Harmonization of Business Law in Cameroon: Issues, Challenges and Prospects

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I. INTRODUCTION

Laws were imported in Africa by the colonial powers. The dualist colonial experience of Cameroon left indelible scars on the legal landscape with the result that one part of the country operates a civil law system while the other operates under the common law. Such bi-juralism in the Republic of Cameroon furnishes an excellent example of a mixed jurisdiction.

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Following the colonization of Cameroon by France and Britain, English and French laws were applied in the West and Eastern Regions of Cameroon respectively. This legal balkanization of Cameroon created a legal environment of uncertainty which resulted in a blatant conflict of laws in the same country with one flag, one people and one destiny. Until the recent introduction of OHADA (Organisation pour l'Harmonisation en Afrique du Droit des Affaires) in Africa, Cameroon remained an example par excellence of a confused legal system characterized by outdated or obsolete laws which were not only scanty in nature but also proved largely inadequate both in content and spirit to address the legal issues of modern commercial transactions. In fact these laws had been abrogated in Nigeria, England and France where they emanated. This inability of the Cameroon legal system to adequately address the tenets and problems of the burgeoning and expanding transactions of the business world has been the result of the bi-jural culture of Cameroon. Certainty, simplicity and uniformity in the law governing economic activities in relating states are vital pre-requisites for mutually beneficial interdependence. Harmonization brings about certainty in the law and predictable rules for the determination of practical problems on a uniform basis.

It was thus against this background that OHADA (in English OHBLA: Organisation for the Harmonisation of Business Law in Africa) was created by the Treaty of Port Louis in Mauritius on the 17th of October 1993 in order to provide viable solutions to the legal dilemma that was the brain-child of the bi-jural culture of Cameroon. It is in this context that the harmonization of business law in Cameroon is situated. It is believed that a credible and transparent legal system applicable throughout the country will go a long way in passing the acid test that investors apply in determining where and what to invest. A uniform or harmonized system of business law, clearly formulated and transparently applied would stymie the problems of multiplicity of laws which may serve to confuse potential investors.

This Article examines the historical background to Cameroon's legal framework, the nature and trends of the current Uniform Law reforms as well as the challenges with regard to the development and the implementation of the OHADA Treaty and Uniform Acts. Finally, in keeping with the spirit and philosophy that legal systems are meant to serve as a touchstone of justice and equity, this Article proposes the way forward with the OHADA Treaty and Uniform Acts that have come to stay.

II. THE HISTORICAL BACKGROUND TO CAMEROON'S LEGAL FRAMEWORK

After its discovery by European explorers and merchants, Cameroon underwent a triple colonial experience—German, English and French domination.[1] The German protectorate of Cameroon was officially proclaimed on 14 July 1884. The Germans were defeated in the First World War by the British and French forces in Cameroon in 1916. Under the Treaty of Versailles in 1919, Great Britain administered the portion of the territory lying to the west and France that portion lying to the east. The partition was recognized by the League of Nations which conferred mandates on the British and French to administer Cameroon. Article 9 of the League of Nations empowered Britain and France to apply their laws to the territory subject to their mandate, with such modifications as may be required by local conditions. This article provides the basis and officially marks the beginning of the duality of Western legal systems which the people of Cameroon have since experienced and to which they remain subject to this day. Great Britain further divided her portion of Cameroon into two territories—Northern and Southern Cameroon, both of which she administered as integral parts of her neighbouring colony of Nigeria through which the institutions and practices of English justice were transplanted into British Cameroon. France, for her part, administered her portion of Cameroon together with her colonies in French Equatorial Africa.

After the United Nations conducted plebiscite of 11 February 1961, the Southern Cameroons voted in favour of re-uniting with the French Cameroons which had already become independent as the Republic of Cameroon on 1 January 1960, while Northern Cameroon opted to remain with the Federation of Nigeria. Within the Federation, the former British territory (Southern Cameroons) became the state of West Cameroon and the former French territory, the state of East Cameroon. The Federal Republic inherited all the existing laws of both Federated states. This dual system accounts for the common and civil law flavour in the Cameroonian legal system. By virtue of Ordinance No. 5 of 1924, all ordinances enacted in Nigeria after February 1924 were applicable to the Cameroons under British mandate. This Ordinance is thus the enabling legislation which makes the application of Nigerian and English laws possible in Cameroon. The Anglophone regions continue to apply

1. DAVID E. GARDINER, CAMEROON: UNITED NATIONS CHALLENGE TO FRENCH POLICY (London: Oxford Univ. Press 1963).

current English law by virtue of section II of the Southern Cameroons High Court Law of 1955 which states:

> Subject to the provisions of this law or any other written law, the common law, the doctrines of equity, and the statutes of general application which were in force in England on the first day of January, 1900 shall, in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force within the jurisdiction of the courts constituted by this law.

