

A supranational African Union? Gazing into the crystal ball

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OPSOMMING

'n Supranasionale Afrika Unie? Die toekoms voorspel

Die ontstaan van die Afrika Unie (AU) word gesien as 'n poging tot die herposisionering van Afrika vir die uitdagings van die kontemporêre *realpolitik* en, in die besonder, as 'n padkaart tot die bereiking van 'n politieke unie. Die instusionele argitektuur van die AU, gebaseer op die Europese Unie, dui die bedoeling van die argitekte van die AU aan om die organisasie met supranasionale eienskappe toe te rus. Tot op hede het geeneen van die instansies supranasionale magte begin uitoefen nie. Dit is teen hierdie agtergrond dat hierdie artikel die bespreking van supranasionalisme en die kerneienskappe van die AU binne die konteks van Afrika-integrasie probeer plaas deur te argumenteer dat die instansies van die AU nie supranasionale entiteite is nie. Vir die AU om sy volle potensiaal te bereik is dit noodsaaklik dat alle lidstate opregte politieke wil toon om 'n graad van soewereiniteit aan sy instansies te verleen.

1 Introduction

At the ninth African Union Summit held in Accra, Ghana, in July 2007, the stage was set for a decision that could change the trajectory of African unity. African leaders were faced with the recurrent dilemma of choosing between the immediate establishment of a continental government and yet another incremental step towards a union government. Expectedly, the latter view prevailed. This decision firmly placed the trajectory of African integration on a gradual footing even though acknowledging that the terminal point of this process would be the establishment of a "United States of Africa" with a union government.¹

The African Union (AU) is the organisation charged with the responsibility of taking Africa to this "promised land". In order for the AU to effectively carry out this delicate and arduous task, it is essential that the organisation be endowed with supranational authority. A corollary of this is that the AU will possess certain international law attributes often associated

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¹ See Accra Declaration, available at http://www.africa-union.org/root/ua/Conferences/2007/juin/Sommet_Accra/Doc/Decision/Accra_Declaration.doc (accessed 2007-10-10).

with nation-states. This is by no means an easy process considering the fact that it impinges upon the question of state sovereignty – a concept that continues to generate passion amongst nation-states.

It is against this background that this article intends to locate the discussion on supranationalism and its core attributes within the matrix of the African integration framework. The development in global *realpolitik* concerning the increasing supranational powers of European Union institutions, has reinforced the centrality of conferring international law features such as sovereignty and international legal capacity on international organisations. This, to a large degree, enhances their effective functioning and also stimulates the regional integration process.

This paper begins with an analysis of the theories of supranationalism by arguing that the AU is still far from being a supranational entity, albeit it has the potential to become one. It then proposes ways and means of conferring sovereignty on key AU institutions. In conclusion, the paper explores the essential ingredients for creating a supranational AU.

2 The African Union: A Supranational Organisation?

International organisations operate on either an intergovernmental or supranational basis. Intergovernmentalism accentuates the dominant structure of the nation state in international relations. Nation-states remain the primary actors in terms of policy making while international organisations merely represent a platform for interaction amongst states.² It is, however, possible for an intergovernmental organisation to evolve into a supranational organisation as long as it satisfies the necessary criteria discussed below.

The term “supranationalism” has been defined as “the existence of governmental authorities closer to the archetype of federation than any past international organisation, but not yet identical with it”.³ Rosamond⁴ also defined it as “the development of authoritative institutions of governance and network of policy-making activity above the nation-state”. Supranationalism gained currency in Europe after World War II, when the protagonists of this idea questioned the rationality and the ability of nation-states to ameliorate conflicts and provide for a stable socio-economic order.⁵ Nation-states are expected to surrender important components of their sovereignty associated with statehood to a neutral authority which is

2 Weiler *The Constitution of Europe: Do the New Clothes Have an Emperor? And Other Essays on European Integration* (1999) 273.

3 Haas E, *The Uniting of Europe: Political, Social and Economic Forces 1950–1957* (1958) 59.

4 *Theories of European Integration* (2000) 204.

