

African Union and African Integration: The Constitutive Act

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ABSTRACT

The aim of this paper is to appraise the African Union and African integration with specifics on the constitutive Act. Africa has made several attempts at integration at various levels. These efforts have recorded varying degrees of success and failure. Via an appraisal of the Constitutive Act of the African Union, this study attempts to determine whether this latest attempt at continental integration in Africa can succeed in certain areas where others, notably the Organization of African Unity, failed. The Constitutive Act is analyzed in the light of prevailing theories of integration and past as well as existing integration initiatives in Africa. The study concludes that the African Union represents an acknowledgement of the weaknesses of past integration efforts in Africa and expresses a commitment to forestall further failure. Nevertheless, Africa continues to face challenges and concerted efforts must be made to enhance the capacities of the organs of the Union in order to facilitate the attainment of its objectives and to secure Africa's economic and political independence.

INTRODUCTION

Integration has become synonymous to development in many parts of the world. Given the economic, political, and social challenges of today's world, it seems no nation state can escape the need for a stronger regional focus. This is even truer for nation states that are relatively small in terms of their economies and population.

Africa has been a continent with many colonial powers, each having territory over which they exercised political, economic, social, and military control. This was the case from 1884 up to the 1960s when, led by Ghana, sub Saharan African countries started gaining independence. The emerging states in Africa and their leaders clearly saw the need for the integration of the continent. They only differed on the modus operandi.

Africa's commitment to integration is evidenced by the impressive array of organizations launched to expedite the process of integration. These organizations, it was firmly believed, would lead to the creation, at the national, sub regional, and

regional levels of a dynamic and independent African economy, paving the way eventually, for the creation of one continental body.

Even though there are problems and hurdles on the way to an eventual total integration of the African continent, there is a general consensus in Africa that there is no alternative to integration, if Africa is to make it in this millennium, which is characterized by globalization and the formation of unions in Europe, Asia, and the America. These challenges are both socio economic as well as political. An appraisal of the Constitutive Act of the African Union is intended to objectively assess the provisions of the Act and weigh them against the challenges that still exist to Africa's total integration.

Brief History of Organization of African Unity (OAU)

The appraisal of the African Union and its Constitutive Act would be complete without a discussion; however brief, of its predecessor the O.A.U. To the credit of Africa's first post-independence leaders, the OAU emerged in May 1963 as a compromise between two fiercely competing political ideologies and socio-economic relations.

As the first organization of its kind Africa, the OAU faced severe challenges to the achievement of its aims, objectives and goals. It is important to note that, post independent African states share diverse ethnic, religious and political dispensations. Anglophone, francophone, lusophone and capitalist socialist dichotomies fuelled numerous conflicts and served as forces of opposition to cooperation in Africa. The OAU had to contend with severe economic crises consisting of mounting debt burden, deteriorating terms of trade, and increasingly disparate level of economic development, as well as non compliance to its directives by member states.

Crisis in the form of border disputes were rife and the OAU lacked the authority to intervene effectively to the principle of non-interference in the internal affairs of member states. To cap it all, the OAU's efforts were severely restrained by the nonpayment by member states of their membership dues.

The Constitutive Act of the African Union and African integration

The African Union is the second and latest attempt at continental integration in Africa. An appraisal of the Constitutive Act of the Union is more meaningful at this stage than its achievement since the AU is but a few years old. The principles of the OAU have been improved upon with the erasure of such principles as Non Alignment and anti colonialism, and the addition of new principles such as the establishment of a common African defence policy, the promotion of gender equality, and the condemnation and rejection of

unconstitutional governments. African leaders have learnt from their own experiences that peace, security, democracy, good governance, human rights and a well managed economy are necessary conditions for sustainable development. They are therefore making a pledge to work, both individually and collectively, to promote these principles in their countries, regions, and the continent as a whole.

