

# Challenges justifying the necessary harmonization of economic and financial criminal laws in O.H.A.D.A. space

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**Abstract:** Some African countries have decided to create the Organization for the Harmonization of Business Law in Africa (O.H.A.D.A.) to build a common legal space to meet their economic and social needs. This organization results from their desire to standardize their legislation to find solutions to the persistent economic sluggishness generating endemic mass unemployment. Its primary purpose is to restore confidence to investors who, for a long time, have turned their backs on Africa because of the obsolescence, scattering, and extreme heterogeneity of its legislation of an economic nature.

With this in mind, the Community body has introduced several uniform laws conducive to economic activity between Member States. That raises the question of security within this regional space. Appearing as a strategic weapon, the regional legislator has put legal means of protection on the civil level, which unfortunately proves to be insufficient. Because of this, recouring to criminal law is necessary.

However, we note that the member states of the O.H.A.D.A. consider the penal field their preserve. The corollary of this national character results in a need to move towards unifying the penal field within the framework of an organization of integration, which is O.H.A.D.A. That constitutes a problematic challenge regarding determining a penal policy in the regional space.

**Keywords:** Challenges; Business Law; Criminal Law; Economic And Financial Law; O.H.A.D.A.

## 1 Introduction

The interconnection between law and economics is not new. Regarding this close bond, Adam SMITH considered the economic field *"part of the legislator's knowledge."*<sup>[1]</sup> That can undoubtedly justify the legal framework of the economic field in order to achieve specific objectives.<sup>[2]</sup> Moreover, this intervention of the law should not be limited to the only choice of economic actors to determine permitted or prohibited behavior. It must also consider the mobility and variability of criminal law intervention.

National criminal law is an integral part of sovereignty. However, it has been disturbed by factors of internationalization. These factors have taken various forms in time and space: wars, the principles of human rights, piracy, the black slave trade, and colonization...<sup>[3]</sup>

Nowadays, the criminality increase is linked to industrial development. Whoever talks about industrialization talks about economy, finance, and trade. Hence the mobility of crime.<sup>[4]</sup>

Mobility is the ability to accomplish or undergo

specific social order changes. In the framework of this study, mobility refers to the character of adapting situations that allow to organize and make operational a certain number of offenses. The situations can be the organization of the crime according to the opportunities that arise (strategic situations) or situations that favor the emergence of a new crime category.<sup>[5]</sup>

This mobility of worldwide criminality has given birth to a certain number of crimes, among which: are money laundering, financing of terrorism, and tax fraud.

Money laundering consists of concealing the origin of a sum of money obtained through illicit activities and redirecting it to legitimate activities. Money laundering comes from black money, referring to illegally obtained funds.<sup>[6]</sup>

Terrorist financing is intended *"to provide or raise money to commit terrorist acts. Terrorist financing is being fought to eliminate or minimize funding opportunities. Terrorist financing has generated coordinated international and multilateral action following the recommendations of the Financial Action Task Force."*<sup>[7]</sup>

Tax evasion is the unlawful deduction from the tax

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legislation of a State of all or part of the taxable matter of a taxpayer.

Depending on the context, these offenses may have national, sub-regional, regional, and international connotations. It means that rules are or can be enacted to make their struggles effective.

The factors mentioned above hardly spare business life. That is the whole problem of criminalizing business crime.

Far from the debate on decriminalizing business life, O.H.A.D.A. criminal law has contented itself with penalizing acts relating to the life of the most vital societies. Therefore, the need to make more extensive use of criminal business law must be considered at the level of legislation and its application in the criminal courts.

It would be necessary to accomplish that, to determine the area of application of the incriminations and the conditions of application of the penal sanctions.

## **2 The problematic determination of the field of application of the incriminations**

The first difficulty in determining the scope of O.H.A.D.A.'s criminal policy is related to its variability in the O.H.A.D.A. space. That is due to the overlapping jurisdiction (imprecise in scope but obligatory) between the member states and O.H.A.D.A. in treating business crime and crime and the ad hoc nature of O.H.A.D.A.'s intervention.

On the normative level, the source of such variability in criminal policy is undoubtedly the content of the provisions of Article five, paragraph two of the Treaty. Article five of the said Treaty states that *"the acts taken for the adoption of the common rules provided for in Article one of this Treaty shall be referred to as "uniform acts." Uniform acts may include criminal provisions. States Parties undertake to determine the criminal sanctions incurred."* By these provisions, the Treaty establishes two spheres of competence, a competition of competence in matters of incrimination (the O.H.A.D.A. legislator and the national authorities) and a single sphere in matters of sanctions, namely the national authorities.

A second *"material"* or *"disciplinary"* dispersion of

this substantive criminal law must be added, which leads to a harmonized division of criminal law. The result is either a dichotomy of criminal policy.

Thus O.H.A.D.A. has determined certain areas in which it has the fullness of these competencies while reserving the right not to interfere in purely national economic fields.

### **2.1 The hard determination of proper fields of materials to be harmonized**

Anxious to build a common legal space to meet their economic and social needs, some African states have decided to create O.H.A.D.A. This organization results from their desire to standardize and even harmonize their legislation to find solutions to the persistent economic sluggishness, which generates endemic mass unemployment. Its primary vocation is to restore confidence to investors who, for a long time, have turned their backs on Africa because of the obsolescence, the scattering, and the extreme heterogeneity of its legislation to regulate the business world.

The objectives of O.H.A.D.A. were, among other things, to create a climate conducive to the development of African economies through guarantees and judicial security.

One of the objectives of O.H.A.D.A. was to create an environment conducive to developing African economies through guarantees and judicial security.

After more than twenty years of the life of this organization, there is an effective establishment of legal means of protection at the civil level. To highlight these guarantees, one must base one on the community texts supplemented by the national texts of the States Parties. Legal certainty thus appears to be a strategic weapon for the legislator. It allows it to attract and favor investors in the said zone. It is thus noted that the O.H.A.D.A. Uniform Acts have in their corpus a whole legal arsenal of protections for the actors involved in the economic life of the O.H.A.D.A. space.

On another side, we notice that Member States' national legislation does not leave the investors without the same protections. However, it is essential to note that all these guarantees are sometimes insufficient at the civil

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level to ensure the rights and duties of economic actors.

The explanation lies in the complex determination of the matters that fall within the scope of O.H.A.D.A. law, including the criminal field. It again shows that O.H.A.D.A. has to conduct a long mediation with the member states. It shows that some matters escape the organization by falling under the jurisdiction of the States.

### **2.1.1 The complex appreciation of Subjects retained by O.H.A.D.A.**

After negotiations between O.H.A.D.A. and its member countries, several areas have been conceded to the regional entity.

However, it appears that these subjects have brought difficulties that deserve to be mentioned before presenting the consistency of the subjects retained by O.H.A.D.A.

#### **2.1.1.1 Problems related to subjects determination**

In addition to regulating specific disciplines in various countries, O.H.A.D.A. faces other essential problems. In order to highlight them, it would be necessary first to go back in time, i.e., to the beginning of the appearance of the community organization, and then to examine in detail the current State of the existing problems.

Concerning the difficulties that existed at the beginning of O.H.A.D.A.'s emergence, they are related to the functioning of the institutions and organs of the organization and the implementation of uniform acts.

At the operational level of O.H.A.D.A.'s institutions and bodies, a leaders' meeting was held in N'Djamena from 16 to April 18, 1996. During this meeting, the participants decided to establish the O.H.A.D.A. instances rapidly. Distribution of seats and internal functions has been made among the forum member states without a fluid legal basis.<sup>[8]</sup> In other words, the informal framework was favored over legality. This decision was based on the need to allow O.H.A.D.A. to start up quickly, on the fringe of the Treaty.

Thus, this harms the source, increases the financial burden of O.H.A.D.A., and frustrates the countries excluded from the system.<sup>[9]</sup>

Indeed, several decisions were taken informally. However, the Conference of Heads of State and Government is the most interesting.

Beyond its creation, the Conference of Heads of State and Government undeniably has three flaws.<sup>[10]</sup>

- First, there is potential to transform O.H.A.D.A., initially conceived as a technical organization for legal integration, into a political organization. That is not the case with A.I.P.O. or I.A.C.I.M., which have the same legal integration purpose but do not have such an organization.

- Secondly, institutionalizing Heads of State and Government meetings creates a cumbersome and costly process, which informal consultations can advantageously replace.

- Finally, setting up this meeting will inevitably raise the question of its cycle and the mandate of the presidency, which are not regulated by the revised draft but must be reconciled with the issues identified for the Council of Ministers.

As for the problems related to implementing Uniform Acts, they concern both the development and the application of Uniform Acts.

In drafting uniform acts, the difficulties are linked to the choice of areas to be standardized and the limits of standardization imposed on O.H.A.D.A.

Regarding fields choice that must be standardized, difficulties appear at the delimitation of the field of standardization and the limits of standardization imposed on O.H.A.D.A.

As for the delimitation of standardization's field, the Community organization has enshrined in Article two of its founding Treaty the field of intervention.

This provision merely lists the subjects. That is understandable for some authors and the Conference of Heads of State and Government. However, in proceeding this way, the ambiguity lies in the absence of criteria inherent in business law. There is also the problem of harmonizing the business law's delimitation. Therefore, delimiting standardization's fields may be understandable but not exhaustive.

Thus, the Council of Ministers must systematically study all its components. These are economic actors, behaviors, goods, and procedures. In addition, it must always consider the specificity of business law and the

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relevance and usefulness of the general legal theory in standardizing regulations; intended to facilitate trade.

There are two types of limitations: those related to the unique nature of business law and those inherent to the competition of other legal integration organizations.

➤ **Limitations related to the unique nature of business law**

Business law is not specific or autonomous in all fields of law. In many areas, it adheres to general law rules and the general theory of law, especially in legal acts and facts like human rights.