5 O’Neill *The Politics of European Integration: A Reader* (1996) 21. Hay observed that the concept of supranational organisation dates back to the 19th century with the establishment of the German Zollverein and the Danube Commission. See Hay *Federalism and Supranational Organizations: Patterns for New Legal Structures* (1966) 4–5.

better placed to minimise conflicts and enhance transnational socio-economic benefits.⁶

In an analysis of supranationalism within the European Community, Weiler⁷ makes a distinction between normative and decisional supranationalism. According to him, normative supranationalism entails “the relationships and hierarchy which exists between the EU policies and legal measures on one hand, and competing policies and legal measures of member states on the other”.⁸ Decisional supranationalism on the other hand, “relates to the institutional framework and decision-making processes by which Community policies and measures are, in the first place, initiated, debated and formulated, then promulgated and finally executed”.⁹ It is the combination of these two that distinguishes a supranational organisation from other intergovernmental organisations.¹⁰ The corollary of this is the existence of a *sui generis* international organisation which acts independently of the member states; takes binding decisions and is responsible for the supervision and implementation of such decisions and constitutes a separate legal order.¹¹ However, this does not necessarily mean that member states are totally excluded from the decision-making process; they remain – together with supranational institutions – privileged players in the integration process.¹²

Having outlined the elements of supranationalism, the following sections will be aimed at determining whether the AU meets the requirements of supranationalism and can thus be regarded as a supranational organisation.

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- 6 Rosamond (2000) 33. Presenting an alternative historical analysis of supranationalism, Lindseth wrote: “[T]he extensive delegation of normative power to the executive and technocratic sphere after 1945 . . . [was] reflective of a conscious effort by major political actors to reinforce the nation-state by making it a more effective agent in the promotion of public welfare, by insulating decision-making from the parliamentary interference and factionalism and thereby pre-committing the state to a stream of purportedly welfare-enhancing future policy choices.” See Lindseth “The contradictions of supranationalism: Administrative governance and constitutionalization in European integration since the 1950s” 2003 *Loyola of Los Angeles Law Review* 382.
- 7 Weiler “The community system: The dual character of supranationalism” 1981 *Yearbook of European Law* 271.
- 8 *Ibid.*
- 9 *Ibid.*
- 10 *Idem* 305. Pescatore identified 3 criteria of supranationality: recognition of common values and interest; creation of an effective power and the autonomy of these powers. He further noted: “[W]here common interests and common values are recognized, the second element of supranationality, the recognition of common authority is lacking. Nothing more, then, has been achieved than what is called international co-operation.” See Pescatore *The Law of Integration* (1974) 51–52. As Leal-Arcas observed, only the EU and the South American Community of Nations (comprising the Mercusor and the Andean Community) qualify as supranational organisations *stricto sensu*. See Leal-Arcas *Theories of Supranationalism in the EU* (2006) 5, available at <http://www.bepress.com/cgi/viewcontent.cgi?article=8481&content=expresso> (accessed 2007-10-12).
- 11 See Lenaerts and Van Nuffel Bray (eds) *Constitutional Law of the European Union* (1999) 16–22.
- 12 Weiler (1999) 273.

2 1 Normative Supranationalism

In gauging the existence of normative supranationalism within an organisation, the legal inquiry¹⁵ should be based on whether – in respect of specific areas of common interest and competence – the policies and laws of such an organisation have direct effect in member states;¹⁴ the laws of the organisation are superior to the laws of the member states¹⁵ and member states are pre-empted from enacting contradictory legislation.¹⁶ While the answer to these questions is affirmative in the case of the EU, the AU is yet to attain such feat.

Although the transfer of sovereignty to the AU has been less than satisfactory, a careful reading of the AU Constitutive Act¹⁷ (CA) suggests that the architects of the organisation intended to create a supranational entity.¹⁸ The intention to confer supranational powers on the institutions of the AU can be gleaned from the preamble of the CA which reads thus:

“We, heads of States and Government of the member states . . . [are] determined to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them to discharge their respective mandates effectively.”

These common institutions are listed in article 5 and include the Assembly, Executive Council, Pan-African Parliament, Commission and the African Court of Justice. It also covers other notable bodies which, although not listed in article 5, form part of the AU: the Peace and Security Council (PSC), the New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism (APRM). In a clear departure from the Organisation of African Unity (OAU) era, these institutions have been established to address, at a supranational level, specific challenges ranging from security, human rights, globalisation, socio-economic development, to political and democratic governance.

15 Weiler (1981) 273–80.

14 The doctrine of direct effect is described as “a provision which is clear and unconditional and bestows a legal right on a natural or legal person, exercisable against another natural person, or against the authorities of a member state”. Dashwood, Arnall, Ross, Wyatt, Spaventa and Dougan *European Union Law* (2000) 158–159.