Articles 3 (f) of the Constitutive Act both deal with peace and security. These initiatives consist of three elements: promoting long term conditions for development and security, building the capacity to prevent, manage, and resolve conflicts, as well as building the capacity of African institutions for early warning in global politics considering the importance of peace and security issues in Africa, it seems unlikely that the existing Conflict /crisis Management Centre established under the OAU will be disbanded and the security functions of the Organ discontinued. This raises the question of how the AU will relate to the Conference on Security, Stability, Development and Cooperation in Africa (CSSDSA) and The New Partnership for Africa's Development (NEPAD), both of which have peace and security mandates at the regional level as regard to world affairs.

The AU in Article 3(g), on the one hand, confirms its adherence to the principle of non interference in the internal affairs of member states, as did the OAU. On the other hand, Article 3(h) concedes "the right of the union to intervene in Member States, pursuant to a decision of the Assembly in respect of grave circumstances, namely, war crimes, genocide, and crimes against humanity". This new addition is to ensure that the rights of the peoples of the continent are preserved.

The question of human rights as enshrined in Article 3(h) brings to mind very important questions: Will the African Union succeed in upholding human and people's rights in its member states when the OAU failed? Democracy refers to self-government, where there is a government of the people, by the people, and for the people and Article 13 of the African Charter on Human and People's Rights states in no uncertain terms, that, "every citizen shall have the right to participate freely in the government of the country, either directly or through freely chosen representatives in accordance with the provisions of the law". Thirty-nine years after the promulgation of the Charter, it has not been fully put into practice. This objective in the Constitutive Act is therefore very important and African leaders must do everything possible to ensure its enforcement.

If the intention of African leaders is to move from the OAU to an effective AU, the issue of sovereignty as enshrined in 3(b) of the Constitutive Act cannot be avoided. The issue of sovereignty is at the core of the transformation of the OAU and therefore, addressing this issue in one way or the other is unavoidable. In its working documents on the transformation of the OAU into the AU, the Secretariat

suggested the pooling of the sovereignty of member states in some specific areas "to start with. According to the Secretariat, "it was our considered view that such areas as environment, the fight against pandemics, external trade and food security deserve to belong to the community domain. In these and other areas, our individual Member States, individually, cannot make any difference, while in pooling sovereignty, they can make impact.

Structure and Organs of the African Union

In addition to the four organs of the OAU, The AU has created five more institutions. In consonance with Article 5(2) of the Constitutive Act, African leaders have decided to incorporate the Peace and Security Council, and the NEPAD, as organs of the Union which helps in African total integration. This is an ambitious list and reflects a model drawn from the European Union. The Constitutive Act lays out blueprints for each of these, while also leaving many of the details for future elaboration. The Union cannot function without two of the organs which are of utmost importance. These are the Assembly and the Commission. The Executive Council runs a close third. These are essentially the same organs that existed under the OAU. However, their governance and administrative responsibilities will be heavier, given the task of setting up and running the other institutions envisaged by the Constitutive Act.

The strength of every organization, more or less resides in its secretariat but this was not the case with the OAU. Although the statute of the Commission has made provisions which will free it from undue interference from member-states, there is also the need to clearly define the relationship between the Commission and the Permanent Representative Committee to ensure they do not interfere in the affairs of the Commission. Since the Union cannot function without these two bodies, all efforts must be made to equip them to function properly.

A perusal of the Constitutive Act reveals that relevant supranational institutions have been created for the AU, but their powers are very suspect. The Act is very vague or silent regarding the enforcement of decisions by these two organs; meanwhile, they appear to be essential to the realization of the objectives of any economic community. Take the Commission of the European Union, for instance. This body has contributed immensely to the success of the EC to date. The European Commission and its 18,000 staff members have served as the bureaucracy of the EU. It has been responsible for the initiation and implementation of policies and the promotion of European interests.

Conversely, there seems to be multiple institutions with overlapping functions in the AU. The Economic and Social Council, the Specialized Technical Committees, and the Executive Council for example may soon engage in struggles

over competencies. It is therefore an imperative that the Executive Council has Clear-cut mandate, if nothing else, in order to promote supranational interest, through policy formulation and implementation. The Protocol relating to the establishment of the PAP was adopted at the 36th OAU Summit in Lome, Togo in July 2000 and is still being ratified by Member States.

The PAP was established in March 2004, by Article 17 of The Constitutive Act of the African Union, as one of the nine Organs provided for in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria, in 1991. The establishment of the Pan-African Parliament is informed by a vision to provide a common platform for African peoples and their grass-roots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent.

