




Chapter 5

African Union Integration Agenda and the Challenges of Plurality and Sovereignty

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Introduction

The determination of African leaders to pursue the ideal of African integration has a long history that dates to the early period of the development of Pan-Africanism. In other words, the development of Pan-Africanism is intertwined with the determination of African peoples to address the challenges of unity, peace, security, and stability on the continent (Nwebo 2020:438). This objective is aptly encapsulated in the vision of the African Union (AU), which is to build “an integrated, prosperous and peaceful Africa, driven by its citizens and representing a dynamic force in the global arena”.¹ The vision crystallised in the institutionalisation of the ideals of Pan-Africanism manifested in the formation of the Organisation of African Unity (OAU) in 1963 and its eventual transformation to the AU, with its integration agenda as a necessary adjunct of Africa’s socio-economic and political development.

The Pan-African initiative of determining Africa’s destiny by addressing its challenges to unity, peace, security, and stability has its foundation in the institutionalisation of and transfer of Pan-African ideals from the OAU to the AU. The aim of these institutionalisations, with reference to the epoch of the AU, was to, among others, achieve greater unity and accelerate the

1 For more information on the African Union’s Vision and Mission, see <https://au.int/en/about/vision>.



political and socio-economic integration of the continent. This is because the integration of the African political economies was foreseen as the necessary adjunct of Africa's socio-economic and political development agendas (Nwebo 2020:440; Nwebo 2019).

It must be noted that the transformation of the OAU into the AU became necessary due to the common knowledge that the OAU did not commit itself sufficiently to the promotion of integration. The OAU nevertheless substantially achieved its set agenda under the 1963 charter and managed to register some modest achievements. These achievements are particularly evident in the areas of decolonisation of Africa and in developing some of the earliest normative, constitutional, and democratic frameworks and mechanisms, which were inherited by the AU. These were further developed to meet the challenges of globalisation under the AU developmental template. Nevertheless, the promotion of African integration under the OAU was not prioritised and did not gain much traction. As the AU intensifies its efforts to promote regional integration, it has been met with diverse impediments, which relate to some existential and fundamental challenges, particularly the sovereignty conundrum.

Though the OAU experienced these challenges, the process of the institutionalisation of the ideals of Pan-Africanism led to the eventual shift of focus from supporting liberation movements in the erstwhile African territories under colonialism and apartheid to the attainment of Africa's development and integration, spearheaded by the AU. Hence, the crystallisation of the new dynamic of a vision of the AU integration confirms the African leaders' realisation that the AU integration is a necessary adjunct of Africa's socio-economic and political development. Thus, the establishment and strengthening of the necessary economic, political, socio-cultural, and legal frameworks for the realisation of the AU integration agenda cannot be overstressed.

The challenges to the realisation of the AU integration agenda include the fragmented and plural character of African societies, the existence of different legal systems, and the preservation of sovereignty. These factors characterised the consciousness of the leaders of the emergent independent African

states. In other words, plurality about African cultural, legal and governance systems arising from vestiges of colonialism, and the obsession of the emergent African leaders with the desire to preserve their hard-won independence and sovereignty from the former colonial powers, are the major factors that pose serious challenges to the implementation of the AU integration agenda. Thus, the above factors substantially constitute the foundation of the necessary justification for the operation of different governance systems in different parts of Africa and the quest for an African intergovernmentalist approach to integration.

Against this background, this chapter interrogates the process of the implementation of the AU integration agenda. It argues that despite the achievements of the OAU, which are particularly evident in the areas of decolonisation of Africa and the development of regional frameworks and mechanisms by the AU, the realisation of the African integration agenda remains atrophied by existential fundamental challenges built around the question of sovereignty. Therefore, a redefinition of the African idea of sovereignty is critical to the relaxation of the African intergovernmentalist approach to integration, which has hitherto slowed down the AU integration agenda.

It then recommends a paradigm shift in attitude or approach to integration, which emphasises the adoption of the idea of 'pooled sovereignty' or 'supranationalism' as the only viable approach toward enhancing the prospects of achieving the AU integration agenda. Invariably, it is crucial to advocate for the creation of a standardised system of national laws in Africa, especially concerning shared values instruments. Thus, the adoption of shared values instruments that establish the necessary legal framework for the promotion of the ideals of the AU integration agenda can effectively catalyse the achievement of the African development agenda.