The significance of the general reception of English law is that it provides the residual law of English-speaking Cameroon, to which reference is made in the absence of any express rule deriving from specific local law. In 1924 all French laws so far applicable in French Equatorial Africa were rendered applicable *en bloc* to the mandated territory of Cameroon by decree of 22 May 1924.

Clearly then, the decree of 22 May 1924 is the enabling statute which renders the application of French law possible in Cameroon. The effect of this was to introduce, among others, the French Civil Code and Commercial Code which continue to serve as the primary source of civil law in French-speaking Cameroon.

In addition to the reception of the common law and civil law, customary law is an established source of law. In the English-speaking regions of Cameroon, customary law is recognized by virtue of section 27 of the Southern Cameroon's High Court Law of 1955. It provides:

> The High Court shall observe and enforce the observance of every native law and custom which is applicable and is not repugnant to natural justice, equity and good conscience, not incompatible either directly or by implication with any law for the time being in force and nothing in this Act shall deprive any person of any such native law and custom.

In the French-speaking regions of Cameroon customary courts were integrated into the judicial system in 1959 by Ordinance No. 59-86 of December 1959. Today, customary courts are included in the hierarchy of courts under the Ministry of Justice. Article 46 of the 1961 Constitution of the Federal Republic of Cameroon, now article 1(2) of Law No. 96-6 of 18 January 1996 to amend the Constitution of 2 June, 1972, maintains the observance of "native law and custom" as a source of Cameroonian law.

The constitution of 4th March 1996 of the Federal Republic of Cameroon, in its article 46, maintained in force all existing laws in both Federated states which were not in contradiction with the Constitution itself. One result has been the perpetuation of three systems of law in Cameroon. Article 68 of Law No. 96-6 of 18 January 1996 to amend the

constitution of 2 June 1972 preserves all legislation passed before 2 June 1972, which has not been amended or repealed by subsequent enactments.

It is clear that the colonial experience laid the foundation for the development of Cameroonian law into a mixed legal system, that is, a system which is derived from both the civil and common law traditions and the native customary law.

It is worth noting that in the area of business law, native customary law has not made a substantial contribution to the development of formal business law. Customary law has made some impact on the law relating to mortgages and land matters. The received common law and civil law operated parallel to each other in the Anglophone and Francophone regions.

The harmonization of business law in Cameroon was done through OHADA. The question is: What is OHADA? OHADA is an international organization that was created by a Treaty signed in 1993 by fourteen African states. As previously noted, the acronym "OHADA" stands for "*Organisation pour l'Harmonisation en Afrique du Droit des Affaires.*"

At present, OHADA has sixteen member states, namely, *Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Federal Islamic Republic of the Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea-Bissau, Guinea Conakry, Mali, Niger, Senegal, and Togo.*

In February 2006, the Democratic Republic of Congo (DRC) expressed its intention to join the Organization and, although in a less formal manner to date, other States such as Angola, Ghana and Liberia have also expressed a certain interest in OHADA.

The idea behind the creation of OHADA sprang from a political will to strengthen the African legal systems by enacting a secure legal framework for the conduct of business in Africa, which is viewed as essential to the development of the continent.

III. THE INSTITUTIONS OF OHADA

In pursuance of the objective of predictability transparency and security for business transactions, through which OHADA operates, five institutions have been established:

1) The council of ministers (*conseil des ministres*), is the legislative body of the organization;

2) The permanent secretariat (*secrétariat permanent*) plays a technical and coordinating role;
3) The common court of justice and arbitration (*Cour Commune de Justice et d'Arbitrage*, CCJA) is the supranational body which ensures the uniform interpretation and application of the OHADA laws. It reviews decisions by High Courts and Courts of Appeal of member states;
4) The regional training centre for legal officers (*École Régionale Supérieure de la Magistrature,* ERSUMA);
5) And the revision of the OHADA Treaty has created the fifth institution, the Conference of Heads of State.

OHADA unifies business law by having the Uniform Acts become directly an integral part of the national legislation of the member states without the necessity of any enactment by their national parliaments. By virtue of article 10 of the OHADA Treaty, its Uniform Acts automatically and directly repeal all existing legislation and supersede any future legislation on the same subject matter. OHADA laws are essentially civil law based since they originated in countries with a civil law tradition.

There are nine Uniform Acts presently in force, namely, General Commercial Law, Commercial Companies and Economic Interest Groups, Accounting Law, Secured Transactions and Guarantees, Bankruptcy Law, Arbitration, Carriage of Goods by Road, Simplified Recovery Procedures and Measures of Execution and Cooperatives and Mutual Societies.