The significant involvement of common law in some issues should prohibit O.H.A.D.A. from intervening to standardize it. The reasons can be underlined by the example of a supposed (fictitious) uniform act on the general theory of contracts. This Act equally applies to all commercial companies, even if O.H.A.D.A. has intervened, with good results, on questions of general scopes, such as securities, procedures, and simplified recovery methods.

This omnipotence of the C.C.J.A. in the general law field will lead to its clogging and deprivation, leading to the impoverishment of national courts of appeal.

For instance, when we choose to dissociate the two cassation procedures (C.C.J.A. and National Court of Cassation) depending on whether it is a commercial or civil contract, it is regrettable for legal and judicial security to risk resolving the conflict on the same legal point.

➤ **Limitations inherent in competition with other legal integration organizations**

This competition can be total or partial. That is complete when O.H.A.D.A. is confronted with an organization whose competence is determined explicitly and exclusively by its organizational Treaty. It is the case of the Inter-African Conference on Insurance Markets, The Organization of African intellectual Property, the Economic and Monetary Community of Central Africa and West African Economic and Monetary Union W.A.E.M.U., and C.E.M.A.C. (Banking, Currency, Competition, and Dominance by agreement). In all areas where these bodies are competent, O.H.A.D.A. must refrain from intervening

unless a competing body waives it after consultation.

Nevertheless, it is not total when there is a well-defined competence in a particular domain with the competence field of the organization or when the domain is broad, vague, and unexplored. In these cases, O.H.A.D.A. can take a risk, but as a precaution, by consulting potentially competing organizations. This consultation should be linked to the precise distribution of the areas of coordination envisaged between them.

Regarding the application of the uniform acts, we will dwell on the follow-up of the insertion in the states' legal order, the application's control, and the interpretation.

Article ten of O.H.A.D.A's Treaty, which provides for the automatic insertion of uniform law into the internal legal order of the States Parties, is sufficient to ensure this insertion and to make it applicable there.

First, it is a question of identifying all the provisions of domestic law which are repealed by the uniform Act.

Secondly, each State must take this step to make O.H.A.D.A criminal business law is adequate.

Finally, when a provision refers to a text of domestic law, the said provision must be identified or included in the uniform Act in the appropriate place.

Moreover, the Permanent Secretariat is responsible for ensuring the compliance of the legal arsenal of O.H.A.D.A. in the member countries of the community entity. It is also responsible for making the work carried out available to legal practitioners. (Magistrates, lawyers, law professors).

The Permanent Secretariat also verifies whether the States adopt criminal laws relating to the penalties for offenses covered by the Uniform Acts.

One of the essential tools for evaluating the application of the Uniform Acts is the C.C.J.A. This court can provide an annual report on the number of decisions rendered and the countries from which the appeals most often come. It points out the provisions of the Uniform Acts that are difficult to interpret and may propose solutions in the form of informal or ex officio opinions. This judicial perception of applying the Uniform Acts will enable the Permanent Secretariat to organize the revision of the Uniform Acts. After ten years of applying the Uniform Acts, undertaking a possible reform is also very

appropriate.

#### ➤ **The inventory of current problems**

The inventory of current problems results to a certain extent from existing ones. They are linked to social responsibility and companies' economic and financial transparency.

The concept of corporate social responsibility developed a few years ago. The idea emerged because of the requirement for companies to adopt a socially responsible approach to their environment in the broadest sense: employees, partners, consumers, citizens, communities, and even the protection of the environment. This responsibility aims to avoid pollution of the land, water (rivers, lakes), and the air we breathe.

In other words, it rekindles business confidence and prevents the systematic pursuit of growth from undermining sustainable development. This problem exists almost everywhere in Africa and some parts of the world. That is to say that this problem concerns everyone. Moreover, the companies searching for profit and evolve in specific sectors: the mining sectors, violent with hydrocarbons, are perfect illustrations of this, especially in developing countries. Some companies do not hesitate to violate the legal rules established in this area.

Thus, it is for this reason that companies should voluntarily agree to limits beyond existing legislation.

Nevertheless, for the moment, and despite the legal rules, does not care about that.

The second problem relates to the economic and financial transparency<sup>[11]</sup> of companies. Indeed, to meet its financing needs, the company calls on savers. This security means that companies that openly call for savings have absolute transparency. However, the need for transparency is no longer limited to these types of companies. It increasingly applies to all company law in legislation and case law. There are many examples of this development linked to the old principles of business secrecy: management reviews, publication of agreements, favorable conditions for the transfer or acquisition of shares traded on regulated markets, and money laundering, not to mention the extension of the obligation to draw up consolidated accounts or the directors' right to know.

Indeed, administrators receive valuable information from them in the exercise of their mission. They have access to the documents necessary for their deliberations.<sup>[12]</sup>

2.1.1.2 Ways or paths to finding statements of common subjects retained by O.H.A.D.A.

O.H.A.D.A. first drew up several texts called: "*Uniform Acts*" to materialize its philosophy into practice. A constitutive treaty precedes these Uniform Acts. It constitutes the basis of Community regulations.<sup>[13]</sup>

A Uniform Act can be defined as a set of legal provisions that regulate a specific field, identified as forming part of O.H.A.D.A. economic law, which applies to all African countries' signatories to the O.H.A.D.A. treaty. In other words, the Uniform Act is a harmonized law. As provided for by the Treaty's first paragraph of Article five<sup>[14]</sup>, uniform acts are subject to an adoption procedure and have a well-framed application regime.

Regarding the conditions of adoption, the Permanent Secretariat first prepares the uniform acts. Upon completion of the draft, the Permanent Secretariat shall communicate it to the Member State governments for their comments within ninety days of such communication. After receiving and summarizing the various observations<sup>[15]</sup>, the Permanent Secretariat finalizes the draft. It sends it for opinion to the Common Court of Justice and Arbitration, which must rule within sixty days of the consultation receipt request. Then, the project is registered for adoption on the agenda of The Council of Ministers' next session.<sup>[16]</sup>

Through this explanation, we note that three bodies intervene in the adoption phase of the Uniform Acts: the Permanent Secretariat, the National Commissions (States), and the C.C.J.A. before O.H.A.D.A.'s Ministers Council of Ministers adopts them.

Concerning the application of Uniform Acts, it is governed by Articles nine and ten of the Treaty establishing O.H.A.D.A.

Article nine of the Treaty establishes the entry into force of uniform acts in these terms:

*"The Uniform Acts are published in the Official Journal of O.H.A.D.A. by the Permanent Secretariat within sixty days of their adoption. They are applicable*

ninety days after this publication, except for special arrangements for entry into force provided by the Uniform Acts. They are also published in the States Parties, in the Official Journal, or by any other appropriate means. This formality shall not affect the entry into force of Uniform acts."

In reading this article, it can be seen that entry into force is conditional on the publication of uniform acts. This publication takes place first in the official journal at the Community level and then in the official journal of each member state of the community entity. The reading also notes the existence of a delay between the publication and the application of the uniform acts.

Article ten outlines the uniform acts' direct application and obligatory nature.<sup>[17]</sup> It confirms that the provisions resulting from the uniform acts are of direct application since they are incorporated into the internal legal order without any national provisions intended to supplement it. They automatically acquire the status of positive law in the legal order of States<sup>[18]</sup> and apply it in domestic law without modifying them.

From this application of uniform acts, the problem linked to the legal value of the latter could be raised. In other words, does the direct and compulsory application of uniform acts show the primacy of Community rules over the internal law of the Member States? What about the applicability of O.H.A.D.A. law in the presence of another community or international standard?

On the first question, the C.C.J.A. judges, following a request for an opinion from the Republic of Côte d'Ivoire, recognized that the uniform acts have a higher legal value than domestic law provisions and that those provisions are repealed in these terms:

*"... 1. on the first question, in two parts*

*a) Article ten of the African Business Law Harmonization Treaty contains a rule of supranationality because it provides for the direct and compulsory application in the State's Parties of uniform acts and establishes their supremacy over previous or subsequent domestic law provisions.*

*b) Following the supranational principle enshrined in Article ten of the Treaty on African Uniform Commercial*

*Law, which provides for the direct and binding application of the Uniform Act in the Contracting States, notwithstanding any contrary domestic law, including a provision on repealing by a Uniform Act the rules of national law."*<sup>[19]</sup>

Therefore, internal provisions cannot prevent the application of uniform acts.<sup>[20]</sup>

However, it turns out that the constitutions of member states only provide for international treaties and commitments. Neither do they recognize treaties as having a supra-constitutional<sup>[21]</sup> value. That can undoubtedly lead to confusion in interpreting the provisions of Article 10 at the level of national courts.

Regarding the second question, the same court maintains that the provisions of Article ten of the Treaty are not applicable when it comes to two international standards in these terms:

*"(...) However, given that this provision does not apply to two international standards, as in the present case, the I.A.C.I.M. Code has been instituted by a Treaty that entered into force on January 15, 1995; therefore, it would be necessary to reject this second branch."*<sup>[22]</sup>

There are ten uniform acts. The Council of Ministers adopted the first three on April 17, 1997, and entered into force in O.H.A.D.A. member states on January 1, 1998. They are the Uniform Act relating to general commercial law, the Uniform Act relating to Commercial Companies Law and Economic Interest Groupings, and the Uniform Act relating to the organization of sureties.

#### **■ Uniform Act Relating to General Commercial Law (U.A.G.C.L.)**

The Uniform Act Relating to General Commercial Law is one of the first Uniform Acts adopted in 1997. Before the reform of the U.A.G.C.L. by the O.H.A.D.A. legislator, the objective sought was essentially focused on the law applicable to acts of commerce, traders, businesses, commercial lease, commercial intermediaries, and commercial sales. The O.H.A.D.A. legislator innovated this Act on December 15, 2010. On May 15, 2011, it entered into force. This reform introduced the creation of a trade and securities register. This register centralizes all company and security information at



national and regional levels. The revised Act also creates a new commercial lease accessible to non-traders, regulates business leasing, and introduces status for commercial intermediaries.