Indeed, African leaders, under the auspices of the AU, have made various attempts through the adoption of shared values legal instruments that are aimed at effectively catalysing the achievement of African development and the African integration agenda. Some examples of African Union shared values include

the African Charter on Human and Peoples' Rights (1981), the Protocol on the Rights and Welfare of the Child (1990), the African Union Convention on Preventing and Combating Corruption (2003), the Protocol to the Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), and the African Charter on Democracy, Elections and Governance (2007).

However, it is not enough to aggregate and adopt shared values legal instruments aimed at promoting the AU integration agenda; it is equally imperative that such instruments are ratified, domesticated, and implemented by member states to be able to achieve the desired result across state boundaries. The failure or slow pace of AU member states in the ratification, domestication, and implementation of their own voluntarily adopted shared values instruments and decisions is the bane of Africa's efforts at achieving the AU integration agenda.

Furthermore, it is instructive to note that the recognition of these challenges is not new. For instance, reports are normally received at almost every AU summit during which member states are called upon to take necessary steps to ratify and domesticate, where necessary, the AU shared values legal instruments. However, the next summit would record no progress by member states on the issue. Thus, the challenges of actualising the African integration agenda will remain the same unless the AU member states eschew their intergovernmentalist approach to integration and rather adopt supranationalism as the only viable outlook. The chapter concludes with recommendations for the acceleration of the AU integration agenda through supranationalism as a dynamic option for continental integration.

To effectively address the theme of the chapter, it commences with the introduction, followed by an examination of some of the important conceptual issues. The third section briefly discusses the AU agenda on integration *vis-à-vis* the challenges posed by nationalism and member states' sovereignty, which continue to impact intergovernmentalism. The subsequent section examines the role of AU institutions in promoting integration and the imperative of legal harmonisation as a mechanism for the

enhancement of the AU agenda on integration. The chapter ends with concluding remarks and makes important recommendations.

Conceptual Issues

Integration

The concept of integration can be explained as the act of bringing together smaller components into a single system that functions as one.² It is important to note that there is neither a clear definition of integration nor consensus on its substantive content and form, let alone a common agreement on paradigms that should inform it (Chingono & Nakana 2009). However, in the context of this chapter, regional or continental integration refers to a mechanism by which states with certain common historical, socio-economic, political, and security challenges and interests can come together and co-operate to develop their economic potential and thereby fast-track their social development. Regional integration helps the integrating states overcome the divisions that impede economic development, especially the free flow of goods, services, capital, and people (Chingono & Nakana 2009).

Against the background of the permissive and competitive nature of international relations in a globalised world, the scope and effectiveness of a state's participation in the political and economic sphere is a function of its capacity. However, capacity disparities exist between the more developed and the less developed countries of the world about global resource capabilities. This disparity puts the developed countries in an advantageous position in the quest for economic development. Therefore, the need arises for states bound together by geography and a common history of exploitation, underdevelopment, impoverishment, disabilities, or weak capacities *vis-à-vis* the global resource pool, to collaborate either to enhance their potential or competitiveness in the global race for economic development of individual member states. States can also co-

2 For more information, see <https://www.techtarget.com>.

operate to constitute themselves as a bulwark against the predatory instincts of more endowed states.

Therefore, regionalism or regional integration can be described as an instrument of socio-economic development of the integrating states or the protection of their economies. It is also a mechanism for the maximisation of member states' national security, economic interests, and regional interdependence and co-operation. Furthermore, the integration of national economies can consequently lead to a bigger market for both primary and finished products. Ultimately, integration will engender greater progress in the political and economic conditions of African states. Thus, regional integration arrangement is presented as a viable strategy that can help in the maintenance of good governance, peace, and security necessary for development. The European Union (EU) was erected upon these beliefs.