IV. THE ISSUES AND CHALLENGES WITH REGARD TO THE DEVELOPMENT AND IMPLEMENTATION OF THE OHADA TREATY AND UNIFORM ACTS

The adoption of new legislation usually poses various problems, one of which is acceptance by the users: academics, judges and legal practitioners. The coming into effect of the OHADA Treaty and Uniform Acts are no exception. The situation was even more acute in the Anglophone provinces where OHADA was perceived as an instrument to undermine the cherished common law. Generally OHADA was received with great suspicion. Justice Njoya said:

> It is with great suspicion and reserve that common law courts have received the Treaty and its Uniform laws. The highhanded manner in which the text was dumped on them, the fact that French is the only working language of OHADA, and the fact that Cameroon took part in the

> deliberations resulting in OHADA texts as a Francophone nation are reasons giving rise to the suspicious attitude.[2]

The applicability of the OHADA Treaty and Uniform Acts raised constitutional issues in Cameroon. Specifically, OHADA's language aroused debates on the constitutionality of the provisions of the OHADA Treaty within the context of bilingual and bijural Cameroon.[3] Article 42 of the treaty states that the working language of the treaty is French. The Treaty and the Uniform Acts are drafted and issued in French. Implicitly, any document in English or any other language would be a translation from French to English or Spanish or Portuguese. Most of the texts in translation have been criticized for being literal, inadequate and rather nebulous. They are simply approximations, and in many cases there are no legal equivalents in English. The poor translation of legal terminology in the Uniform Acts does not permit legal practitioners to easily reconcile civil law concepts with common law equivalents. One of the regrettable translations is the rendering of "*Registre du Commerce et du Crédit Mobilier*" which was translated as "Trade and Personal Property Credit Register." It is doubtful whether any such notion exists under the common law for when dealing with property rights reference is made either to realty or real property rights or personalty or personal property rights.

In most of the Uniform Acts, the procedure for seizing the competent jurisdiction is by '*assignation*.' *Assignation* has been translated in some Uniform Acts as writ of summons, summons or motion on notice. However, '*assignation*' as a civil law concept has no equivalent in the common law. Unlike '*assignation*' which is an extra-judicial act, a writ of summons is signed by a judge, magistrate or other officer empowered to sign summonses. Above all, contrary to the provisions of the Uniform Acts and in line with the present procedure applicable in the Anglophone provinces, it is not possible to seize the Court of First Instance and Court of Appeal by a writ of summons or

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2. Irene N.T. Njoya, 1, *OHADA Treaty—An Unruly Horse, The Impartial Judge*, 1 SOWEMAC, JUDICIAL J. 21 (2003).

3. There were elaborate discussions on the constitutionality of the OHADA Treaty in Cameroon at the OHADA Seminar on the Theme: 'The applicability of the OHADA Treaty in Cameroon,' see Proceedings of the OHADA Seminar held at the University of Buea, Buea, Cameroon, 18-19 September 2003. For the first time in Cameroon, this seminar brought together jurists from both common law and civil law provinces of Cameroon. This cross-border gathering was the springboard for multi-lingualism. It is worth noting that there is a proposed amendment to article 42 of the OHADA Treaty currently under discussion. If adopted, it will usher in a multi-lingual dimension of the OHADA project: four languages: French, English, Spanish and Portuguese, shall be the working languages, of OHADA; see Appendix 3.

summons. Here again, the Anglophone courts continue to entertain actions commenced in accordance with modes dictated by the above cited procedural laws. The question is: Does this amount to a violation of OHADA law?

There is a need for co-drafting future OHADA Uniform Acts in order to avoid the problems of translation. Furthermore, it would be desirable to have a co-revision team to work together on the existing Uniform Acts. This team should employ contextual meanings of terms and the adaptation approach to translation. Member states should develop an OHADA lexicon of words, phrases and concepts. This would go a long way in clarifying the misunderstandings of legal jargon and technical terms.

The new article 42 proposed by treaty revisions signed in Quebec on 17 October 2008, and circulating to complete ratification, goes a long way to rectifying these issues. If adopted, it will add English, Spanish and Portuguese to French as working language. In the event of difference among the versions, however, the French version will control. Because translation, especially legal translation, affects concepts as well as mere words and phrases, the adequacy of the new article 42 will depend on the quality of the actual translations. The creation of such teams of translators becomes yet more imperative as soon as the new article 42 is effective.