■ **Uniform Act Relating to Commercial Companies and Economic Interest Grouping Law (U.A.C.C.E.I.G.).**

Adopted in Cotonou on April 17, 1997, this Uniform Act entered into force on January 1, 1998, following Article 920-2. It was revised by January 30, 2014, and entered into force on May 5, 2014. It, which provides for the operating rules of commercial companies and E.I.G.s, constitutes the law of commercial companies of all States Parties. Regardless of their nationality, people who wish to work in an enterprise of one of the Contracting States must choose one of the forms of enterprise provided for by the Uniform Act.

The first part includes the general provisions common to all commercial companies: rules of incorporation and operation, the liability of directors, the legal relationship between companies, transformations, mergers, demergers, partial contributions of assets, dissolution, liquidation, nullity, formalities, and publicity.

The second part successively regulates the many forms of commercial companies: General partnership (G.P.), Limited partnership (L.P.), Limited Liability Company (L.L.C.), Public Limited Company (P.L.C.), Simplified Joint Stock Company (S.J.S.C.), Joint Venture Company, Joint Venture Company, and E.I.G.s. The branch belonging to a foreign natural or legal person has a lifespan of two years, at the expiration of which it must be transferred to a national company, except by ministerial dispensation.

The third part enacts incriminations relating to the constitution, life, dissolution, and liquidation of commercial companies; it is specified that the national law of each State Party must specify the sanctions relating to the offenses thus provided.

■ **The Uniform Act on the organization of sureties (U.A.O.S.)**  
**The Uniform Act on the organization of sureties (U.A.O.S.)**

The Uniform Act of April 17, 1997, revised on

December 15, 2010, and the organization of sureties (U.A.O.S.) organizes sureties, understood as allocation, for the benefit of a creditor, property, or patrimony in order to guarantee the execution of an obligation or a set of obligations. He thus distinguishes:

✓ Personal sureties, which include surety, guarantee, and independent counter-guarantee;

✓ Movable securities comprising the right of retention, property retained or assigned as security, pledge, pledges, and privileges;

✓ Mortgages and real estate guarantees are also surety pledges.

The 2010 revision, which repeals and replaces the initial Uniform Act of 1997, entered into force on May 15, 2011. The Act substantially modernizes the legal framework for credit guarantees: the range of usable guarantees is broadened, the credit information system is modernized, and the text establishes the guarantee officer, a professional in charge of managing the securities of others, from their constitution to their realization. The new text also simplifies the formalities of the constitution of guarantees while strengthening their effectiveness by establishing alternative methods of realization of guarantees.

The Council of Ministers then adopted the following Uniform Acts:

■ **The Uniform Act Relating To Simplified Recovery And Enforcement Procedures (U.A.S.R.E.P.)**

Entered into force on July 10, 1998, the O.H.A.D.A. legislator designed the Uniform Act Relating To Simplified Recovery And Enforcement Procedures. It organizes two main legal procedures: the simplified debt collection procedures and the enforcement procedures.

■ **The Uniform Act relates to collective procedures for discharging liabilities (U.A.C.P.D.L.)**

Entered into force on January 1, 1999, this Uniform Act organizes from preventive settlement to the liquidation of property, including receivership and liquidation. Patrimonial, professional, and criminal sanctions against managers when the company can no longer pay its debts. A.U.P.C.A.P. was revised on September 10, 2015, and entered into force on December 24, 2015, thus repealing

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that of April 10, 1998.

■ **The Uniform Act Relating to Arbitration Law (U.A.A.L.)**

Approved on March 11, 1999, and entered into force on June 11, 1999, this Uniform Act was revised on November 23, 2017, and came into force on February 23, 2018. The A.U.A. is the arbitration law of all O.H.A.D.A. member states. As such, it is intended to apply to any ad hoc or institutional arbitration having as its seat an O.H.A.D.A. State.

■ **The Uniform Act Relating To Accounting Law And Financial Information (U.A.R.A.L.F.I.)**

Adopted; On March 23, 2000, this Act entered into force in two stages<sup>[23]</sup>, for the companies' accounts and the consolidated accounts and the combined accounts; under the Uniform Act on the organization and harmonization of company accounts. This Act was repealed and replaced by January 26, 2017, which entered into force on January 1, 2018, for personal accounts and, according to standards, on January 1, 2019, for consolidated accounts, combined accounts, and financial statements.

■ **Uniform Act Relating To Contracts For The Transport Of Goods By Road (U.A.C.T.G.R.)**

On March 22, 2003, this Uniform Act was adopted. After nine months, it entered into force on January 1, 2004. The goods and people's free movement is consubstantial with the policy of economic integration initiated at the level of the two prominent sub-regions, the west and the center of the African continent, where most of the O.H.A.D.A. member states are located. It applies to any contract for goods' transport by road, and it is sufficient that the pick-up and delivery places are in the territory of a member state of O.H.A.D.A. The O.H.A.D.A. legislator has not reformed this Act since its adoption today.

■ **The Uniform Act Relating To Cooperative societies Law (U.A.C.L.)**

This Uniform Act was approved on December 15, 2010, and came into force on May 15, 2011.

The cooperative society constitutes a company capable of carrying out its activities in all branches of human activity and requires, to do so, that legal provisions

be devoted to it in terms of organization, financial, material, and human resources for the realization of its objectives. This Act contains 397 articles.

■ **The Uniform Act Relating To Mediation (U.A.M.)**

Adopted on November 23, 2017, at the same time as the new Uniform Act relating to arbitration, and entered into force on February 23, 2018. AUM applies to mediation. However, it does not apply when the judge or an arbitrator tries to facilitate an amicable settlement directly with the parties during a judicial or arbitration proceeding.

In addition to the constitutive Treaty and the uniform acts, the Council of Ministers has issued regulations. The Uniform Acts determine the general principles and their modalities of application.

**2.1.2 The subjects remaining in the domain of the States.**

The objective of O.H.A.D.A. member states, in general, is to achieve legislation that guarantees the legal security of economic actors. These guarantees must be compatible with the O.H.A.D.A. Uniform Acts and more functional than the existing legislation. It promotes the establishment of commercial enterprises in the countries while ensuring better protection of foreign investors. The internal civil guarantees are also part of this logic through a reform program and broader support for the business sector. One aspect is adapting business law in these countries to O.H.A.D.A.'s uniform acts.

This adaptation takes shape through the insertion of uniform acts in the legal arsenal of states, the revision of texts relating to procedures, and the adoption of new texts in this area.

In addition, there are also many areas not exploited by O.H.A.D.A. law. However, these areas have an essential link with business life. Given its importance, each State has decided to legislate in these areas or to refer to the provisions of other community organizations: this concerns investment, taxation, social relations within companies, but also the banking sector.

For more consistency, it is necessary to present and characterize these different areas; and show the reasons



for their consideration by O.H.A.D.A.

The word "investment" designates the result of using property, funds, or values in an economical operation intended to produce profitable results for the initiators and their clients. The object of investment companies is the collective management of generally real estate assets and a financial portfolio.<sup>[24]</sup>

From this definition, it is noted that the scope of investments relates to financing fixed assets and initial working capital within the framework of a development project.<sup>[25]</sup>

That turns out to be confirmed by the investment codes of O.H.A.D.A. member countries. In Benin, the first two articles of the 2020 investment code are precise in the framework of the areas of intervention of financing. The same is true in Senegal through article two of its investment code. In Cameroon, the law of 2017 devotes a chapter (articles six and seven). Countries like Mali, Togo, Guinea Conakry, Niger, Burkina Faso, Comoros, Côte d'Ivoire, Gabon ... are in the same dynamic.

Concerning taxation, it refers to the set of rules<sup>[26]</sup> intended to regulate the practices used by a state to collect taxes and other compulsory levies. Taxation plays a decisive role in a country's economy. It participates in financing the latter's needs and is at the origin of the expenditure. All countries, without exception, have a legal text that governs this matter. O.H.A.D.A. member countries are no exception.

In addition to participation in financing, taxation plays a crucial role in the State's public budget. They are composed of taxes and levies that investors and economic actors pay yearly to the State.

The legal employment relationship is the relationship that exists between employers and employees. It exists when someone performs an activity or provides services under certain conditions and fees.

The employment relationship creates reciprocal rights and obligations between employees and employers. That manifests through the employment contract provided by labor law and social security law like Benin, which dates from 1998<sup>[27]</sup>. Burkina Faso<sup>[28]</sup>, Cameroon<sup>[29]</sup>, Comoros<sup>[30]</sup>, Congo<sup>[31]</sup>, D.R. Congo<sup>[32]</sup>, Côte d'Ivoire<sup>[33]</sup>, Gabon<sup>[34]</sup>,

Guinea Conakry<sup>[35]</sup>, Guinea Bissau, Equatorial Guinea<sup>[36]</sup>, Mali<sup>[37]</sup>, Niger<sup>[38]</sup>, Central African Republic<sup>[39]</sup>, Senegal<sup>[40]</sup>, Chad<sup>[41]</sup>, Togo<sup>[42]</sup> also have them. The employment contract is the agreement under which a person undertakes to put his or her professional activity for payment under another person's direction and authority called the employer.

The employment relationship has been the primary means workers obtain employment rights and benefits in labor law and social security.

The banking sector designates the bond of trust and business deliberately created, organized, and maintained between a credit institution and its customer, individual, or business.