Intergovernmentalism

Intergovernmentalism refers to a system of international organisational governance in which member states co-operate in matters of common interest, of their own volition, and to the extent or level they can control. It is a loose association of states who desire to co-operate for their mutual benefit while holding tenaciously to their independence and territorial boundaries. A good example is the United Nations (UN), which provides an international platform for states to co-operate to solve issues of global concern, without any significant loss of states' sovereignty. Whereas supranationalism implies that certain aspects of member states' sovereignty can be ceded to a higher body or international organisation, intergovernmentalism is averse to the ceding of states' sovereignty or sacrificing their national interests at the instance of a supranational authority, such as the EU. Rather, intergovernmentalism focuses on co-operating or working together for mutual benefit, without any constraints. Thus, intergovernmentalism assumes national governments to be the key actors in regional integration (Schimmelfennig 2018).

Plurality

The term plurality can be used in different contexts to simply mean the state of being plural or in large numbers. In the context of this chapter, plurality is used to refer to the existence of diversities that manifest in inequality of the size of the components, governance systems, economic systems, culture, and religion. The aggregation of different nationalities into one political structure without addressing questions of diversities is bound to generate problems of economic exploitation, minorities' fear of dominion by the major ethnic groups, and ethnic politics. The former colonial powers imposed different legal and governance systems on ethnic nationalities in Africa, without their consent. Thus, Africa's internal plurality challenges and contradictions remain major impediments that the AU must recognise and address in prosecuting the AU integration agenda.

Sovereignty

The concept of sovereignty represents the complete and undisputed control over a specific geographical area, and all individuals present in the area at any given time. In particular, territorial sovereignty is one of the essential attributes of statehood, implying that a state exists and operates within a territorial area over which it exercises supreme authority. It is one of the characteristics or indicia of statehood without which nations cannot be accepted into the club of global actors. However, as presented in this chapter, membership of international organisations and their obligations thereby, may constitute an obstacle to full political control of state activities and the rights of the citizens. The concept of territorial sovereignty, therefore, signifies the existence of a territorial domain within which a state exercises exclusive jurisdiction over persons and property concerning other states.

Max Huber, arbitrator in the *Island of Palmas* arbitration case, describes territorial sovereignty as signifying independence to a portion of the globe in “the right to exercise therein, to the

exclusion of any other state, the functions of a state”.³ Thus, the question arises as to what constitutes the functions of a state. Thus, the exercise of the functions of a state is the hallmark of the existence of territorial sovereignty. These activities will encompass state actions that demonstrate the exercise of authority within that specific territory. State activities imply the exercise or enjoyment of some rights and the carrying out of some duties attributable to a sovereign state. This means that a sovereign state has several rights, powers, and privileges attributable to it under international law.

Some of the rights, powers, and privileges associated with sovereignty include the power and authority to exclusively control its domestic affairs, its diplomatic envoys in other countries, and to have sole jurisdiction over crimes committed within its territory. A sovereign state also has co-relative duties binding on it, such as the duty not to perform acts of sovereignty on the territory of another state; the duty to abstain from or prevent agents or subjects of that country from committing acts constituting a violation of another state’s independence or territorial sovereignty; and the duty not to intervene in the affairs of another state, which extends to both internal and external affairs.

It is important to note that international relations are based on the principle of sovereign equality of all states. The UN recognised the fundamental importance of this principle, hence it provides in Article 2(1) of the Charter of the UN that the organisation is based on the principle of the sovereign equality of all its members. Among others, Article 2(7) of the Charter further makes provision that “nothing contained in the present shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or settlement under the present charter” (UN 1945:3). Therefore, domestic jurisdiction under international law means the totality of the foregoing as captured and protected under Articles 2(1) and 2(7) of the charter.

3 See *The United States of America v. Netherlands* in the Yearbook of the ILC.

Thus, there are two types of sovereignty: internal and external sovereignty. Internal sovereignty relates to a condition where a state is sovereign to the extent that it monopolises the exercise of governmental authority at home, rejecting the right of foreign states or other external actors to impose their laws from the outside or in any other manner interfere in its domestic political order. External sovereignty therefore means the exclusive legal authority of a government over its population and territory, independent of external authorities. This implies that the application of international instruments meant to promote supranationalism must necessarily derogate from the concept of domestic jurisdiction in its absolute context. Here lies the challenge *vis-à-vis* supranationalism in international organisations.