Article 9 of the treaty states that the Uniform Acts should be published in the official gazette of contracting states. The Cameroonian Constitution requires that publications in the official gazette be in both French and English in order to reflect the bilingual character of the country. In the case of *Akiangan Fombin Sebastian v. Foto Joseph & Others*,[4] Justice Ayah Paul makes the point that a treaty which is basically French suffers from self-exclusion from the English-speaking provinces. Following his reasoning, by implication the OHADA Treaty and its Uniform Acts cannot be applied in the English-speaking provinces of Cameroon. A question which is often asked is, what would happen to a case that leaves the courts in the English-speaking provinces of Cameroon to the CCJA (Common Court of Justice and Arbitration) in Abidjan since the proceedings and decisions of all courts below would have been in English? Perhaps, the CCJA would refuse to entertain the matter so long as the treaty's article 42 constitutes French as the only working language of OHADA; perhaps, in the interim, the CCJA could distinguish between a working language and an official language, and

4. Suit No. HCK/3/96 of 6 Jan. 2000 (unreported).

find some compromise to allow documents to be submitted in their original language. In the same vein, it may be assumed that, strictly applied, OHADA does not allow the courts in the English-speaking provinces of Cameroon to articulate in English, at least until an amended article 42 adds English (along with Portuguese and Spanish) as a working language.

In the English-speaking provinces of Cameroon, the treaty was originally seen as an instrument of French, and Francophone-Cameroonian neocolonialism, since it ignored the bilingual and bijural nature of the country. Today, however, the reality is that, even before adoption of the amendment adding languages, official OHADA documents, including the treaty and the Uniform Acts, are translated from the French, although the French version remains the authentic and correct document. For the moment, pragmatism in addition to article 42 demands this reference back to the original French, because of problems relating to translation of words, phrases and concepts from one language to another. The habit of referring back to the French will have to continue, of course, even if the currently circulating treaty revisions are fully ratified; as noted above, the French version would remain the controlling text in the event of differences.

If that is the focus concerning Cameroonian bilingualism, issues of OHADA in Cameroon are further compounded by the fact that the country is bijural, with common law and civil law operating parallel to each other in the Anglophone and Francophone provinces, respectively. The Uniform Acts are strongly grounded in civil law; except for the Anglophone provinces of Cameroon, the OHADA member states share a tradition of civil law. Consequently, the common law jurists are braced for a novel legal battle. It is not surprising that there have been evocations such as 'What common law is left?' and 'Is OHADA common law friendly?'[5]

OHADA has even been described as an 'unruly horse.'[6] At an International Conference in Lagos in 2004[7] participants asked questions such as what were the drafters of the OHADA Treaty harmonizing since they were dealing with basically civil law. In fact, even in OHADA'S Francophone region the countries had different business laws, albeit

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5. *See* Keynote Address by Akere Muna: Is OHADA 'Common Law Friendly?,' in Proceedings of the OHADA Seminar held at the University of Buea, Buea, Cameroon, 18-19 Sept. 2003, at 7-16.

6. *See* Njoya, *supra* note 2, at 21.

7. *See* Report on the first OHADA International Conference, held on 30 Apr. 2004 at Lagos Hotel, Ikeja, Lagos, Nigeria.

based on the same civil law heritage: some had updated pre-independence legal regimes more than others; consequently, even among Francophone countries, harmonization through OHADA has been meaningful.[8]

Nevertheless, the conference participants' interrogation of OHADA's usefulness is representative of early reactions of Anglophone lawyers in Cameroon, as there is a certain degree of nostalgia for common law amongst the English-speaking jurists.[9]

Some in Cameroon have argued that the bijural nature of the country ought to be preserved and promoted, that any meaningful reform should take into consideration Cameron's national peculiarities.

There is no reason to believe that another jurisdiction having an Anglo-Saxon legal tradition would be instinctively any more willing to replace its system with a civilian legal system. Another main concern relating to the OHADA Treaty is that member states are required to renounce their legislative and judicial sovereignty in matters relating to business law.[10] The OHADA reform does in fact entail a transfer of sovereignty: for example, a supranational body, the Council of Ministers, not the national parliaments, adopts the Uniform Acts; the CCJA in Abidjan, and not the national supreme courts is the final court of justice. This has generated criticism and unease among those who contend that parliamentarians and the supreme courts of member states have become moribund. The resistance is buttressed by the fact that parliamentarians are elected officials, whereas the Ministers of Justice and Finance who

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8. For a description of the state of pre-OHADA business laws even in francophone West and Central Africa, consider also Julie Paquin, L'harmonisation du droit des affaires en Afrique; le projet de l'OHADA, Ohadaga D-04-15 (2001), http://www.ohada.com; http://www.barreau.qc.ca/publications/journal/vol33/no15/ohada.html (last visited 18 Apr. 2008).