The relationship resulting from banking activity feeds on multiple transactions due to the multiplicity of services banks offer. That is why a plethora of legal texts governs banking activity. We can cite the cases of the Community of West African States (E.C.O.W.A.S.)<sup>[43]</sup>, the Central Bank of West African States (C.B.W.A.S.)<sup>[44]</sup>, the West African Economic and Monetary Union (W.A.E.M.U.)<sup>[45]</sup> of the West African Monetary Union (W.A.M.U.)<sup>[46]</sup> in West Africa; the Economic and Monetary Community of Central Africa (E.M.C.C.A.)<sup>[47]</sup>, the Central Economic Community of Central African States (C.E.C.C.A.S.)<sup>[48]</sup>, the Central Bank of African States (C.B.A.S.)<sup>[49]</sup>, and the Economic Union of Central Africa (E.U.C.A.)<sup>[50]</sup> in Central Africa.

After presenting these areas, it is appropriate to explain the problems that prevent O.H.A.D.A. from reflecting on their integration into the legal framework.

The difficulties are numerous and not negligent. It would be wise to follow the above logic to highlight them. It should be noted that the national law of the Member States of O.H.A.D.A. governs these areas. Moreover, it ensures that these rules govern these spaces. In other words, the rules vary from country to country.

Regarding taxation, the typical example is the tax regime that companies must pay each year. This corporate tax varies by country. Therefore, in Senegal, Gabon, and Guinea-Bissau Niger, respectively, corporate income tax is 45.1%, 45.2%, 45.5%, (and 48.2%). In Mali, the rate is 30%. In Chad, the rate exceeds 63%.

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That is also the case with value-added taxes, which fluctuates between 18 and 20%.

It is difficult, facing this dilemma, to harmonize tax rates within the community organization.

We can also add that taxation can also be a source of difficulty through tax fraud.

Tax fraud is the illegal evasion of the tax legislation of all or part of a taxpayer's taxable income. In other words, the tax evader does not pay the amount of tax he or she owes to the tax authorities by using illegal means. In practice, tax fraud can take the form of more or less complex procedures ranging from simple omission on the tax return to the use of shell companies or the organization of the taxpayer's insolvency.

The difference between tax fraud and social fraud is that, first, the aim is to avoid paying taxes. The second is making false declarations to obtain certain social benefits. We know the enormous amount of undetected fraud in various social welfare organizations. Among other things, voluntary non-declaration, voluntary concealment of assets or taxable income, corporate bankruptcy, and, more generally, any means to hinder taxation are considered fraud.

The perpetrator of tax fraud is the taxpayer himself, the debtor of the tax on which he has evaded or attempted to evade fraudulently. In the case of legal entities, proceedings will be initiated against the legal representative (legal director) and any influential director when the crime is established. In addition, accomplices who should have provided assistance and aid to the principal perpetrator of the crime, or were instigators of the crime committed by the latter, will also be prosecuted. Among the persons concerned, we specifically target accounting professionals, employed or not, who use their technical knowledge to conceal accounting or tax irregularities committed by their employers or clients.

Tax optimization is based on accurate calculations and actual activities by specialists. For example, investing in a particular sector to benefit from a tax credit is based on an actual project with concrete economic benefits. If the optimization is legal, it can be considered illegal when it uses illegal means, constitutes an abuse of laws, or is an

injustice.

Tax evasion is between optimization and fraud. It concerns all acts undertaken by individuals or companies. They seek to reduce the taxable amount through maneuvers without natural economic substance justifying such behavior.<sup>[51]</sup>

In other words, tax evasion uses loopholes in the tax system, which are outdated and no longer correspond to the reality of the economy.

The keystone of this maneuver is the tax havens,<sup>[52]</sup> which offer individuals and companies tax benefits without seeking the veracity of their activities with a nominal rate, the non-existence of transparency, and take measures to ensure the secrecy of the identity of customers.<sup>[53]</sup>

Regarding labor law, the difficulty lies in the obsolescence of specific texts governing labor relations between employers and their employees in certain O.H.A.D.A. member countries. Indeed, countries such as Benin, Chad, Cameroon, Mali, Equatorial Guinea, Congo, and Comoros. Most of these texts do not correspond to the social realities of the States. Refer to the Guaranteed Interprofessional Minimum Wage ( G.I.M.W.f.) for proof.

The Guaranteed Interprofessional Minimum Wage is a fixed amount in terms of hourly pay. A government sets it after agreement or at least consultation with representatives of all professions.<sup>[54]</sup> This amount varies due to differences in legislation between states. In Equatorial Guinea, for example, the minimum wage was 90,000 CFA francs in 2002, now 128,000 CFA francs (€195). In Côte d'Ivoire, it is 60,000 FCFA (91€). In Benin, it is 40,000 FCFA (61€). It is in Mali and Niger that we find the most S.M.I.G. They are respectively 31.370 FCFA (48€) and 30.047 FCFA (46€). These salaries are insufficient in many countries to meet the daily expenses, which allow them to live decently. Hence the need to reconcile, to standardize by opting for a single text consecrated by O.H.A.D.A. By the way, Hygin Didace Amboulou has published a book<sup>[55]</sup> to solve these difficulties, proposing an elaborate Uniform Act on labor law. Unfortunately, to date, the draft of this uniform Act has not seen the light of day.

At the level of the banking field, we note several

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difficulties which slow down the regional organization's efficiency and legal security.

Firstly, several regional organizations and national legal texts intervene in this field. Over the last twenty years, this law has undergone critical legislative reforms in the E.M.C.C.A. and W.A.E.M.U. Regions. These rules, established and changing at any time, are often difficult to understand. However, these reforms aim to keep banking institutions at the forefront of the worldwide evolution of the banking system. These rules are immediately applicable and must be transposed in the States concerned. That leads us to wonder whether it would not be better to try to unify the legal rules in the E.M.C.C.A. and W.A.E.M.U. Zones.

O.H.A.D.A. States members do not share the same currency. Indeed, the eight W.A.E.M.U. Countries (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.) have a common currency: the C.F.A. franc.

In Central Africa, six countries have a currency in common: the C.F.A. franc. The latter differs from W.A.E.M.U.: Cameroon, Gabon, Equatorial Guinea, the Central African Republic, the Republic of Congo, and Chad.

The Comoros uses the Comorian franc. Guinea Conakry's currency is the Guinean franc. Furthermore, finally, the Congolese franc is the one used by the Democratic Republic of Congo.

This currency diversity could be a source of problems regarding the calculation rates of exchanges in space. Which, in our humble opinion, deserves a reflection.

Lastly, there is a discrepancy in the conditions for granting bank credit (bank loan). The conditions can be flexible or rigid depending on the company or business that wishes to project in one or more countries. For example, loan conditions are more rigid in Congo and are relatively flexible in Senegal and Mali.

In addition, the rules governing the creation of banking institutions are shared between O.H.A.D.A. law, the national law of the countries, and the community law of other sub-regional organizations. Indeed, banks are, first and foremost, commercial companies. A commercial

company is partly governed by O.H.A.D.A. law, which is the Uniform Act relating to the law of commercial companies.

At the national level, investment, labor, and tax laws must be respected by banking institutions.

Other sub-regional organizations are involved in the regulation of the banking sector. These are the legal regulations established by the West African Economic and Monetary Union (W.A.E.M.U.) and the Economic and Monetary Community Of Central Africa (E.M.C.C.A.). These provisions apply to all bank instructions.

That, therefore, increases the source of insecurity and legal effectiveness of O.H.A.D.A. law in member states, de facto limiting the search for a simple and accessible right within the regional Community. Effective and satisfactory mechanisms are necessary for stimulating domestic and foreign investment. For example, the lender, a banker to whom a loan is intended to help economic operators, will want a guarantee to guard against several risks. As an illustration, we have competition's risk with other creditors, the risk of forfeiture by the debtor of his property, and the risk of loss or threat of immobilization of the advance granted. The State has therefore considered putting in place easy and inexpensive means to encourage the creation and implementation of adequate security; so that they can promote the financing of companies across the States.

Nonetheless, it proves a more or less large discrepancy between the internal law of the Member States and Community law, even on the civil legal level.

There may exist on the margins of O.H.A.D.A. law, internal provisions contrary to it or not identical constitutes a substantial legal uncertainty factor. These dysfunctions have harmful consequences for economic operators at several levels. That is the legal uncertainty regarding the application of a text, which can dissuade investments and well-informed operators who could use this uncertainty to bind their contractual relations with the law that interests them most.

## **2.2 Characterization of concepts and techniques of incrimination**

Determining the incriminations of O.H.A.D.A.

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criminal law is not an easy task. Even if the application areas are now known, the fact remains that the process by which the application will be practical and viable is a problem that must be resolved. For this reason, the following question should be asked: **What legal integration technique was finally used to determine and effectively apply incriminations in the O.H.A.D.A. area?**

Answering this question leads us to list and explain the techniques and procedures available to O.H.A.D.A. O.H.A.D.A. can choose from these techniques.

### **2.2.1 The concept and basis of unification of offenses**

In normative integration, two legal processes are generally used: standardization and harmonization. In order to achieve a determination of conduct detrimental to business law, these two techniques are generally used.

The technique of harmonization<sup>[56]</sup> could be understood by a juxtaposition, a bringing together of several legal systems.<sup>[57]</sup> This search for symbiosis aims at reducing or even trying to make certain divergences between the various legal systems disappear. For Joseph ISSA-SAYEGH, *"harmonization consists of ensuring that all parties work towards the same goal or melodious effect."*<sup>[58]</sup> Thus, this technique seeks to determine broad outlines of legal systems while leaving room for maneuvering to the parties who have agreed to adhere to an integration policy. This margin is a source of involvement of the States by completing the legal framework of a sub-regional, regional, or international organization; by bringing their stones to it, which agrees with their particularism.