Supranationalism

It is undeniable that international organisations have recently and increasingly become active players in the field of international lawmaking, most notably with respect to treaties and the interpretation of these, and other norms by international adjudicatory bodies (Wouters & De Man 2011). Hence, when specific contracting states collaboratively establish an international organisation centred around mutually beneficial objectives, they delegate essential powers, coupled with a degree of discretion, to the organisation's officials. This strategic delegation empowers the organisation to execute specific functions aimed at realising predetermined policy objectives on behalf of its members. These delegated powers are subject to defined controls, ensuring a balance between organisational autonomy and accountability to the member states. Such measures, then, can be said to constitute a form of constitutionalism at an international level, referred to as supra-constitutionalism. Thus, supranationalism and supra-constitutionalism are two sides of the same coin or condition that transcends national boundaries, authority, and interests (Nwebo 2019).

Thus, supranationalism or supra-constitutionalism is an attempt to translate to the international plane concepts and values that were traditionally reserved for domestic constitutions,

as a mechanism for controlling or modulating constitutionalism at the level of states and in conformity with the relevant international instruments, which states have voluntarily adopted. To this extent, supranational organisations can constitute a challenge to state sovereignty by limiting the powers of member states in certain economic and political actions (Nwebo 2019). The difference between supranationalism and intergovernmentalism is that, in supranationalism, some aspects of sovereignty are ceded to a higher body. On the other hand, intergovernmentalism focuses on a situation that allows different governments to work together, while protecting their national interests and without ceding any sovereignty to a higher authority (Nugent 2017). It is against this backdrop that this chapter analyses the prospects of the AU to effectively deliver on its integration mandate by superimposing a supranational constitutional model and legal order on member states' domestic constitutional orders.

AU Integration Agenda and the Challenges of Sovereignty and Intergovernmentalism

AU Integration Agenda

Regional integration has been recognised, the world over, as a tool that can be used for the economic, political, and social development of countries. Hence, countries in various regions of the world continue to engage in regional integration arrangements. This is due to the immense benefits of stimulating development among the states involved. Accordingly, regional co-operative initiatives have emerged to impact the economic fortunes of integrated regions. There have been significant successes recorded in more advanced integrated regions as evidenced by increases in intra-regional trade and resultant increases in economic growth and development in regional organisations like the EU and the Association of South-East Asian Nations (ASEAN). It was this success that largely encouraged Africa to embrace the idea of regional integration (Nwebo 2019).

African states need integration more than other regions because they are not strong enough individually to survive in the

world market. For instance, being militarily weak, African states and governments cannot defend themselves effectively from internal and external aggressions and would have to belong to a regional group to increase their clouts and ensure their security (Chingono & Nakana 2009). Thus, by pooling their resources and exploiting their comparative advantages, integrated countries can devise common solutions and use their resources more efficiently to achieve better outcomes (UNECA 2004). Integration of African states is therefore necessary as a veritable means of fostering inclusive and sustainable development, as well as addressing concerns around poverty alleviation, healthcare, food security, and access to essential services. This is why the AU has long “identified economic co-operation and integration as the engine to propel African development” (Van Ginkel *et al* 2003:1). This also explains why the demand for integration remains on the front burner of socio-economic and political discussion in the AU. Hence, integration is foreseen as a viable means of addressing the challenges of globalisation and the changing global economic and political environments within which Africa stands in a marginal and disadvantaged position.

The foregoing explains why post-independence African leaders have long recognised the importance of regional economic co-operation and integration as a means for accelerating and consolidating economic and social development (Lebale *et al* 2014). Hence, many African governments embraced the idea of regional integration, initially mainly for political reasons and later as a development strategy to rise above the challenges of small markets and many landlocked African states, and to benefit from economies of scale in production and trade (Tanyanyiwa & Hakuna 2014). However, the integration process involves the use of different forms of integration arrangements, including the establishment of free trade areas, customs unions, common markets, and economic unions, which would necessitate the establishment of common legal rules.