The Pan-African Parliamentarians represent all the peoples of Africa. The ultimate aim of the Pan-African Parliament is to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage.

The objectives of the Pan-African Parliament, according to its protocol, are among others, to facilitate the effective implementation of the policies of the Union; promote the principles of human rights and democracy in Africa; and encourage good governance, transparency and accountability in member-states.

The notion of creating a PAP invokes nationalistic concerns from some member states. The main issues are its composition, jurisdiction, and powers, and whether such a body would have an Executive Branch to enforce its legislative enactments. Regarding the jurisdiction and powers of the PAP, the primary concern is whether this body would have a prerogative over existing national parliaments.

The mode for electing members has also not been agreed upon. At the meeting of legal experts and parliamentarians in Tripoli in 2000, it was noted that, "the process of electing Members of the PAP, the context of a continent-wide electoral process, would not only be most costly but would also present severe administrative and logistical challenges to member states." There is thus no consensus on even the mode of selection of parliamentarians to the PAP. The question of how many persons would represent each country is also still a debate since membership is by equal number of seats based on the principle of sovereign equality of states.

The Economic and Social Council

The Constitutive Act contains provisions for economic and monetary union, and specifies that the Union shall have an African Central Bank, African Monetary Fund and an African Investment Bank (Art.19). These are institutions that, if taken seriously, contribute to a stronger continental Union. Africa's constant dependence

on the West for aid has put the continent in a position of subservience and if Africa is able to fund her projects from her own coffers, she will gain influence and take her rightful place in world affairs.

Regarding the establishment of these institutions however, if it is seen as monetary union, it may not be feasible in the short term, given that Africa has more than 47 different currencies with very unequal values. The fact of the matter is that the requisite foundations for an African Economic and Monetary Union are currently unavailable. A monetary union requires participating countries to part with their sovereignty, meaning loss of control over monetary policies, among others. How is this likely to happen in a continent where more of its players lack monetary and fiscal discipline? In the face of adverse economic situations, African governments, under pressure, are known to have printed money at will, with little or no regard for rational economic principles. The AU has therefore encouraged the Regional Economic Communities (RECs) to intensify efforts at sub-regional integration and this includes monetary union. These sub-regional efforts could eventually culminate into a continent-wide monetary union. A continent-wide monetary union may therefore be considered a legitimate long-term objective.

The Constitutive Act further allows for the creation of an Economic and Social Council (ECOSOC), through which civil society, trade unions, and Non-Governmental Organizations will have a right to participate in the affairs of the AU. Its functions, composition and organization however, are to be determined by the Assembly. Despite the fact that the very notion of civil society is still an "anathema" to most of the AU's Heads of State, this again is an advance on the charter of the OAU and will go a long way to ensure mass participation in the activities of the Union.

Many of the obstacles that have hampered effective economic integration in Africa in the past still exist. The most significant of these is the lack of a dominant political or economic power on the continent that can form the core of the integration process. Whereas countries like Nigeria and South Africa have spearheaded the cause of integration in West and Southern Africa respectively, at the continental level there is no single country with the economic and political might/influence to play a comparable role. Most African countries are exporters of raw materials, especially agricultural and mineral products, and compete with one another for markets. Industrial production is concentrated in a relatively small number of countries, and is not significant on a global scale.

The peace and stability function of economic integration is important for various reasons. First, it provides an important political impulse towards economic integration. Second, economic integration will be successful if it generates economic growth, and that in turn is facilitated by peace and security. Economic integration

should help limit inter- state conflict, because there are strong countervailing interests against a break in relations between economically-integrated neighbors.

Members of African civil society will be assisting with the drafting of the protocol establishing the ECOSOC, meaning that a consistent and fair process is likely to be the result. This also means we can ensure monitoring of and civil society participation in all the affairs and business of the AU, making it a people's institution instead of political leaders' institution like the OAU. Despite the fact that the very notion of civil society is still "anathema" to most of the AU's Heads of State, this again is an advance on the OAU Charter and bodes well for the integration of the African continent.