15 The doctrine of supremacy is defined as “the capacity of that norm of Community law to overrule inconsistent norms of national law in domestic law proceedings”. See De Witt “Direct effect, supremacy, and the nature of the legal order” in Craig and De Burca (eds) *The Evolution of EU Law* (1999) 152.

16 In *Commission v Council* (Case 22/70) [1971] ECR 263 pars 17–18, the European Court of Justice (ECJ) highlighted the principle of pre-emption by ruling that each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules. As and when such common rules come into being, the Community alone is in a position to assume and carry out contractual obligation towards third countries affecting the whole sphere of application of the Community legal system.

17 See “Constitutive Act of the African Union (2000/01)” in *Compendium of Key Human Rights Documents of the African Union* Pretoria University Law Press (2005) 4–11.

18 According to Hay 30: “Supranationalism . . . does not depend on express stipulation, but follows from powers and functions actually accorded to an organization.”

A closer look at the functions of these institutions reveals an intention on the part of the drafters of the CA to confer some degree of supranationalism on these institutions. The Assembly, in terms of article 9 of the CA, has the powers to determine common policies, monitor implementation of these policies and ensure compliance by member states. It also has the power to impose sanctions on member states that fail to comply with these common policies.¹⁹ The function of the Executive Council is to coordinate and take decisions on policies with regard to foreign trade, immigration matters, transport and communication, education, health and agriculture.²⁰

The General Affairs Section²¹ of the proposed Court of Justice and Human Rights will have jurisdiction over matters relating to the interpretation of the CA, disputes between states, and acts and functions of the organs of the AU.²² The General Section may constitute itself into special chambers to hear matters relating to trade, economics and the environment.²³ Although the court will have no jurisdiction over AU states that have not ratified the protocol,²⁴ these states may appear by special dispensation from the Assembly²⁵ or may on notice of the Court Registrar, intervene in a case which concerns the interpretation of the CA.²⁶

Another allusion to supranationalism is the AU's right to intervention. Unlike its predecessor, the OAU Charter, the CA circumscribed the provision on sovereignty and territorial integrity of member states²⁷ by stipulating in article 4(h) the right of the AU, as against that of member states,²⁸ to intervene under the following conditions, war crimes, genocide, crime against humanity and, through a 2003 amendment, a serious threat to legitimate order.

While it could be argued that the AU as an institution had in some instances, notably through the normative provisions in its CA, intervened in the internal affairs of member states,²⁹ the fact remains that the

19 AU CA art 23(2).

20 *Idem* art 13.

21 In terms of the Statute of the proposed African Court of Justice and Human Rights, there will be two sections of the Court: the General Section composed of 7 judges and the Human Rights Section composed of 5 judges: art 15, Protocol on the African Court of Justice and Human Rights and Annexed Statute 2006. The Human Rights Section will be competent to hear matters relating to the alleged violations of human rights: art 16(2).

22 Art 30.

23 Art 18(1).

24 Art 30(3).

25 Art 30(2).

26 Art 60.

27 Art 3(bj).

28 While art 4(g) provides that any member state may not interfere in the internal affairs of another, it does not expressly prevent the AU as an institution from intervening.

29 These include the decision to bar Madagascar from attending the inauguration of the AU in 2002, suspension of Togo in 2005, mandating Senegal to put in place an appropriate legal mechanism for the trial of Hissin Habre and the deployment of troops to hot spots such as Darfur, Somalia and Burundi.

designated purveyors of normative supranationalism are yet to take shape.³⁰ In illustration, the Pan-African Parliament (PAP) still exercises consultative and advisory powers³¹ and the members are not directly elected by citizens of the member states.³² The PAP's full legislative powers are to be defined by the Assembly.³³ In respect of the judicial framework of the AU, it is envisaged that the African Court of Justice will be merged with the already inaugurated African Court on Human and Peoples' Rights, and will be known as the African Court of Justice and Human Rights. With no implementation date for the court in sight, and the deferral of the exercise of full legislative powers by the PAP, one can only speculate on how these important institutions will exercise supranational powers. However, this affords the architects of African integration the opportunity to develop nuanced practices that suit the African peculiarity.

2.2 Decisional Supranationalism

Decisional supranationalism essentially relates to the autonomy of inter-governmental institutions in terms of policy formulation and decision-making process.³⁴ At the core of this autonomy is the majority voting system.³⁵ The majority voting system ensures that as long as the voting requirement is satisfied, member states are bound by a decision whether or not they support it. It appears that while the AU has little or no measure of normative supranationalism, there exists an element of decisional supranationalism. In terms of article 7 of the CA, the Assembly can ratify decisions by "consensus or failing which, by a two thirds majority of the member states of the Union, apart from procedural matters which require a simple majority". The decision-making process in the Executive Council is the same as the Assembly's.