Harmonization could also be seen as the outcome of the organization's vision. The assessment of this result can only be validated based on some criteria established before or during the harmonization process.<sup>[59]</sup>

Derived from the Latin words *"unus"*<sup>[60]</sup> and *"forma,"*<sup>[61]</sup> standardization is a process that eliminates the distinctive characteristics of the different elements or individuals of a whole.<sup>[62]</sup> It tends to give them a single form. Its basic premise is that stakeholders accept the content of a normative framework for a well-defined

domain; without having the possibility to deviate from it in form or substance. To illustrate, one group of states may agree to integrate into a homogeneous framework an organization that has already established a set of standards.

Uniformity can be seen as a process: it is a uniformity process. It can also be understood as an outcome: this is uniformity-outcome. As with unification, process uniformity begins with an integrated and expanded body of law. The fate that courts reserve for such a text must be assessed to determine whether it is appropriate to speak of consistent results. This predecessor has been used by organizations of countries leaning towards the Romano-Germanic system.<sup>[63]</sup>

Thus defined, these two concepts have differences that should be highlighted.

Unlike harmonization, standardization ensures that the resulting norms' content is identical for all the member actors involved in legal integration.

Conversely, harmonization advocates, on the one hand, legal rules that cover similarities that can be found in the legal framework of all actors; on the other hand, it allows the latter a certain amount of freedom, given the existence of national specificity. It would mean that the institution of harmonization draws from the existing substances in the States involved. The legal framework that results from it leaves it up to the actors to decide on the enactment and management of aspects.

In contrast to standardization for the scheme of a single implementation, *"erga Omnes,"* harmonization completes the standards that should remain in the domain of the member states. It means that uniformization opts for a monistic dynamic that traditionally assumes that a sub-regional, regional, or international text rightly ratified by a State becomes a text of direct and immediate application within it. It will thus be unnecessary to draw up a legal text for transposition.

However, harmonization favors the dualist doctrine, according to which a sub-regional, regional, or international rule can only have a result if it has first been incorporated into national legislation.<sup>[64]</sup>

The link between O.H.A.D.A. and the concepts

of harmonization and standardization is rooted in the organization's founding Treaty and the application of criminal law provisions. Indeed, the content of article five, paragraph two of the Treaty is, for the doctrine, the source of the imprecision of the formula used to integrate substantive criminal law. More precisely, the ambiguity of the method results from the obligatory concurrence of normative competencies in the determination of the offense referred to in O.H.A.D.A. law, a concurrence according to which the Council of Ministers intervenes to standardize the constituent elements of the offense. In contrast, it is up to the national authorities to complete (at their discretion?) the incrimination by a sanction.

We are only interested in the case of offenses at this level. The offenses at the O.H.A.D.A. level infringe on the principle of legality of incriminations. Indeed, the principle and the common sense and respect of the principle of legality of offenses would like that from the nature of the offense; it is possible to know de facto the situation of the offense according to the legal classification of offenses. However, it turns out that the fundamental norm of the regional organization is silent on this question.

In the same logic, another observation contrasts with the principle of the legality of offenses, that of the determination of the competent jurisdiction to hear cases relating to the violation of the rules of business law on a purely penal level: is it the regional jurisdiction given that the offenses are included in the uniform acts? Do the national jurisdictions have the legal and material capacity to judge cases relating to the penal law of business? Has O.H.A.D.A. specified the procedure to be followed in judging criminal cases? These are some of the problems that O.H.A.D.A. criminal law raises. The doctrine believes regional criminal law's choice between standardization and harmonization is complex.

Despite this doctrinal debate, which we will develop later, it is possible to determine the technique maintained by positive and legalistic law through an in-depth analysis of the legal provisions of the O.H.A.D.A. legal framework.

### **2.2.2 The maintenance of the standardization technique**

Because of the difficulties related to national particularities and criminal sovereignty, which is the preserve of all States, O.H.A.D.A. is struggling to implement a criminal policy. However, this penal policy is a source of consolidation of economic activities in Africa. In order to put in place this regalian domain as a whole, the regional organization has two procedures: the technique of harmonization and standardization. The question needs to be asked on what basis will the choice of the technique used to federate the criminal laws of the organization's member states be made while considering the values, traditions, and different legal systems?

To solve this problem, we must look at the Treaty's provisions and, by extension, the uniform acts.

The first founding act article specifies O.H.A.D.A.'s objectives in these terms: *"the harmonization of business law in the member states by elaborating and adopting common rules that are simple, modern and adapted to the situation of their economies, by implementing appropriate judicial procedures and by encouraging recourse to arbitration of contractual disputes."* The enactment and adoption of simple standard rules for member states indicate the regional entity's integration policy. These indicators, described by the expression *"common rules,"* are more like standardization than harmonization, which is visible in the acronym and at the beginning of the wording of article one of the constitutive Treaty.

Another element makes it difficult for the organization to be clear in determining criminal policy: the impact of the place of regional criminal law on that of the States that composed it.

With this situation, O.H.A.D.A. sought a negotiated unanimity on the regional criminal issue. The result of this negotiation is the standardization of incriminations.

Thus, article five, paragraph two merely states that *"uniform acts may include provisions on criminal law."* This standardization appears to combine several similar elements to form a whole. It also presupposes that the organization should draw up detailed rules that are identical in all respects for all the member states in a

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given legal matter. It is precisely at this level that uniform acts intervene. Indeed, the Uniform Acts directly govern the fields selected by O.H.A.D.A.: *"The Uniform Acts are directly applicable and binding in the Contracting States notwithstanding any contrary provisions of domestic law, whether prior or subsequent."*

Uniformity becomes Unity, the bearer of a secondary legislative unity anchored in a flexible medium. The former develops a text with unified content from its conception by the legislator. After the text has been adapted, the process continues and ends with the agency interpreting and applying it in a given context.

This unification concerns the constitutive elements of the incriminations harmful to business. These are legal or prerequisite, material, and moral elements.

As the principle of legality in criminal matters requires, the legal element supposes that the incrimination is defined and determined by the uniform acts. The requirement of the legal element becomes apparent mainly when a cause of justification arises, making the Act conform to the law.

The material element of the incrimination aims at avoiding arbitrariness. It is the determination of objectively ascertainable material facts. It includes all the elements related to the commission of the reprehensible acts, requiring the accomplishment of the Act. In other words, it is a mode of execution, an action, or even an omission.

The moral element is equivalent to the mentality of the perpetrator at the time of the commission of the offense, i.e., the fault, the State of mind, the turn of mind, socially reprehensible, even moral that will have accompanied and characterized his activity of the perpetrator.

### **3 The problematic nature of harmonizing applicable criminal sanctions**

Unlike reprehensible behavior, criminal sanctions pose a specific problem. Indeed, without criminal sanctions, incrimination has no reason to exist. That is why a significant part of the penal texts compiles both the incriminations and the corresponding penalties. In

addition, criminal sanctions vary from country to country: some countries emphasize imprisonment, others fines. That is based on traditional, legal, economic, moral, religious, and other characteristics. All this makes it challenging to match the incriminations of the delinquency with the cases. That has led the organization to resort to prudent management of criminal sanctions. The result has been mixed, as the chosen formula is imprecise and complex.

In any case, a process that opts for a possible convergence of sanctions should be sought. Without taking into account the transnational character of the delinquency of the cases, the technique would be doomed to failure.

#### **3.1 The research for a convergent option of sanctions**

While in the O.H.A.D.A. context, the doctrine is almost unanimous that uniform acts bring about uniformity, the same cannot be said of the criminal field. Indeed, the formula of normative integration is imprecise because, under article 5, paragraph 2 of the O.H.A.D.A. treaty, *"uniform acts may include provisions on criminal law. The Contracting States undertake to determine the criminal sanctions incurred."*

Therefore, this provision of the Treaty is the source of the imprecision of the formula used to integrate substantive criminal law. More precisely, the ambiguity of the method by a sanction. Indeed, article five, paragraph two of the O.H.A.D.A. Treaty specifies that member countries can determine criminal sanctions. However, it is customary that in criminal matters, the provisions of incrimination and those which affect the sanctions are contained in the exact text. Therefore, proceeding as O.H.A.D.A. has done removes its *"legal autonomy"* from the incrimination, as N'DIAW specified, and thus subordinates its application to enact the sanction. Thus, criminal sanctions fall within the exclusive competence of each Member State regarding criminal sanctions. This technique is close to that of the harmonization explained previously. Reason for which BORE considers it as being *"a mobilization of the national law at the service of the Community law."*<sup>[65]</sup>



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Harmonizing punishments by the States is a questionable option based on legal and economic considerations.

*"The legal argument lies in the diversity of penal systems. Each country has its penal system. That aligns with Portalis' assertion that "reading the penal laws of a people can give a fair idea of its public and private morals." [66]*

*Qualified as a liberal technique, the method of harmonization seeks to leave untouched a part of the criminal sovereignty of the Member States, safeguarding the choice of penalties incurred by offenders of the Community norm. Depending on the case, this also gives the flexibility to consider each case's particularity in deciding the quantum of the appropriate penal sanction. That once again reflects the harmonization of penalties.*

*The economic reason for harmonizing criminal sanctions is related to the cost of criminal justice. Embodying a facet of the state monopoly, the criminal justice system, Embodying a facet of the state monopoly, bears a certain amount of costs related to the organization of a trial. That is a problem because O.H.A.D.A. comprises states that do not have the same economic development. Thus, each State must deal with criminal cases according to its financial capacity.*

*Divided between various competencies, adopted according to different procedures, and associating two irreconcilable, complex requirements, the criminal sanctions highlight a difficulty: splitting the procedure in criminal cases or with a criminal incidence between the national jurisdictions and the C.C.J.A.*

*Indeed, the quasi-exclusive competence of member states in criminal sanctions has had as a logical corollary an exclusive competence in applying these sanctions. The member states did not intend to relinquish their jurisdiction in criminal matters, and it is inconceivable that such relinquishment would be imposed on them. Faced with this difficulty, O.H.A.D.A., against all expectations, had no other recourse than to submit to the exclusive jurisdiction of national courts the application of criminal sanctions or, more generally, the knowledge of questions relating to the application of criminal sanctions.*

*This option has its legal basis in article Fourteen, paragraph three of the Treaty. Indeed, under the terms of the said provisions, relating to the jurisdiction of the Common Court of Justice and Arbitration, the latter, "seized by way of appeal to the Court of Cassation... shall rule on decisions rendered by the courts of appeal of the Contracting States in all cases raising questions relating to the application of the uniform acts and regulations provided for in the present Treaty, except for decisions applying criminal sanctions".*

That means that when a case involves a judicial decision applying criminal sanctions, the C.C.J.A. has no jurisdiction to hear such a case. In other words, the solution implies that the Common Court of Justice has no jurisdiction in criminal matters, mainly when the case concerns a decision to apply a criminal sanction.