In order for an economic community to function and have stability, the experience of the European Union (EU) demonstrates that the contracting parties have to commit themselves to a democratic style of decision-making. The principle of majority rule and minority rights has prevailed in West European societies during the post-World War II period. Hence, it was only appropriate that the tradition be continued at the supranational level. Member countries of the EU have also been typically guided by the politically permissible of their respective societies when agreeing to policies at the EU level. That is, they are cognizant of the fact that they are democratically elected governments, which have to periodically submit themselves to the scrutiny of voters at home. Hence, member governments are unlikely to adopt politically unpopular policies which could lead to their demise at home. In essence, the European people have a say in what goes on at the supranational level, albeit indirectly. This overarching commitment to a multi-party democratic tradition is not only stated in the legal documents of the EU but is also demonstrated time and again by the EU as a precondition for accession.

It is this lack of a sustained democratic tradition which is worrisome in the African Continent. Contracting African countries, in general, lack a credible track record with respect to democratic principles. What is more, the AU Treaty is not explicitly reassuring on this point. Since the advent of independence in Africa, only a handful of African countries have remained steadfast in their pursuit of multi-party democracy. The implication and, indeed, the reality is that African governments are prone to use coercion via the centralization of power in their decision-making endeavor and are likely to transfer this attitude to their dealings the AU.

African Court of Justice

This will also be a new institution and like the Parliament, its statute, composition and functions are to be defined by the Assembly. The interpretation of matters relating to the application of implementation of the Constitutive Act is entrusted to the Court by Article 26. Although the powers and function of the

African Court of Justice have not been established, it should assist in settling legal disputes between member countries and help secure justice against human rights abuses anywhere in Africa. The Court will also provide a place where disputes between nations can be heard in an unbiased venue. As noted earlier, Article 9 of the Constitutive Act entrusts the appointment and termination of appointments of judges of the Court in the hands of the Assembly. This is likely to compromise the independence of the Court and must be reviewed since cases to be handled by it may involve governments of Member States.

An EU institution of importance and relevance to the African Court of Justice is the European Court of Justice (ECJ). In accordance with the respect for rule of law and due process at the national level of member countries, an adjudicating body is created under the aegis of the EU. The (ECJ) has successfully acted as the final arbiter on disputes between different parties within the EU. The ECJ has such an impressive record that some "Euro-watchers" have proclaimed that "the Court of Justice constituted the European Community, "because during the two-decade period of inaction and paralysis in the EU, it was the ECJ that kept alive the vision of European integration to mean more than just a trade arrangement. Shapiro notes that the emergence of the ECJ as a vital organ of the EU was gradual, beginning with its landmark decisions during the early-1960s when the Court established its relevance to EU activities and the supremacy of EU laws over national ones.

In the manner the AU is conceived, it is unclear from a perusal of the treaty if its adjudicating and arbitrating institutions would be assured non-interference from participating member states. It is also highly unlikely that African countries will, anytime soon, accept the principle of allowing AU laws to supersede national laws. Consequently, African countries must endeavour to establish a pervasive respect for rule of law and due process at the national level. In short, the foundations for effective human (individual and group) and institutional rights in Africa are currently remiss. Unless the situation is rectified, the AU Court of Justice may be a still born idea, if the contention by Shapiro is accepted.

In general, the argument being advanced here is that supranational institutions, such as a bureaucracy a judiciary, may be critical to the ultimate success of the AU. They are essential tools of rulemaking, rule implementation, and rule adjudication, which constitute the foundation for the success of any regional integration. Although a bureaucracy and a Court of justice exist under the AU framework, they must be accorded binding powers.

The Peace and Security Council

This Organ is envisaged to replace the Central Organ of the OAU's Conflict Prevention Management and Resolution Mechanism. The Protocols relating to its establishment (ASS/AU/4(I)) was adopted by the First Ordinary Session of the Assembly in Durban South Africa on 9th July, 2002. The rationale within the African context for the adoption of a common position to Africa's defence and security policies has its roots in the speeches and writings of the late Kwame Nkrumah and other leading Pan Africanists during the 1950s. Nkrumah called for the creation of a common African defence capability whereby Africa could resist the interventions of external actors in the continent. He called for the creation of an African High Command whose task would be, initially, to co-ordinate the respective defence activities of all OAU Member-States and, ultimately would result in the creation of a common African military capability. The Constitutive Act of the African Union asserts the following principles.