As mentioned above, the supranational status of an international organisation is determined by the existence of both decisional and normative supranationalism within the institutional framework. Based on the absence of normative supranationalism within the institutional framework

30 Decision-making powers are firmly placed in the hands of organs which are entirely composed of representatives of national governments. The Assembly is composed of Heads of States while the Executive Council is composed of the Ministers of Foreign Affairs or designated Ministers of member states.

31 It is expected to start exercising full legislative powers five years after its inauguration. See Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament 2001 art 2(3). The PAP was inaugurated in 2004-05.

32 PAP, in accordance with art 4(2), is presently composed of 5 nominees each from member states which add up to 265 members. See http://www.pan-african-parliament.org/AboutPAP_Overview.aspx (accessed 2007-10-10). It remains to be seen how the AU will handle the direct election of PAP members considering the fact that the continent is plagued by a high incidence of electoral fraud.

33 See PAP Protocol art 11.

34 Weiler (1981) 281.

35 According to Pescatore 53, through the majority procedure it is possible for inter-governmental institutions to exercise one of the criteria of supranationalism – a relative autonomy of power.

of the AU, it can only be classified as an intergovernmental organisation, although it has the potential to evolve into a supranational organisation.

3 National Sovereignty and African Integration: Walking on Egg Shells

The supranational status of an international organisation is determined, to a large extent, by the measure of sovereignty that has been transferred to such an organisation by its member states. Explaining the relationship between supranationalism and sovereignty, Hay remarked that

“with few exceptions . . . the criteria for the loss of sovereignty coincide with those which much of the literature regards as the elements of supranationalism. Thus, the concept of a transfer of sovereignty may be the legal-analytic counterpart of a political-descriptive notion of supranationalism.”³⁶

Historically, sovereignty has its root in the 1648 Treaty of Westphalia.³⁷ As a contemporary phenomenon, sovereignty has been defined as the “whole body of rights and attributes which a state possesses in its territory, to the exclusion of other states, and also in its relations with other states”.³⁸ The traditional concept of sovereignty encompasses internal and external sovereignty.³⁹ Internal sovereignty connotes the “exercise of supreme authority by states within their individual territories”⁴⁰ or what Bodin⁴¹ described as the exclusive right “to give lawes unto all and everie one of its . . . subjects and to receive none from them”. External sovereignty on the other hand, implies the legal independence of a sovereign state – which can only be limited by international law – from other states.⁴² It, therefore, emphasises the equality of states regardless of their capacities.⁴³

The effective functioning of a supranational organisation is dependent on its ability to exercise sovereign powers in relation to common interests. Illustratively, such an organisation should be able to exercise jurisdiction nationally within member states over specific areas of common interests and also possess the capacity to represent member states on the international plane in relation to such interests. Although to a certain extent this amounts to a limitation of national powers, national authorities

36 Hay 69.

37 The Treaty of Westphalia was a peace treaty between the “Holy Roman Emperor and the King of France and their Respective Allies” which established the rights of kings and princes across Europe to exercise non-religious powers in their domain. The full text of the Treaty of Westphalia is available at <http://www.yale.edu/lawweb/avalon/westphal.htm> (accessed 2007-10-21).

38 The *Corfu Channel Case*, ICJ 39, 43.

39 Biersteker “State sovereignty and territory” in Carlsnaes (ed) *Handbook of International Relations* (2002) 168.

40 Goodwin “The erosion of external sovereignty?” 1974 *Government and Opposition* 61.

41 Cited *ibid.*

42 Kelsen “The principle of sovereign equality of states as a basis for international organisation” 1944 *Yale Law Journal* 208.

43 Goodwin 1974 *Government and Opposition* 62.

are not precluded from enacting legislation insofar as it is not inconsistent with treaty obligations.⁴⁴

Since member states remain important players in any integration process, it is crucial that political and legal mechanisms are put in place to safeguard national sovereignty/interests or, to put it in another way, maintain a balance between member states and supranational entities. One such measure is the principle of subsidiarity. This doctrine implies that international organisations should only deal with matters that cannot be sufficiently handled at the national level.⁴⁵ As will be shown later in this paper, this principle will be of crucial importance as Africa embarks on the onerous journey of closer regional integration.