Against the above background, it can be understood why African states have entered into several regional integration agreements. Currently, each Africa country is a member of at least one regional economic group (Geda & Kebret 2002). The

following are some of the regional integration arrangements existing in Africa: The East African Community (EAC), the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Southern African Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA). Though ECOWAS, EAC, COMESA, and SADC have played a crucial role in enhancing the political, social, and economic development of their member states, the impact has not been felt as in the case of the European and Asian regional economic communities (Nwebo 2019).

Beyond integration arrangements at regional levels, attempts have also been made to integrate at the continental level to achieve higher economic co-operation among African countries (Nwebo 2019). Indeed, African leaders aspire to foster regional integration, which gave impetus to the adoption of the Lagos Plan of Action (LPA), which was an initiative of the OAU that was adopted in 1980. It aimed to increase Africa's self-sufficiency and reduce dependency on Western countries. The treaty emphasised African solidarity, self-reliance, and an endogenous development strategy through industrialisation, and envisaged the development of an African Economic Community (AEC) by 2028. The major contribution of the LPA framework for industrialisation includes the division of the economic space of Africa into regional integration areas for the establishment of building blocks of a united African economy. The foregoing shows that the issue of continental integration as an accepted development strategy has remained on the African agenda right from independence.

Having identified economic co-operation and integration as the engine that can propel African development and regional economic communities as pillars for continental integration and development (Chingono & Nakana 2009), it becomes apposite to analyse the challenges and prospects presented by the AU integration agenda.

Challenges of Sovereignty and Intergovernmentalism

The challenges confronting the African integration agenda have a historical background dating back to the formation of the OAU. It must be noted that during this era, integration was conceived as a highly intergovernmental relationship with decision making centralised at the highest level of the Assembly of the Heads of State and Government. The point is that the early integration efforts in Africa were based on 'nationalist' strategies, which focused on co-operation with the sole aim of solving political problems for emerging African states (Nzewi 2014). Indeed, the preoccupation of the leaders was to guarantee absolute control over both external and internal affairs of member states based on the principle of sovereignty and non-interference. An intergovernmentalist approach to African integration was therefore adopted by the leaders in order to secure their countries' sovereignty while co-operating and gradually implementing the agenda.

It is apposite to note that it was based on this intergovernmentalist stance that the AU leaders opted for limited legislative powers for the Pan-African Parliament (PAP) in the interim, allowing it to evolve into a parliament with full legislative powers with time. This was a compromise option between the demand for a supranational regional parliament with full legislative powers and the complications of the sovereignty concerns of member states. Thus, the AU member states might have exercised fears that ceding legislative powers to the PAP would amount to subjecting the lawmaking powers of national parliaments to that of a regional parliament, thereby compromising the legislative sovereignty of the former. Accordingly, the evolution of the PAP into a parliament with full legislative powers was linked to the gradual process of the African continental integration agenda (Nwebo 2019). The PAP is important in terms of providing the legal and legislative instruments for regional integration.

However, the above arrangement could not be sustainable in the long run due to the tremendous influence of multilateral organisations like the UN and supranational bodies like the

EU, and the impact of globalisation. Arguably, the idea of absolute control over both external and internal affairs could be understood and accepted in the 18th and 19th centuries, when states were self-sufficient units of relatively equal powers. Possibly, states were then capable of protecting themselves against internal and external sources of instability and change. Besides, they were states with clearly definable borders, unlike the contemporary dispensation in which globalisation and the challenge of security are rapidly closing the 'iron walls' separating countries. Though national sovereignty is still valued around the world, even in EU countries (which still retain sovereign rights and authority in sensitive areas like foreign policy), the forces of globalisation are constantly chipping away at its walls (Biersteker & Weber 1996).

It is noteworthy to understand that the contemporary global system is shaped by global activities and events that affect national governments at different historical periods. Notably, Europe provides a clear illustration of how sovereignty has changed in the current interdependent world. Since the 1950s, a growing number of European states have voluntarily relinquished some of their sovereign rights, such as determining their own economic policies and other initiatives that were formerly reserved to the exclusive competence of domestic authorities. In an effort to promote economic growth, environmental co-operation, security, and other mutual interests, European governments have established integrated Europe-wide institutions and engaged in joint decisionmaking procedures, establishing what has been described as a system of pooled sovereignty⁴ (Miliband 1969). These efforts culminated in the formation of the 27-member EU.