- The promotion of Peace and Stability on the continent
- Establishment of a common defence policy for the African continent (Constitutive Act, 2000, Article 4(d)).
- Peaceful co-existence of Member-States and their right to live in peace and security (Constitutive Act 2000, Article 4(i)).

The Draft Protocol Relating to the establishment of a Peace and Security Council of the AU identifies the following mechanisms as constituting components of the Common African Defence Security Policy (CADSP). "There is hereby established, pursuant to Article 5 of the Constitutive Act, a Peace and Security Council as a standing decision making Organ for the prevention, management and resolution of conflicts within the Union". Further, the Draft Protocol also endorses the development of a "Common Defence Policy for the Union, in accordance with Article 4(d) of the Constitutive Act".

According to the Protocol, the Peace and Security Council (PSC) shall comprise of 15 members, 10 out of this number will serve two years and the rest for three years, subject to immediate re-election. The OAU had a lack of continuity of membership in its institution for the management of conflict and this provision is meant to eliminate this weakness in the AU Peace and Security Council. The Council will employ the early warning system, preventive diplomacy, peacemaking, peace support operations and intervention activities as its modes of operation. This also includes peace building, post conflict reconstruction, humanitarian action and disaster management.

A remarkable feature of this protocol is the formal recognition of the need for cooperation with other peace and security organs, such as the United Nations. Like the mechanism of the OAU, however, the Peace and Security Council is not

empowered to respond to conflict situations without the authority of the Assembly. This situation may tend delay intervention efforts and lend to compounding of situations needing rapid action.

The political environment on the continent seems to be stabilizing, as more African countries embrace democratic governance. What remains to be done is the deepening of constitutionalism in member-states as well as the rule of law. The establishment of the Peace and Security Council will however prevent, monitor, and intervene in conflicts on the continent to ensure the protection of lice.

The New Partnership for Africa's Development initiative was launched in October, 2001 in Abuja, Nigeria as a merger of two pre-existing initiatives, namely the Millennium Partnership for Africa's Recovery, and the OMEGA Plan spearheaded by Senegal. NEPAD was adopted by the Assembly of Heads of State and Government at their 37th Ordinary Session held in Lusaka, Zambia in July, 2001 as one of the organs of the African Union. Through the NEPAD initiative, African leaders and their governments have made a commitment to promote good governance as a precondition for rapid economic growth. It is expected that in response to the strengthening of democracy and the rule of law, achieving Peace and Security, and reducing corruption, Africa's developing partners in the industrialized world will provide fairer access for African products on their markets and grant more debt relief to enable the continent meet its development agenda.

Apart of the NEPAD program is the establishment of an effective African Peer Review Mechanism (APRM). The APRM is owned and managed by Africans so as to demonstrate, that African leaders are fully aware of their responsibilities and obligations to their peoples and are genuinely prepared to engage and relate to the international community on the basis of transparency in leadership. The mechanism aims to identify evaluate and disseminate best practices in political and economic governance and monitor progress towards these goals. This is meant to bring errant leaders under control and ensure self monitoring among leaders of the Union. This will go a long way to ensure that democracy prevails on the continent.

At a Workshop of Experts on the indicators, Benchmarks and Processes for the African Peer Review Mechanism, held in 2002, the experts agreed that the APRM has a critical role to play in this context of democracy prevailing on the continent and the goal of the African Union as the parent assembly is to ensure not just that it is done properly, so that we can get things right. The continent has embraced several programmes in the past that were stifled in the process of implementation either because the approach or planning process was ill-conceived or because we could not mobilize general support behind them. According to the experts, this is a mistake that we must not repeat. It is thus imperative that we learn from experience. The key lesson is that the good intentions of African leaders have

not always translated into results. Thus Attica must harness efforts to intentions and the character of such efforts must be informed by the need to work together in an atmosphere of mutual respect. Africa must also act with transparency in a manner that acknowledges our mutual sensitivities so that our efforts will converge. The process of peer review must thus begin with our own initial efforts.