The significance of such a solution is splitting the procedure in criminal cases. When it has to assess a case involving criminal elements, the C.C.J.A. can only examine the correctness of the interpretation or application of the Uniform Acts. That concerns only the criminal element. It refers the rest of the case to the national court of cassation, which will be responsible for verifying the correctness of the appeal court's decision.

In practice, however, this solution has two closely related consequences. On the one hand, it requires the C.C.J.A., in criminal matters, to confine itself to ruling on the elements relating to incrimination: the existence of the offense by examining the legal qualification of the facts, applicability or not of O.H.A.D.A. law, and to refer, for the application of the sanction, to the national judge of a State party.

The somewhat strange situation will oblige the parties to the dispute to initiate two procedures: a first procedure to submit the case to the C.C.J.A. to examine the charge and a second to bring the case before the national judge.

Unquestionably, we are in a complex procedure that hardly offers the celerity so sought after in the business world. Moreover, this double procedure is fatally expensive for the litigant, who will have to incur travel expenses when he resides in a State other than the Ivory Coast. It would, therefore, not be exaggerated to argue

that the concern for the preservation of the interests of investors could have argued for a more rational solution, mainly since the choice to refer to national jurisdictions is a real risk of leading to heterogeneous jurisprudence.

It must be recognized that the result of the decision to reserve the competence to apply penalties to national jurisdictions is the risk of jurisprudential disparity. It would result from the difference that could exist between the sanctions enacted by the Member States, with, if necessary, the partial or total impossibility for the Common Court of Justice to proceed to a unification of the case law of the national courts. However, two situations must be distinguished, although they lead to the same result: the disparities concerning non-harmonized criminal law and those that could nevertheless remain in the case of criminal law integrated by O.H.A.D.A.

In the first case, the heterogeneity of case law is unquestionable. Non-harmonized criminal law is subject to national law. The judge seized on a case is competent to interpret the text of the offense. He applies such a principal or complementary penalty to the offender and subjects him to such a security measure. He can also acquit the offender. In this first hypothesis, the Community judge can neither censure the interpretation of the text of incrimination nor even question the sentence applied by the national judge. The C.C.J.A. is only competent for interpreting and applying the Treaty, the regulations, or the Uniform Acts. Since this type of litigation is entirely outside the jurisdiction of the C.C.J.A., it goes without saying that the case law may vary according to the national legal systems of the member states.

On the other hand, concerning the second case, the hypothesis that incrimination is made in a uniform act, things are a little different, but with the same consequence. In fact, concerning this partially harmonized criminal law, if the interpretation of uniform acts and criminal offenses is not left to the national courts but to the C.C.J.A., it must be remembered that the national courts are responsible for applying criminal sanctions. In such circumstances, since O.H.A.D.A. refers to national law for the applicable penalty without always indicating a strict quantum, the decision to apply the penalty will ultimately depend on

each national law.

It depends on the State; a case may be judged differently despite the harmonization of the constituent elements of the offense.

Thus, it is noted that the application of criminal sanctions will vary according to the State. For example, in terms of fraud, the penal codes of Burkina Faso and Côte d'Ivoire provide, respectively:

- Burkina Faso: 1 to 5 years in prison and/or a fine of 300,000 to 3,000,000 CFA francs (article 477 paragraph 1); the penalties are 5 to 10 years in prison if it is a public call for the issue of shares, bonds, shares and other securities of a company, an enterprise commercial or industrial (article 477 paragraph 2); the article provides for additional penalties (paragraph 3);

- Côte d'Ivoire: 1 to 5 years in prison and/or a fine of 300,000 to 3,000,000 CFA francs (article 403 paragraph 1); the penalties are ten years in prison and (optionally) a fine of 300,000 to 10,000,000 CFA francs in the case of a public call for the issue of shares, bonds, warrants, shares and other securities of a company, a commercial or industrial enterprise (article 403 paragraph 2).

This example provides information on the variations between states and the sanctions that can affect an offense determined by O.H.A.D.A.

### **3.2 Taking into account the transnational nature of criminal business law**

Considering the transnational nature of reprehensible behavior in O.H.A.D.A. law is a source that considerably reduces the gaps between the regional organization and the member states in terms of criminal sanctions. Indeed, O.H.A.D.A. criminal law is a regional law. The organization is composed of seventeen States. It means that offenses are undoubtedly of a nature that goes beyond the national framework. The same should be valid for criminal sanctions.

For this reason, it is necessary to give meaning to this transnational character and use this extra-national character to reconcile the criminal laws of the countries that make up O.H.A.D.A. and the integration policy it has put in place, specifically criminal sanctions.

### 3.2.1 Definition of the transnational character of criminal law

Because of its specificity, criminal law can go beyond the national framework. In this order of idea, it could, according to certain elements, be qualified as transnational criminal law. That raises the following questions: could the regional criminal law of the OHADA area be considered transnational criminal law? Why?

These questions' answer requires defining transnational criminal law, comparing it to cross-border and regional criminal law, and finally demonstrating a possible consideration of O.H.A.D.A. regional criminal law as a transnational law.

Transnational criminal law could be defined as rules governing offenses' criminalization and punishment that either have an element of extraneity or are of international origin. The element of extraneity means a national criminal law is in contact with a foreign legal order. They generally result from the perpetrator's foreign nationality or the offense's extraterritorial nature. The international origin of criminalization or repression refers to their conventional or customary international sources.

However, if we refer to the preparation, planning, conduct, or control of the reprehensible behavior done by one state, and the act was executed in another state; we could talk about transnational crime. In other words, transnational crime refers to behaviors committed in two or more States.<sup>[67]</sup> It espouses this transnational qualification if the preparation, planning, conduct, or control of the wrongdoing was done in one State and the Act was carried out in another.<sup>[68]</sup>

That may also involve a criminal gang or group engaging in unlawful activities in multiple states. Finally, this transnational law may involve acts committed in one State, and the consequences of those acts are received in another.<sup>[69]</sup>

Transnational criminal law character is a concept of North American origin. Indeed, the mafia installation in the United States of America tended to diversify the typology of the offenses.<sup>[70]</sup>

In Italy, mafias have made it possible to specify the variety of criminal groups according to their fields of

intervention and the degree of their organization on a regional and continental scale.

The relationship between transnational criminal law and transnational crime thus establishes that it is necessary to highlight the differences between cross-border and regional criminal law.

Cross-border criminal law refers to the set of regulations that govern offenses that occur in one country and impact another border country. This law is based on offenses between two or more countries having a common geographical delimitation.

As an illustration, a person can commit an offense in a country, flees, and hides in another country bordering the first. The perpetrator can choose this bordering country for the lack of judicial cooperation and extraction. Thus, cross-border criminal law focuses on the interactions between different legal systems and how they cooperate in prosecuting criminals crossing national borders.

Unlike Cross-Border criminal law, transnational criminal law refers to generally organized criminal offenses or coordinated across borders. It involves several countries and focuses on the global, international nature of offenses. Drug trafficking, human trafficking, and money laundering are transnational offenses. It also requires international cooperation to combat them.

Thus, transnational criminal law deals with criminal activities involving multiple countries that are often organized or coordinated across borders.

Despite these differences, transnational criminal law is close to trans-frontal law, which generally extends into space and time. Both concepts are at the heart of organized crime, commonly defined as a *"set of crimes characterized by meticulous preparation, with multiple interventions, and general international dimension."*<sup>[71]</sup>

Regional criminal law is a set of legal and institutional rules that punish offenses within a specific geographic area. Offenses that are reprehensible vary by organization.

Here are some critical differences between transnational and regional criminal law:

- Scope: Transnational criminal law has a broader scope than regional criminal law. Indeed, offenses cross national boundaries, while regional criminal law is limited

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to a specific geographic area.

- **Jurisdiction:** Transnational criminal law uses cooperation and coordination between countries to enforce the law, while regional criminal law is applied within a particular region.

- **Enforcement:** Transnational criminal law is enforced through international organizations such as Interpol, and the United Nations, while regional law enforcement agencies enforce regional criminal law.

- **Harmonization:** Transnational criminal law aims to harmonize countries' legal systems and create common standards for criminal activity crossing borders. Regional criminal law aims to create a common legal framework within a specific geographic region.

- **Legal Instruments:** Transnational criminal law relies on international legal instruments such as treaties, conventions, and protocols, while regional criminal law relies on regional legal instruments such as charters, treaties, and agreements.

Because of these divergent elements, one tends to say that OHADA criminal law cannot be considered a transnational criminal law.

However, referring to the element of extraneity and the international source of transnational criminal law, one can draw a connection or even consider OHADA regional criminal law as a criminal law of a transnational character. Indeed, in the context of offenses committed by multinational commercial companies having subsidiaries in the member countries of the regional entity, these offenses can be considered transnational offenses.