Arguably, by entering treaties, countries impliedly agree to live harmoniously under an international system or organisation that can interfere in their domestic affairs, especially when it becomes obvious that certain elements that ensure international peace have been tampered with, in order to restore harmony.

4 For clarity, pooled sovereignty simply describes a system in an international organisation whereby member states give up part of their sovereignty by allowing some shared institutions they have established to achieve specific purposes to democratically take binding decisions on specific matters of joint interest on their behalf.

The UN established the Responsibility to Protect (R2P) principle in 2005, which embodies a global political commitment to end the worst forms of violence and persecution through multilateral military interventions in the affected areas when necessary.⁵ In this context, it can be concluded that the idea of the state's absolute control over its affairs is now obsolete under a globalised political system.

However, this does not mean that countries are no longer in control of their affairs; rather, the presence and actions (collective actions) of the members of the international community have eroded the growing influence and absolute control of states over matters essentially within their domestic jurisdiction. Thus, the moment a state accedes to a treaty or an international instrument signifying its consent to be bound by it, it can no longer plead the rule of equality and sovereignty of the state as a bar to international obligation concerning that instrument. It is, however, submitted that the loss of sovereignty by acceding to such treaties is minimal, *vis-à-vis* the maximum benefit to the states and the entire international community.

Furthermore, during the era of the OAU, the African governance system was more state-centred than people-centred, as most African governments were preoccupied with the problem of political survival. Therefore, the need for the transformation of the OAU to enable it to respond to the prevailing African problems was glaring, culminating in the transformation of the OAU to the AU under the Constitutive Act of the African Union. Accordingly, the AU under the Constitutive Act abandoned the old OAU doctrine of non-interference in the internal affairs of states and adopted a new and more proactive and progressive paradigm of non-indifference (Nwebo 2019).

Nevertheless, the African integration progress has been very slow, largely because of the fear on the part of some member states that integration might undermine their sovereignty. In other words, the entrenched overriding principle of non-interference and sovereignty in the AU system continues to

5 More information is available online at <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

dictate the character of the African integration space (Nzewi 2014). Accordingly, the AU remains a highly intergovernmental system, highly concerned about sovereignty, and is reluctant to cede power to supranational institutions like the African regional parliaments, especially the PAP (Nwebo 2019). In other words, the overarching principles guiding the relationships between the African heads of state and government right from the OAU era – “the sovereign equality of all member states” and “non-interference in the internal affairs of states”⁶ – remains the albatross on Africa’s journey towards integration. Thus, the excessive adherence of member states to these principles, without flexibility in their interactions, significantly hindered the promotion of African economic integration under the OAU. This challenge persists to this day, impeding progress in the region.

Role of AU Institutions: From RECs to the PAP

This chapter argues that, without a supranational approach to the promotion of integration based on the harmonisation of a set of common democratic values that support integration, the achievement of the AU integration agenda will remain elusive. This can only be realised through the critical roles of AU governance institutions and African regional economic communities (RECs). Against this backdrop, the role of the AU regional institutions and the RECs in promoting the AU integration agenda deserves special analysis, given the strategic importance of integration in catalysing the realisation of African developmental aspirations and the attainment of Agenda 2063.

In particular, the role of the African regional parliaments, especially the PAP, deserves special attention, especially regarding some of its mandates. Article 11(4) and (7) empower the regional legislature “to make recommendations aimed at contributing to the attainment of the objectives of the OAU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them” and “to promote the co-ordination and harmonization of policies, measures,

6 See Articles 3(1) & 3(2) of the Charter of the Organisation of African Unity (1963).

programmes, and activities of the RECs and the parliamentary fora of Africa” (AU 2001:8-9). The above provisions clearly show that in establishing the AU, the African leaders foresaw that the PAP has a critical role to play in realising the integration agenda, especially in the area of governance, co-ordination, and harmonisation of the integration process amongst stakeholders.