Challenges External to Africa's Integration Efforts

There are several forces that combine to reshape the development terrain in Africa: innovation in technology; the rapid financial integration of the world, especially being fuelled by advances in information technology, and most importantly, regional and / or sub-regional integration.

The external challenges confronting Africa's development and integration come these inter-related sources, amongst which is the constraints imposed by the hostile international economic and political order within which African economies operate.

The main elements of the hostile global order include, first, the fact that African economies are integrated into the global economy as exporters of primary commodities and importers of manufactured products, leading to terms of trade losses. Reinforcing this has been the policies of liberalization, privatization deregulation as well as an unsound package of macroeconomic policies. An example is structural adjustment which was imposed on African countries by the World Bank and IMF. This was institutionalized within the WTO through the rules of agreements and procedures, and has been biased against African countries. The external difficulties have exacerbated the internal structural imbalances of African economies, and this has further led to the disintegration of African economies.

Globalization is thus nothing but a new order of marginalization of the African continent. By its universalization of communications, mass production and market exchanges, rather than engendering new ideas and developmental orientation in Africa, it subverts the autonomy and power of self-determination by Africans. Thus despite the continents stupendous resources, poverty has become a major institution in Africa.

Nation-states in Africa today rarely define the rules and regulations of their economy, production, credits and exchanges of good and services due to the rampaging menace of globalization. Looking at the foregoing, it is apparent that the globalization process is more symmetrical to the "origin and development of the neo-colonial states in Africa which were determined by the nature and structures of the colonizing countries. Globalization thus creates a process through which the poor countries in Africa are dominated by the rich countries.

Considering the disadvantages of globalization for Africa and in light of the analysis done in the context of the article, one may argue that much as globalization may be inevitable, its consequences for Africa are devastating. There is, therefore, the need for an appropriate response from Africa with a view to understanding the dynamics that will hopefully help to evolve measures that will reduce the devastating effects of globalization.

CONCLUSION

International relations in Africa has changed dramatically since the end of the Cold War with the collapse of Apartheid rule in South Africa, and the intensification of the phenomenon of globalization. The African continent must therefore reposition itself for the new realities of international relations. The creation of the proposed bodies provided for in the Constitutive Act and the implementation of the provisions of the Act would contribute significantly to this end.

The question though is whether the African Union will be successful in realizing its goals and objectives. In addition to the new challenges posed by globalization, trade liberalization, the HIV/AIDS pandemic and scientific as well as technological advancement, many of the issues the OAU was not able to address still persist. These include the mounting debt burden, poverty and low intra-regional trade, degradation of the environment and poor physical and production infrastructure to facilitate continental integration.

Again, despite the obvious improvement in the objectives, principles, institutions and mode of operation of the African Union, the AU is ultimately an institution of sovereign states, and consequently, the success or otherwise of the Union will depend on Member-States. If the AU is to succeed therefore, it is incumbent on all Member-States to soberly reflect on what led to the failure of the OAU in these same areas and to make a conscious effort to avoid these in order for the African Union to succeed.

Furthermore, intra-African trade, which is at an infinitesimal level (roughly 8% of Africa's total trade), must be vastly augmented. Likewise, intra-regional trade between the existing regional enterprises must be encouraged and strengthened beyond sheer rhetoric. If intra-African trade is to improve, as advised by the AEC Treaty, extraneous-conditioned influences, like colonial links and colonial mentalities must cease. Finally, if the AU is to take off and not be relegated to obscurity or be merely footnoted in history, requisite democratic institutions must, first, be constructed at the national level. If the AU is to succeed, rational economic principles must guide decision-making at the national and supranational levels, so as to achieve optimal allocation of limited resources and optimize returns.

Member countries must also be able to measure benefits; otherwise, they may find it difficult to justify their membership. This is indeed important, because, at least in the experience of the EU, national interests continually compete with supranational ones. To that end, a realistic timetable is in order for the AU to succeed. To be sure, and in light of the foregoing discourse, Africa needs a modicum of regional integration for its survival and advancement.

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