the UIHJ strongly supports the adhesion of the African countries members to the 15 November 1965 Hague Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters.

Finally there is also the Cadat project (Cape Town-Dakar Tunis) which includes the Maghreb as well as Central, Western and Southern Africa.

The project was born in Cape-Town in 2001 from the will of the Union to work in Africa for:

- The research within the African countries, as a whole, of common legal provisions, civil and commercial procedures and enforcement professionals, having a common specificity in these fields;
- To support the installation of a African legal area for the creation of a uniform instrument allowing the direct transmission of documents and legal decisions between judicial officers;
- To support the harmonization of the education levels of the judicial officers (collaborations charters are already in place between the National School of Procedure of Paris, Tunisia and Morocco)



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The final objective of Cadat is to lead to the creation of a legal area at continental African level, in which enforcement professionals will exert with the same statute and therefore the same attributions and competences.

Finally wherever people unite for the economic welfare, this means legal cogency: good laws certainly but especially carried out laws and for this reason enforced legal decisions...