Then, nowadays, the diversification of illicit activities is a perfect illustration. Illicit activities have varied according to the search for profit. The free movement of people and capital and the opening of borders has facilitated this search for profit. Hence the creation of new illicit activities, among which the economic crime.<sup>[72]</sup>

Thus, the activities are related to the participation in an organized criminal group and to the activities of money laundering, corruption, trafficking in arms and human beings, bribery, and delinquency related to business law.

Therefore, while the national criminal law

remains within its territory, transnational crime and the organization of cross-border networks require the adoption of common standards, if not unified, at least compatible.

Corporate and white-collar crime, committed by people who only see easy profit, even at a derisory cost, gangrene the national and continental economy. It is not only linked to delinquency in the business world.<sup>[73]</sup>

Because an economic actor commits an offense provided for by the provisions of the O.H.A.D.A. uniform acts, he must be treated as the perpetrator of a transnational offense. Indeed, O.H.A.D.A. is the meeting of several African countries.

Consequently, the element of extraneity or an extra-national source can have a repercussion on the penal qualification of the incriminations, thus making certain offenses of O.H.A.D.A. regional criminal law into transnational criminal law.

However, suppose one notes that each country, asserting its penal sovereignty and influencing the sanctions according to some interest, does not remain less. In that case, the penal treatment will be of an effect with weak intensity. As a result, O.H.A.D.A. criminal law could not strengthen business security in Africa. In other words, the translation of the States' control over offenses and sanctions would risk considerably reducing the legal security required by O.H.A.D.A. Only actors with considerable wealth will be untouchable and free to manipulate the economic fabric of the State in which they do business. For this reason, among many others, it is urgent to reconcile the transnational nature of the incriminations with the sanctions of O.H.A.D.A.'s criminal business law.

### **3.2.2 Reconciling transnationality with regional business law**

O.H.A.D.A. law cannot be effective without considering criminal law. Criminal sanctions are necessary for these rules to produce the desired effects. This entity seeks to be a homogeneous discipline in economic matters. Therefore, it is necessary to opt for a criminal law of direction that should fill the insufficiency of the civil sanctions provided by the set of rules intended to frame the business life, even the economic life in the

sense decided by the community bodies. Despite the sensitivity of this issue, which is an affirmation of the sovereignty of States, giving them the power to legislate in criminal fields (to order, prohibit and enact sanctions to infringe certain freedoms), there is also an imperative to harmonize the criminal provisions that punish the violation of the law. Indeed, if States were to penalize the violation of Community law provisions differently, this would undermine the legal certainty sought by the founders of O.H.A.D.A. That is what led the founders of O.H.A.D.A., in the search for a compromise while considering the sovereignty of the States, to opt for splitting up the different offenses relating to business. The basis of this compromise lies in article five of the Treaty that created O.H.A.D.A.

However, it must be recognized that this article has brought difficulties relating to the practical application of this regional criminal law of business. Indeed, the fragmentation of these offenses hinders the full implementation of uniform acts in criminal matters. The Treaty establishes the legal element of the incrimination and the repression of the offense. That concerns a part of the Community's economic life: *"The standard of incrimination and that of sanction belong to different legal orders."* <sup>[74]</sup>

For this reason, it should seek to reconcile the transnational nature of offenses and sanctions in O.H.A.D.A. law so that the objective assigned to the organization with a continental vocation, i.e., to ensure and guarantee the legal security of economic activities within its area, is achieved.

The fact that economic and financial delinquency has become transnational through the creation of O.H.A.D.A. also makes its control and repression more difficult. The speed of correspondence, thanks to information and communication technologies and the ease of financial transactions, has favored an internationalization of related activities. The evolution of the number of incriminations and their natures makes global business crime a current and developed source, particularly in Africa. In doing so, *"any solution in their official discourse can only be articulated about more surveillance, tighter security, and*

*better-calibrated enforcement. Any subsequent human security gap that arises from these practices will thus lead to more surveillance, security, and coercion in a potentially endless spiral of amplification."* <sup>[75]</sup>

*That should lead to the observation that the importance of organized crime in current delinquency, due to its character, presents a significant risk for human societies and States.*

*New guidelines in criminology will be desirable, as well as the constant development of regional cooperation, to contribute to a better adaptation of the penal policies of these States by guaranteeing the security of democratic, open, and, consequently, more exposed societies.*

*Finally, it must be remembered that organized crime has evolved. The multiplication of commercial exchanges and the mobility of individuals have opened up numerous avenues for various forms of crime. In addition to the drug trade, the field of criminal activities is constantly expanding. The considerable illicit profits have opened up new fields in the complex money laundering circuit.*

*If delinquency today has international dimensions, it has not abandoned its regional or cultural variants. Financial delinquency coexists with insecurity and the informal sector, present almost everywhere in the big cities of the world in which the rates of victimization grow.*

*Faced with these social facts, many States (especially those in the developing world) have difficulty implementing credible responses to increasingly elaborate or violent manifestations of delinquency. "Thus, many questions favor more effective research strategies and prevention and control policies to face tomorrow's challenges."* <sup>[76]</sup>

## Reference

- [1] (A.) SMITH, Recherches sur la nature et les causes de la richesse des nations, GF-Flammarion, 1991. (rééd. 1776), 2 vol., Livre IV, Introduction.
- [2] (PH.) COPPENS, "La fonction du droit dans une économie globalisée", Revue internationale de droit économique, 2012/3 (t. XXVI), 269-294.
- [3] Arroyo Zapatero, Luis,. L'harmonisation internationale du



- droit pénal, *Revue de science criminelle et de droit pénal comparé*, vol. 3, no. 3, 2011, 557-574.
- [4] Ibid.
- [5] (C.) Bassiouni, *L'Association Internationale de Droit Pénal (AIDP): Plus d'un siècle de dévouement à la justice pénale et aux droits de l'homme*, Nouvelles Études Pénales, éd. Érès, vol. 18 (1999), 13-14.
- [6] CORNU(G), Association (H) Capitant, *vocabulaire juridique*, op. cit.
- [7] <https://www.mataf.net/fr/edu/glossaire/financement-du-terrorisme>, consulted on 18/02/2023.
- [8] (H.) DIDACE AMBOULOU, *Le droit des affaires dans l'espace O.H.A.D.A.*, 1ere Ed., Harmattan, 2014.
- [9] Ibid.
- [10] Ibid.
- [11] (D.) KESSLER, *L'entreprise entre transparence et secret*, *Revue Pouvoirs* N°97, Paris, février 2001, 33-46.
- [12] See, for example, Article 435 paragraph 3 and 457 paragraph 2 of the Uniform Act on commercial companies.
- [13] The treaty is a written source of law. In the hierarchy of sources, it is placed after the constitution but before the law of each State - party.
- [14] Article five paragraph. one of the founding Treaty of O.H.A.D.A. provides: "the acts taken for the adoption of the common rules provided for in article 1 of this treaty are qualified as "Uniform Acts."
- [15] The specificities of each Member State are considered by the observations made.
- [16] See (I.) MAYELA, *Le régime juridique des actes uniformes de l'O.H.A.D.A.*, published on: 30/10/2019 in <https://www.village-justice.com/articles/regime-juridique-des-actes-uniformes-O.H.A.D.A.,32802.html>, consulted on 07/06/2021.
- [17] Article 10 provides: "The uniform acts are directly applicable and binding in the States Parties notwithstanding any contrary provisions of domestic law, prior or subsequent."
- [18] ISSAC, Guy, *Droit communautaire général*, Paris. Armand Colin. 7è éd. 1999. P.166.
- [19] C.C.J.A., Opinion n°001/2001/EP of April 30, 2001, *Recueil de jurisprudence C.C.J.A.*, n° spécial, janvier 2003, January 2003, P.74.
- [20] See ( I.) MAYELA, *Le régime juridique des actes uniformes de l'O.H.A.D.A.*, op. cit.
- [21] Article 146 of the Constitution of the Republic of Benin of December 02 1990 / Article 93 of the Constitution of the Central African Republic of March 27 2016 / Article 122 and 134 of the Constitution of the Republic of Côte d'Ivoire November 08 2016 / Article 175 paragraph 2, 180 paragraph 1, 181 paragraph 1, 222 and 243 of the Constitution of the Republic of Congo of November 06, 2015 / Article 10 paragraph 2 of the Constitution of the Union of Comoros of December 23, 2001 / Article 44 and 47 of the Constitution of the Republic of Cameroon of January 18 1996 / Article 139 of the Constitution of the Togolese Republic of September 27, 1992 / Article 150 and 152 paragraph 1 of the constitution of the Republic of Burkina Faso of June 11, 1991 / Article 93 paragraph 1 and 150 of the Constitution of the Republic of Guinea of May 07, 2010 / Article 221 of the constitution of the Republic of Chad of May 04, 2018 / Article 87 and 113 paragraph 1 of the Constitution of the Republic of Gabon of 1991 amended by Law No. 1/94 of March 18, 1994 / Article 39 h. and 95 paragraph 3 g. of the constitution of the Republic of Equatorial Guinea November 16, 1991, amended by Constitutional Law No. 1/1995, of January 17 / Article 98 paragraph 1. of the constitution of the Republic of Guinea-Bissau of May 16, 1984 / Article 90 of the Constitution of the Republic of Mali of February 25, 1992 / Article 120 paragraph 2 and 170 of the constitution of the Republic of Niger of November 25, 2010, / Article 92 paragraph 1 and 97 of the constitution of the Republic of Senegal January 22, 2001 / Article 216 of the constitution of the Democratic Republic of Congo of February 18, 2006.
- [22] C.C.J.A., Judgment No. 040/2013 of May 16, 2013, Case. Jean Samvi de SOUZA against GTA- C2A IARDT, JURIDATA N° J040-05/2013.
- [23] January 1, 2001 and January 1, 2002.
- [24] <https://www.dictionnaire-juridique.com/definition/investment.php>, consulted on 05/20/2021.
- [25] We have: in Benin law n°2020-02 of March 20, 2020, on the Investment Code in the Republic of Benin / in Senegal Law n°2004-06 of February 6, 2004, on the Investment Code, Amended by law n°2012- 32 of December 31, 2012 / in Guinea the law L / 2015 / N ° 008 / AN of May 25,