Analysing the lackadaisical attitude of African leaders towards regional integration initiatives, Udombana⁴⁶ aptly surmised that:

“African leaders lack the certitude to face the challenges of integration. Integration requires that each constituent party have clearly defined national plans and strategies to achieve economic development. Like a child in a toyshop, most leaders in Africa do not know which way to look. They have been unable to make the changes that will sustain growth and development. Others are not prepared to subordinate immediate national plans to long-term economic regional goals or to cede essential elements of sovereignty to regional institutions.”

As evident in the experience of the EU, clothing the AU institutions with sovereign attributes will by no means be an easy task. It demands cautious and calculated steps, tactful negotiations, constant assurances and compromises, and the skillful management of national egoisms. It is indeed a complex task. However, there is no gainsaying the fact that the AU, as it presently functions, cannot achieve its common objectives. It is, therefore, vital that member states bequeath the AU with enabling powers to effectively discharge its duties. At this juncture, MacCormick's⁴⁷ suggestion is quite instructive:

“We must not envisage sovereignty as the object of some kind of zero sum game, such that the moment X loses it, Y necessarily has it. Let us think of it rather more as of virginity, which can in at least some circumstances be lost to the general satisfaction without anybody else gaining it.”

4 A Road Map

In order to ensure an effective transition from a position of non-enforceable and weakly implemented protocols to legally binding decisions and protocols, concerted efforts must be geared towards the gradual

44 As Lauterpacht explained, “[National] sovereignty ends where . . . international obligations begin”. See Lauterpacht “Sovereignty – Myth or reality?” 1997 *International Affairs* 149.

45 Dashwood *European Union Law* (2000) 158–159.

46 See Udombana “A harmony or a cacophony? The music of integration in the African Union Treaty and the New Partnership for Africa’s Development” 2002 *Indiana International and Comparative Law Review* 202.

47 MacCormick “Beyond the sovereign state” 1993 *The Modern Law Review* 16.

harmonisation of the varying legal standards across the continent.⁴⁸ This would in turn ensure the easy and uniform implementation of rules and decisions across the continent. It would also enhance the functioning of AU institutions *vis-à-vis* common policies.

The Executive Council, in consonance with its function to co-ordinate common policies, should, for instance, be granted powers to determine trade-related issues such as tariffs, quotas and standards of commodities.⁴⁹ The Council, in conjunction with PAP, should also be empowered to determine the pace of integration by deciding on the relevant sanctions for errant member states, most especially when such states have refused to comply with the judgment of the African Court.⁵⁰

The million dollar question is whether, come 2009, member states will confer full legislative powers on the PAP. One should, however, be cautiously optimistic about this possibility. Even if full legislative powers are not given to the PAP, member states must be prepared to allow the PAP to exercise some degree of legislative power over issues relating to human rights, trade, the AU budget, democratic supervision over the AU Commission and the appointment of judges. In giving adequate priority to the principle of subsidiarity, national and sub-regional parliaments should set up *ad-hoc* committees responsible for liaising with the PAP on a regular basis with regard to matters bordering on national interests. In relation to future representation in the PAP, it is politically imperative that due regard be given to the differences in the demographic distribution across the continent. For example, Nigeria with a population of 140 million should have more representatives than Lesotho, which has a population of 1,8 million. To ensure that the PAP plays a meaningful role in the integration process, it is necessary that member states come up with an outlined policy which details the step-by-step process of conferring legislative powers on the PAP.

The influential role of a judicial organ in any integration process cannot be ignored. The court's liberal and innovative interpretation of provisions in the constitutive instrument has the effect of developing concepts and principles which are essential for the furtherance and solidification of the integration process.⁵¹ The envisaged African Court of Justice and Human Rights thus has the potential of fast-tracking closer integration by making judicial pronouncements on issues which may not necessarily go down well with individual member states. The court would be expected to

48 The Organisation for Harmonisation in Africa of Business Laws (OHADA), which consist of 16 countries in West and Central Africa is an example of an initiative aimed at the harmonisation of legal standards across the continent. There are supranational institutions, such as a legislature and a court, which monitors the implementation of the OHADA Treaty. For detailed analysis on the successes and challenges of OHADA, see Dickerson "Harmonizing business laws in Africa: OHADA calls the tune" 2005 *Columbia Journal of Transnational Law* 17-73.