9. The University of Buea played host to three international seminars: The Applicability of the OHADA Treaty in Cameroon (18-19 Sept. 2003); the Implementation of the OHADA Accounting System: Practice, Problems and Prospects (15-16 Sept. 2005); The Implementation of the Uniform Act on Simplified Recovery Procedures and Measures of Execution in Cameroon: Practice, Problems and Prospects (15-16 Nov. 2005). It has organized five workshops on various themes: The Implementation of the OHADA Treaty and Uniform Acts in Cameroon (April 2003), by a student body called the Law society; Implementation of the Uniform Act on General Commercial Law: Practice, Problems and Prospects, hosted by FAKLA (Fako Lawyers Association), Limbe (30 Oct. 2005); Implementation of the Uniform Acts on General Commercial Law, Bankruptcy, Securities and Simplified Recovery Procedures and Measures of Execution, hosted by the BALA (Bamenda Lawyers Association), Bamenda (30 Dec. 2005); Implementation of the Uniform Act on Company Law, hosted by University of Douala, Faculty of Law (10 Dec. 2005), and Implementation of the Uniform Acts: Problems and the Way Forward, by MELA (Meme Lawyers Association) (16 Jan. 2006). These seminars and workshops have served as a very useful resource channel for the information put together in this Article.

10. *See* articles 6, 10, 14 and 20 of the Treaty on the Harmonization in Africa of Business Law.

make up the Council of Ministers are appointees of the member states. One response to this criticism is that OHADA refers only to business laws and that, consequently, the contracting parties do not in fact give up much sovereignty. Another is that, if the OHADA Treaty had been properly adopted in Cameroon, it would obviate the question about the Council of Ministers' legitimacy for acts applicable to Cameroon: the will of the people, as expressed in the Constitution, has been respected. Thus, it will be important for any further adhering states to respect all procedural requirements.

At a different level, the OHADA national commissions have evolved *sua sponte* as an interface both between the government and the Council of Ministers and between the national governments and the jurists and business people most directly affected by the OHADA laws. Contracting states have begun to recognize that these commissions are very important to OHADA's functioning and legitimacy: Acting through the Council of Ministers, they have sought to formalize the commissions.

Despite their importance, commission members are appointed by the executive, not elected by the people. Of course, freely elected parliamentarians can be unimpressive and lack independence, and judges and ministers appointed by the executive can be both skilful and independent. However, it is inevitable that the calibre of all these professionals, as well as the members of the national commissions, may be compromised and that the current selection processes may result in allegiance and mediocrity.

With respect to judges in particular, Anglophone Cameroonian legal professionals are particularly concerned, as they argue that the common law's tradition of elevating accomplished barristers to the bench explains why the supreme courts of most common law countries harbour the most skilled and experienced judges, who, in consequence, are able to withstand external pressures. These Anglophone sceptics view with dismay the OHADA requirement that decisions of the High Courts and Courts of Appeal be appealed directly to the CCJA; thereby bypassing the most learned and esteemed jurists. For some Anglophones, the cost of losing access to the most respected jurists exceeds the benefits to be extracted from uniformity in interpretation of the business laws. For all the criticism, the CCJA is a very important and innovative institution, which lies at the heart of the OHADA system.

Another concern is a paucity of trained personnel. A lot of the misapprehensions and misunderstandings within Anglophone Cameroon concerning the OHADA laws stem from the fact that very few jurists are sufficiently skilled in business law and comparative law to advise clients

and judge cases efficiently under OHADA. For example, a lawyer trained under the common law cannot overnight be cast into the civil law mould and be competent to plead before the CCJA, whether orally or in writing. The Regional Training Centre for Legal Officers (ERSUMA) is located at Port Novo in Benin. It is a laudable idea that there be a training school, but it falls short of the needs of Anglophone lawyers trained in the common law tradition. The school is centralized, and training is limited to a few; it seeks to diffuse widely knowledge about OHADA and its laws by 'training the trainers.' A legal professional who obtains an ERSUMA certificate is expected to share the acquired knowledge upon returning home. For Anglophones, however, the first hurdle is that currently the training in Benin is in French; other languages could profitably have been added before, but will need to be included upon the revision of article 42 to include English, as well as Spanish and Portuguese, as working languages. There is very specifically a need to train lawyers of Anglo-Saxon legal heritage using the English language as the medium of expression. This may require a substantial change in ERSUMA'S programme and orientation in order to meet the needs and aspirations of a common law lawyer.