- 2015, on the Investment Code of the Republic of Guinea / in Burkina Faso law 038 - 2018 of October 3, 2018, on the investment code /, in Congo Law N° 008 – 92 of April 10, 1992, on the Investment Code /, in Congo RD the Law n° 004 of February 21, 2002 /, in Côte d'Ivoire, / Gabon, / in Guinea Bissau Ordinance No. 001/PRG/87 of January 3, 1987, amended by Law No. L/95/029/CTR of June 30, 1995/, Equatorial Guinea Law No. 7/1992 of April 30, on the investment regime in the Republic of Equatorial Guinea, Amended by Law No. 2/1994 of June 6 /, in Mali Law No. 2012-016 of February 27, 2012 /, in Niger Law No. 2014-09 of April 16, 2014, relating to the Code of investments in the Republic of Niger/, in the Central African Republic Law N° 96-019 OF MAY 13, 1996/, in Chad Law n°006/PR/2008 of January 3, 2008, instituting the Investment Charter of the Republic of Chad/, in Togo Law No. 2012 – 001 on the Investment Code.
- [26] We can cite a few texts: 1. The General Tax Code of the Union of Comoros was adopted by Law No. 11-07 of May 3, 2011, promulgated by Decree No. 11-151 of July 23, 2011; 2. General Tax Code of Senegal, adopted by Law No. 2012-31 of December 31, 2012; 3. Law No. 06-067/AN on the General Tax Code and Law No. 06-068/AN on the Book of Malian Tax Procedures, adopted on December 29, 2006.
- [27] Law No. 98-004 of January 27, 1998, on the Benin Labor Code.
- [28] Law No. 028 -2008/year on the labor code in Burkina Faso.
- [29] Law No. 92/007 of August 14, 1992, on the Labor Code of Cameroon.
- [30] Law No. 84-108 on the Comoros Labor Code.
- [31] Law No. 6-96 of March 6, 1996, amending and supplementing specific provisions of law no. 45/75 of March 15, 1975, instituting a Labor Code of Congo.
- [32] Law No. 16/010 Of July 15, 2016, Amending And Supplementing Law No. 015-2002 On The Labor Code Of The Democratic Republic Of Congo.
- [33] Law No. 95/15 of January 12, 1995, on the labor code in Côte d'Ivoire.
- [34] Law No. 022/2021 of November 19, 2021, on the Labor Code in the Gabonese Republic.
- [35] Law N°. L/2014/072/CNT of January 10, 2014, on the labor code of the Republic of Guinea.
- [36] Law No. 2/1990 of January 4, 1990, on general labor regulations in Equatorial Guinea.
- [37] Law No. 92-020 of September 23, 1992, adopting the labor code in Mali.
- [38] Decree No. 2017-682 of August 10, 2017, on the regulatory part of the Labor Code of Niger.
- [39] Law No. 2009-04 of January 29, 2009, on the Labor Code in the Central African Republic.
- [40] Law No. 1997-17 of December 1, 1997, on the Labor Code in Senegal.
- [41] Law No. 38/PR/96 of December 11, 1996, on the Labor Code in Chad.
- [42] Law No. 2021-012 of June 18, 2021, on the Labor Code in Togo.
- [43] It is the main structure for coordinating the actions of West African countries. Its main goal is to promote cooperation and integration to create a West African economic and monetary union.
- [44] The Central Bank of West African States is an international public institution headquartered in Dakar, Senegal. It is the joint issuing institution of the member states of the West African Monetary Union (W.A.M.U.).
- [45] The West African Economic and Monetary Union is a West African organization created on January 10, 1994. Whose mission is to achieve member states' economic integration by strengthening economic activities' competitiveness within an open and competitive market framework and a rationalized and harmonized legal environment. The union member countries are Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.
- [46] The West African Monetary Union (WAMU) is characterized by recognizing a single monetary unit, the African Financial Community Franc (CFA Franc), which the BCEAO issues.
- [47] The Economic and Monetary Community of Central Africa includes Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea and Chad.
- [48] This institution is responsible for the monetary convergence of member states, which share the same currency in Central Africa.
- [49] The central monetary institution of the Economic and Monetary Community of Central Africa and the common

central bank of the six states make up the Community. The institution's missions are to define and conduct the monetary policy of the E.M.C.C.A., issue its currency (banknotes and coins in C.F.A. francs), conduct its exchange rate policy, hold and manage the foreign exchange reserves of its member states, promote the smooth functioning of payment systems and promote financial stability.

[50] The E.U.C.A.'s mission is to harmonize the regulations in force in the member states in order to boost trade and facilitate the convergence of economic policies within the sub-region.

[51] It is the case when individuals or companies artificially relocate their income or profits to a country different from where they have their economic activities and where tax rates are meager, or even zero, as in "tax havens."

[52] A tax haven is a country or territory that deliberately adopts tax laws and policies that allow individuals or companies to minimize their taxes in the countries where they operate.

[53] That is a legal, administrative, or judicial provision that ensures the secrecy of the identity of the real owners of companies, trusts, or the owners of assets or rights.

[54] CORNU(G), Association (H) Capitaine, vocabulaire juridique, op. cit.

[55] (H.) DIDACE AMBOULOU *Traité congolais de droit du travail et de la sécurité sociale*, éd. L'Harmattan, Brazzaville-Paris, 2013.

[56] From Latin Harmonia.

[57] (M.) BOODMAN, « The Myth of Harmonization of Laws », (1991) 39 Am. J. Comp. L. 699, 700-702.

[58] (J.) ISSA-SAYEGH, *L'intégration juridique des États africains de la zone franc*, (1997) 823 Penant 5.

[59] (H. P.) Glenn (sous dir.), *Droit québécois et droit français : communauté, autonomie, concordance*. In : *Revue internationale de droit comparé*. Vol. 46 N°1, Janvier-mars 1994, 292-293.

[60] Which translates as "one".

[61] Which means "form".

[62] Émile LITTRÉ, *Dictionnaire de la langue française*, t. 7, Paris, Gallimard, Hachette, 1971, p. 1450.

[63] (M.) GRIMALDI, *Codes et codification : pour souligner le dixième anniversaire de l'entrée en vigueur du Code civil du Québec et le bicentenaire du Code Napoléon*, (2005)

46 C. de D, P.19 pour qui il n'y a point de code dans un authentique pays de Common Law.

[64] (J.) COMBACAU, (S.) SUR, *Droit international public*, 6e éd., Paris, Montchrestien, 2004, 178- 180.; (J.-M.) ARBOUR, *Droit international public*, 4e éd., Cowansville, Éditions Yvon Blais, 2002, 145-146.

[65] J. BORE, la difficile rencontre du droit pénal et du droit communautaire, in *mélange à l'honneur d'André Vitu, droit pénal contemporain*, Cujas, 1989, 25.49.

[66] Quoted by (P.G.) POUOUE, (F.) ANOUKAHA, et (J.) NGUEBOU, *L'Acte Uniforme relatif au droit des sociétés commerciales et du groupement d'intérêt économique* annoté et commenté, juriscope, paris, P.234.

[67] United Nations Convention against Transnational Organized Crime, 2001.

[68] Ibid.

[69] Definitions of "transnational organized crime" abound; some scholars reserve the term for Mafia-type criminal organizations, while others apply it to all criminal structures that involve the coordinated action of more than three people. The same is true of the meaning of the term "transnational."

[70] (G.) Picca *Rivista di Criminologia, Vittimologia e Sicurezza*, Vol. III – N°3, Vol. IV – N. 1 – Settembre 2009– Aprile 2010.

[71] (S.) Guinchard, (T.) Debard, *Lexique des termes juridiques*, op.cit.

[72] (J W. E.) SHEPTYCKI, *Réflexions critiques sur le crime transnational et les services de police transnationaux*. *Criminologie*, 47(2), 2014, 13–34. For the authors: "The transnational condition is inherently criminogenic, that is, it systematically causes crime. That is so for various reasons, but perhaps the most fundamental is the enormous gap in life chances and living standards between classes of people. This gap is evident at different geographical levels: from local municipalities to regions to the international level. This basic precondition is made manifest practically by vast differences in politics and economic power; these distinctions occur within a world system based on capitalist consumption and competition."

[73] (R. D.) LAING, *The Politics of Experience and the Bird of Paradise*. Harmondsworth: Penguin. 1967, p.49. the authors

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asserts : "Until we can think beyond them and we, the good and the bad, history will continue. The only possible ending will be when all the good guys have killed all the bad guys, and all the bad guys have killed all the good guys. Such a scenario does not seem so difficult or improbable. From our perspective, we are the good guys, and they are the bad guys, while from their perspective, we are the bad guys, and they are the good guys..."

[74] SAID ISSA, La politique juridique des Etats parties de l'O. H.A.D.A. : Une faille pour une intégration effective, Publié le 22/09/2010 in [https : //www.legavox.fr/blog/said-issa/politique-juridique-etats-parties-O.H.A.D.A. -3286.htm](https://www.legavox.fr/blog/said-issa/politique-juridique-etats-parties-O.H.A.D.A.-3286.htm), consulté le 05/06/2021.

[75] (G.) Picca *Rivista di Criminologia, Vittimologia e Sicurezza*, Op. Cit.

[76] Ibid.