In this connection, it is noteworthy that the treaty establishing the AEC provides the modalities for the implementation of the integration project, as provided in Article 4(1) of the AEC Treaty. Under the AEC treaty, African integration was to be achieved in stages and the PAP was conceived as a necessary institution to be established at a later stage, whose membership would be determined by universal suffrage. However, the treaty did not elaborate on the form or the nature of the envisaged parliament. Rather, it provided that the PAP’s powers, composition, organisation, and functions were to be set out under the protocol to be adopted at a later stage. With the adoption of the protocol, the PAP has the mandate of promoting the strengthening of the existing RECs, the harmonisation and co-ordination of policies among existing regional and future sub-regional communities, and the harmonisation of national policies.⁷

The harmonisation of laws is particularly imperative for Africa, being a continent bedevilled with plural or diverse legal frameworks for regulating business laws in different countries, thereby constituting huge legal obstacles to intra-African business. Yet, Africa remains the continent where the least progress has been made in the readjustment of international commercial law (Fombad 2013). The harmonisation of international business laws will invariably reduce the costs of doing business, which are normally increased by the diversity in legal rules in the different countries. It will also make it easier for the continent to deal with the rest of the world with one voice and make it difficult for foreign partners to exploit Africa’s weakness in a globalised world. This is particularly evident in the differences

7 For more information see AU (2000).

in the legal systems, which enable the foreign partners to underpay for the goods and services they obtain from Africa.

Considering the above, the PAP was rightly foreseen as a necessary part of the institutional framework for the strengthening and facilitation of the process of actualisation of the African political and economic integration agenda. This is particularly critical in view of its contribution to continental integration and addressing the challenges of integration in Africa. This provision empowers the PAP to develop continental institutional regulatory frameworks and mechanisms that can propel integration, leveraging on the existing RECs as building blocks. The PAP can achieve this by formulating model laws for co-ordination and co-operation strategies for adoption by the assembly.

Furthermore, the PAP has the mandate of promoting and popularising the integration agenda in the constituencies of the member states (Article 11(6) of the protocol) as one of the major policies and programmes of the AU. In this regard, the PAP has been very instrumental in facilitating co-operation among the RECs and their parliaments by organising, on an annual basis, regional meetings on issues of integration, harmonisation, ratification, and domestication of AU legal instruments. Accordingly, the PAP has established organic linkages with all regional parliamentary bodies, such as the East African Legislative Assembly (EALA), ECOWAS' Parliament, the CEMAC Parliament, and the SADC Parliamentary Forum. These organisations, especially through their parliaments, play important roles in promoting African integration following their respective mandates. As part of its strategies in promoting the AU agenda, the PAP has also established an inter-organ forum, which meets annually to consider the processes of integration on the continent. This is in line with the protocol that provides for co-operation between the PAP and other AU organs.

In line with the above reasoning, a model law is typically a detailed set of provisions embodying the international, regional, or sub-regional standards on a particular subject, developed to facilitate the adoption of national legislation. This means that the purpose of proposing model law is to attempt the harmonisation

of states' laws on a particular subject. That is, to achieve uniformity in their form and content, particularly in the areas of shared values. Therefore, it is the responsibility of state parties seeking to adopt a model law to determine the nature and scope of adjustments that may be required regarding the form and content based on the provisions of its constitution and the structure of its legal system. The use of model laws in Africa is particularly important as a means of shaping the development of national legislation in conformity with generally accepted regional models or standards.

Thus, based on the African common position on certain subject areas, a model law for the AU will provide a framework for the guidance of member states in formulating or updating their local legislations. This process will serve to align national legislation in conformity with the regional standards, considering national interests, levels of development, contexts, and peculiarities. The process also assists the national governments in understanding their obligations to their country and how they can address them through their national parliaments. In other words, unifying or harmonising the laws of different countries means replacing, to respective degrees, the existing national laws with common rules (Fontaine 2013).