The commercial registry has not fully achieved its objectives of ensuring legal security because of inefficiency, maladministration and lack of basic infrastructure. For example, there is lack of unanimity in the registration procedure, and the contents of information required in the forms vary from one jurisdiction to another. There is as yet no well-organized and equipped commercial registry in Cameroon. There are no files of registered companies, only a ledger of entries of registered companies. There are no computers and skilled employees. Commercial operators are plagued by delay and inefficiency. The registration process is slow. This delay is often caused by inadequate personnel, inadequate facilities and crude registration processes.

It is commonplace to find companies and natural persons operating without authorization or any modification in status. There is an indifference to the requirement for registration. Most commercial operators are unaware of its implications for themselves, others and the nation. Registration is viewed as a formality and not an obligation. Most businesses operate on an informal basis in order to evade taxes. Evidently, this would have a rippling effect on the system, such as perpetration of illegal contracts and reduction of investor confidence. It is clear that the objectives of OHADA are under threat because of the practical realities on the ground. This lack of basic infrastructure defeats the objectives of transparency and predictability.

V. THE NATURE AND TREND OF THE CURRENT UNIFORM LAW REFORMS

The OHADA Uniform Acts while essentially originating from countries with a civil law tradition and significantly French–law inspired, have consciously benefited from a plethora of international legal sources. This is true as far as some Uniform Acts which are presently in force and also others that are still in preparation. Despite their civilian inspiration OHADA is a mixed legal system. International legal instruments were taken into account in the drafting of the following Uniform Acts: General Commercial Law, the Law on Arbitration, Accounting Law, the Law of Carriage of Goods by Road and the Law on Secured Transactions and Guarantees.

A. The Uniform Act on General Commercial Law

The Uniform Act on general commercial law covers the status of commercial operators (*commerçants*), the commercial registry, the leasing of commercial premises, the operation and sale of businesses, commercial intermediaries and the sale of goods.

The law on the sale of goods under OHADA is based on the Vienna Convention of 11th April 1980 relating to contracts for the international sale of goods which was ratified under the auspices of the United Nations in view of facilitating international trade. The rules and principles relating to the formation of the contract of sale of goods and the obligation of the contracting parties are similar under OHADA and the international sale of goods. Under both systems, an offer is defined as a proposal addressed to one or more identified persons in order to create a contractual relationship and it is a manifestation of a unilateral willingness by which a person reveals his intention to enter into a contractual relationship and states the required conditions for the said contract. Acceptance is the result of a declaration or any other behaviour indicating that a person to whom an offer is made consents to the said offer. With regard to the obligation of the parties, the two instruments provide similar rules concerning the rights of sellers and buyers. A seller is required to deliver the goods sold, together with any relevant documents to the purchaser and where necessary, ensure that the goods comply with contractual provisions. The seller is also required to warrant against any defects in the goods and must deliver them free of any third party rights or claims. Similarly, the purchaser is obliged to pay the contract price and to take delivery of the goods. However, there are significant differences relating to the rules on transfer of risk and title.

Most of the requirements in the provisions of this Uniform Act are similar to the common law, at least in result if not in form, and provide security that may encourage local and international businesses to invest in the OHADA member states. Convergence of laws is strongly manifested; this is unsurprising as commercial law has long been the object of convergence. It is worth noting that the common law family also, draws some of its roots from Roman law. There is scope for identifying shared general principles. In the seventeenth and eighteenth centuries, two outstanding commercial lawyers, worked to adapt the common law to the requirements of the merchants. They thus contributed to the eventual integration of the very international lex mercatoria into the common law.

B. Arbitration Under the OHADA Law

Arbitration may be defined as the resolution of a dispute by private persons referred to as arbitrators . These private persons are appointed in principle by the parties in dispute by virtue of an arbitration agreement. The jurisdictional mandate of an arbitrator ends with a decision called arbitral award which terminates the dispute. A distinction is made between ad hoc arbitration and institutional arbitration. In ad hoc arbitration, parties freely define the rules relating to the composition of the arbitral tribunal as well as those relating to the procedure and the substance of the dispute. Institutional arbitration is administered by an arbitration centre or institution in conformity with the rules of the arbitration centre. OHADA arbitration has a dualistic aspect. It is regulated both by the Uniform Act on Arbitration and by the rules of arbitration of the Common Court of Justice and Arbitration (CCJA). These two legal instruments are based on international conventions on arbitration.

The drafting of the Uniform Act on arbitration involved the United Nations Commission on International Trade Law (UNCITRAL) which is the major legal organ of the United Nations in the area of international commercial legislation. It was commissioned by the United Nations General Assembly to enhance the harmonization and the progressive unification of international commercial legislation. Members of UNCITRAL are drawn from various regions of the world and are elected by the United Nations General Assembly taking into account the representation of major economic and legal systems in the world as well as in developed and developing countries. When called upon to draft harmonized legislation UNCITRAL usually takes into consideration the rules of common law as well as those from the civil law tradition. It is

not surprising therefore that with the participation of UNCITRAL, the Uniform Act on Arbitration, in the areas of composition of arbitral tribunal, arbitral proceedings, arbitral awards and remedies against awards as well as their enforcement, borrowed significantly from the UNCITRAL Model law on International Commercial Arbitration of 1985.