49 Wachira *Sovereignty and the United States of Africa: Insights from the EU* (2007) ISS Paper 144 4.

50 This should also include member states that have failed to implement the recommendations of the APRM report.

51 Raworth *Introduction to the Legal System of the European Union* (2001) 84.

adjudicate on pertinent issues such as the question on whether the member states' obligation to adhere to the principles of the AU include the ratification of key protocols,⁵² multi-level governance within the AU, the role of the Regional Economic Communities (RECs) within the integration framework, and the roles of municipal courts and parliaments in the integration process. It is of utmost importance that judges of the court have a sound grasp of international law.⁵³ The success of the court is, however, contingent upon the availability of an effective enforcement mechanism, which will ensure that the decisions of the court are implemented to the letter.⁵⁴

For Africa to be a meaningful and active participant in the global economy, it is imperative that it acts as a single bloc on the international plane. For instance, on issues relating to trade and aid negotiations at the World Trade Organisation (WTO) and EU, the AU should be empowered to negotiate in close co-ordination with representatives of member states and RECs on certain issues. It is suggested that as a matter of principle and in pursuance of implementing a common agenda, the AU should have an observer role when the RECs are negotiating multilateral trade agreements. Initiatives like this have the potential of placing the AU in the driving seat of multilateral negotiations.

It is premature to call for the immediate establishment of a "United States of Africa" when member states are still grappling with the idea of transferring a modicum of sovereignty to the AU. The focus should rather be directed at the gradual solidification of the foundation upon which the "United States of Africa" will be built. A virile AU should thus be the appropriate point of departure for such a vision.

5 Conclusion: *Quo Vadis Africa?*

It is clear from the foregoing that the AU is still a long way from evolving into a supranational body. The transmutation of the OAU into the AU signaled the intention of African leaders to create a veritable platform for the attainment of closer regional integration and co-operation. Little has, however, been done about translating these laudable intentions into action. In order for the AU vision to become a reality, it is of paramount importance that African leaders subscribe to shared norms such as democracy, good governance, and human rights. These norms are essential for the entrenchment of the integration process.⁵⁵ Although the continent has, in recent years, witnessed a shift towards democracy and good

52 These include the PAP Protocol, APRM, and ACJ&HR.

53 See Musila *United States of Africa: Positioning the Pan African Parliament and the Court in the Political Union Debate* (2007) ISS Paper 142 10.

54 Musila *idem* 5–6 suggests that a political body such as the Council of Ministers should have the power to monitor compliance with court's orders.

55 Habib, Muchie and Padayachee *African Integration and Civil Society: The Case of the African Union Development Research Series* (2006) Working Paper No 137 16

governance, the political legitimacy and human rights record of many African leaders remains questionable. As Olowu⁵⁶ rightly asked:

“How then could leaders whose claims to political authority are questionable commit themselves to programmes that would empower the mass of their people? How can such rogue regimes turn around to promote the core principles of democracy, rule of law and good governance within their domain?”

For the success of the integration process, it is imperative that the AU seriously consider the present position of unconditional membership. While it is not suggested that the AU be dissolved, member states should be strictly held accountable for the violation of these principles. This will require the strengthening of monitoring and compliance mechanisms such as suspension, economic and political sanctions, and, in some cases, the public censure of errant member states.⁵⁷

In addition, there is a need to “privatise” the process of regional integration by ensuring popular participation and an ample support base. For the success and sustainability of this process, it is imperative that the debate surrounding regional integration is moved from the elitist realm of technocrats, civil societies and the academia to a forum that seeks to inform the African populace about the benefits and drawbacks of integration and to garner their opinions. The “common man or woman” in the streets of, *inter alia*, Kigali, Arusha, Kumasi and Maputo should be given the opportunity to contribute to this debate. The fact that the majority of the continent’s population is illiterate and impoverished makes the issue of popular mobilisation more important.⁵⁸

In conclusion, it is worth quoting Raworth’s⁵⁹ view on the European integration:

“European integration has constantly confounded the skeptics and the faint of heart. Few would have predicted a few years ago that the single currency would have been successfully introduced. Few earlier would have wagered too extravagant an amount on the completion of the internal market. In 1958, only incurable romantics could have envisaged the European Union as it exists today.”

It remains to be seen whether this will ultimately be said about African integration.

56 Olowu “Regional integration, development and the African Union agenda: Challenges, gaps and opportunities” 2003 *Transnational International Law & Comparative Problems* 237.

57 As Pescatore 54 pointed out, “[T]here is no true supranationality unless the power of the group can not only assert itself in legal forms but also impose itself successfully on recalcitrant states”.

58 Olowu 2003 *Transnational International Law & Comparative Problems* 240.

59 Raworth (2001) 239.