OHADA has adopted principles that are in conformity with international trends in arbitration. For example, it adopts the principle of autonomy of the arbitration agreement which posits that an arbitration agreement is independent from the main contract and its validity is not affected by the nullity of the main contract. Also, it adopts the principle of competence which attributes to arbitrators the powers to rule on their own competence when the existence or the validity of the arbitration agreement is contested before them.

The OHADA Uniform Act is compatible with international conventions to which OHADA Member States were already signatories. Indeed, article 34 of the Uniform Act stipulates that foreign arbitral awards may be recognized within OHADA Member States by virtue of subsequent applicable international conventions. This stipulation which refers tacitly to the New York convention ratified on December 10th 1958 relating to the compulsory enforcement of foreign arbitral awards seeks to enhance the practice of arbitration within the OHADA member states.

This Uniform act has made rules relevant to the local context. By offering a three-tier accounting system depending on the size of the entity, the OHADA law has taken into account the obstacles that small and medium size enterprises face in maintaining proper accounting records and generating meaningful financial information. Even if accounting based on the requirements of the International Financial Reporting Standards (IFRS) is beneficial, this conceptual framework was created largely for transnational entities operating in developed countries.

C. The Uniform Act on Contracts for the Carriage of Goods by Road

The Uniform Act on Contracts for the Carriage of Goods by Road was adopted in Yaounde on 22 March 2003 and entered into force on 1st January 2004. This Uniform Act is applicable to all contracts for the carriage of goods by road when the place where the carrier takes over the goods and the place designated for delivery are located either on the territory of a member state or on the territory of two different states where at least one of those states is a member state.

The Uniform Act is based on the Convention relating to the Contract for the International Carriage of Goods by Road (CMR) signed

in Geneva on 19 May 1956 following a special working session of the Domestic Transport Committee of the UN European Commission for Europe. OHADA borrowed so much from the CMR Convention to the point of completely reproducing some of its provisions. It is noteworthy that whenever the United Nations is involved in the drafting of a harmonized law, it takes into account all the continental legal systems and the common law system.

In its quest for modernity and realism, the OHADA legislator included other provisions that were more specific and adapted to OHADA member states. This is in conformity with article 1 of the OHADA Treaty which provides for the drafting and adoption of simple, harmonized, modern laws adapted to the economic context of OHADA member states. For example, although the two laws provide that the contract for the carriage of goods or the bill of lading must be in writing, the OHADA law defines writing in a more specific manner stipulating that it is a "a series of letters, characters, numbers or any other sign or symbol which have an intelligible meaning and which are put into writing or in any electronic format using information technology."

The rules of arbitration of the CCJA are based on the International Chamber of Commerce (ICC). Indeed, besides the CCJA's jurisdictional function as the Supreme Court of OHADA member states on matters relating to business law, the CCJA administers an institutional arbitration which is international and autonomous similar to the International Court of Arbitration of the International Chamber of Commerce in Paris. The CCJA appoints, confirms or replaces arbitrators, ensures the smooth holding of proceedings, and examines draft arbitral awards made by the arbitrators.

D. The OHADA Uniform Act on Accounting

The OHADA Uniform Act on accounting lays down a harmonized accounting system for companies of the OHADA member states. It entered into force on the following dates: 1st January 2001 for companies' individual accounts and 1st January 2002 for consolidated and combined accounts. Articles 1 and 2 of this law provide for the implementation of a general accounting system by private, public and semi-public companies and in general by every entity which operates within the OHADA member states. The OHADA accounting system has been inspired by international norms laid down by the International Accounting Standards Board (IASB) which seeks to write down and publish accounting norms to be observed in drawing up financial statements and to enhance their acceptance and application in the world.

The OHADA accounting system states fundamental principles to ensure a reliable quality of accounting information and accounts. The adoption of these principles and the objective of presenting a faithful image is described as a transposition into the OHADA accounting law of the common law concept known in Britain as "true and fair view" and in the United States of America as "fair presentation."

It is noteworthy that by virtue of article 2 of the OHADA Treaty which defines the areas comprising business law and specifies that the Council of Ministers may include other areas, the Council during its March 2001 meeting which took place in Bangui, Central African Republic added seven new areas in the harmonization project of business law in Africa. These areas include the law on banking, competition, intellectual property, contracts, civil societies, co-operative and mutual societies and the law of evidence. Some draft Uniform Acts are already in preparation. They include the following: Uniform Acts on contracts, sales to consumers, labour and co-operatives and mutual societies. International instruments have greatly influenced the law on contracts, sale to consumers and labour.

E. The Uniform Act on Secured Transactions and Guaranties

The Uniform Act on secured transactions and guaranties is a coherent body of law, and many of its basic terms and concepts are similar to the common law and are also consistent with international business practice. This Uniform Act has the essential elements necessary to create a modern and efficient system of personal and real property securities. The law provides various guaranties which protect creditors, including banks, by securing the enforcement of their debtor's obligation.

F. Draft Uniform Act on the Law of Contracts

In a meeting organized in Libreville on February 2002, the Council of Ministers instructed the Permanent Secretariat of OHADA to contact the International Institute for the Unification of Private Law (UNIDROIT) in connection with the preparation of the Uniform Act on the law of contract. This draft covers major aspects of the law on contracts, namely, formation, validity, interpretation, execution and non-execution. The working team of UNIDROIT are composed of representatives of major legal systems of the world. This proposed draft law on contract is adapted to the modern international commercial environment. The principles of UNIDROIT have been applied in various legal and arbitral cases. This law has been a subject of discussion in

several international seminars and conferences. The UNIDROIT principles have inspired reforms in Russia, Estonia, Germany, Argentina, china and Lithuania.

G. Draft Uniform Act on the Law on Consumer Sales

This Uniform Act was conceived by a Canadian expert within the framework of the support that Canada gives to OHADA. The draft was examined during a conference organized by UNCITRAL in Vienna from 23 to 29 April 2003. This conference brought together some consumer organizations based in some OHADA member states. Therefore, not only was the African opinion taken into account in the drafting of the law on consumer sales, but also the opinion of UNCITRAL, whose objective is to ensure that all major legal systems of the world are taken into account in the drafting of international legal instrument.

H. Draft Uniform Act on Labour Law

The drafting of the Uniform Act on Labour Law which is still under preparation provides some fundamental principles of labour law which are already being applied by OHADA member states as a result of their ratification of major international conventions such as the International Labour Organisation (ILO).

VI. THE WAY FORWARD

With regard to the uniformization of laws under OHADA, important questions must be asked: can OHADA provide a bridge between common law and civil law systems? Is OHADA compatible with common law? Does OHADA possess the capacity to deal with the diversity of legal and judicial traditions of Africa? Does OHADA take into consideration African cultural and traditional norms? It would seem that if it does not, then the integration process will be an uneasy marriage. Can the bujural nature of Cameroon be preserved, let alone promoted, within the context of OHADA? Can meaningful reforms take into consideration the national peculiarities? Most importantly, can OHADA accommodate the contradictory conditions of contemporary society, and the challenges of globalization and modernization? The appropriate approach should be to promote such laws, principles and practices that accord with the orthodox and universally accepted standards of justice and fairness modified to suit Cameroonians and in fact African realities.

Although the law should naturally reflect the ideas and orientation of the law makers, it will not succeed if it only imposes, or appears to impose, some abstract justice that takes no account of the culture, traditions and aspirations of those on whom it will be administered. The reform process ought to envisage that the two legal systems in the Anglophone and Francophone provinces of Cameroon will continue to exist like permanent birthmarks. It is hoped that this new legislation will help build stronger bridges between legal traditions and cultures on the African continent. It should to some extent overcome the traditional distinction between common law and civil law systems, while respecting the role to be played by the traditional law within the context of African legal systems.

VII. CONCLUSION

As the Cameroonian experience demonstrates, harmonization of business laws in Africa through OHADA is a significant step towards overcoming traditional distinctions, at least between the common law and the civil law systems. These elegantly drafted statutory provisions must be enforced, however, to be effective. The task is not Herculean since, in the field of business law, both of these northern-inspired legal systems seek to provide and reinforce predictability: business law is one area where the traditional line separating civil law and common law is blurred. Even the Uniform Acts relating to General Commercial Law, Securities and Guaranties, and Commercial Companies, which are the OHADA laws that have taken the most from civil law, adumbrate principles very similar to those under the common law. Other OHADA Uniform Acts themselves are products of convergence of laws. For example, in the area of accounting, transportation of goods by road, and arbitration, the Uniform Acts display a move towards international standards. It is clearly in the interest of Africa eventually to have a single and Uniform law over the region. Harmonization of business in Africa falls naturally within the framework of the objectives of regional and continent wide organizations. Among Anglophones, among lawyers trained in the common law, Cameroon is the testing ground, the laboratory for this experience.