Furthermore, the convergence of laws assists member states of an international organisation in reforming or making changes in their national laws following the benchmark set by international organisations to produce uniformity in areas of common interest.⁸ The justification arises from the need to overcome jurisdiction barriers and externalities, which are antithetical to the integration agenda, and to promote transparency (Dabiru & Lala n.d.). Herein lies the critical role of the PAP, which understandably was established as a 'parliament without authority' to exercise legislative powers, as its powers and functions are limited to advisory and consultative roles only. As such, its legitimacy and incentive to effectively promote the AU integration agenda through legal harmonisation remain atrophied.

8 See <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095921694>.

Furthermore, it is instructive to note that the attempt to strengthen the PAP by adopting the revised protocol which declared the PAP as the legislative organ of the AU⁹ with enhanced powers, including the power to promote model laws, has not been realised because the protocol is yet to be ratified as required.¹⁰ The challenge of the ratification of the revised protocol¹¹ is one of the problems that negatively impact the capacity of the PAP to effectively deliver on its mandate of promoting the AU integration agenda, especially through the proposition of model laws to enhance legal harmonisation.

Concluding Remarks

The chapter has engaged Africa's attempt at regional integration amidst the diverse challenges of sovereignty and pluralism. It further attempted to make the case that the AU's political and economic integration agenda is a visionary and viable initiative in response to the continent's underdevelopment and economic marginalisation. However, the AU's agenda cannot be realised without rekindling the spirit of Pan-Africanism necessary to achieve unity, solidarity, cohesion, and co-operation among African states and their people. Indeed, the commitment to regional integration can be seen as "part and parcel of the broader aspiration of continental integration, which takes its roots from the Pan-African movement of shared values, collective self-reliance in development, and political independence" (Lumumba 2018:6).

In this regard, the LPA's architecture envisaged a continent where regional integration arrangements served as the building

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- 9 The legislative mandate of the PAP is provided for in Art 8(1) of the revised protocol.
- 10 See Art 23 of the revised protocol, which provides that the protocol shall enter into force 30 days after the deposit of the instruments of ratification with the chairperson of the commission by a simple majority of the member states.
- 11 On 27 June 2014, in Malabo, Equatorial Guinea, the revised protocol to the Constitutive Act of the African Union (AU) Relating to the Pan-African Parliament was adopted by the Assembly of Heads of State and Government of the AU. However, the protocol is yet to become operational because it has not secured the required number of ratifications.

blocks for the goal of establishing the United States of Africa. The convergence of the laws of member states is very crucial in achieving this important feat. Therefore, the PAP¹² was envisioned as a catalyst for the familiarisation of the peoples of Africa with the objectives and policies aimed at integrating the African continent, as well as strengthening continental solidarity and facilitating co-operation among RECs and their parliamentary forums.

Thus, without the full involvement and participation of African governments and peoples, the vision of the AU will not be realised. Therefore, regional co-operation and interaction are required to support continental arrangements aimed at achieving the objectives of an economically and politically integrated African continent. Given the sensitive and deep-rooted nature of the above challenges, the buy-in of the African leaders and well-directed diplomacy are recommended to effectively confront them. This requires serious advocacy and proper communication with countries to make them realise that integration does not necessarily conflict with the sovereign authority of states. Rather, integration will make the continent politically and economically stronger by leveraging comparative advantages in endowments and productivity.

The chapter submits that the PAP can lead this crusade by leveraging its advisory and consultative powers under the protocol to synergise with the parliaments of the RECs and national parliaments or other deliberative organs in promoting the AU integration agenda. Therefore, for the African integration agenda to succeed, the AU member states should be prepared to give up part of their national sovereignty in favour of pooled or shared sovereignty. For instance, AU policies aimed at liberalising the free movement of people, capital, and labour, can promote economic integration. Furthermore, the PAP should be strengthened to continue to play its pivotal role in catalysing informed dialogue

12 This is one of the activities of the PAP Consultative Dialogue with the PAP on 9 May 2007 in Midrand, South Africa. It is available online at <http://www.pambazuka.org/pan-africanism/submission-civil-society-organisations-pan-african-parliament>.

with relevant segments of the African people and soliciting their support at both regional and national levels.

The chapter concluded by emphasising the fact that the new paradigm of non-indifference challenges the concept of state sovereignty in its absolutist form in the AU. It supports the concept of pooled or shared sovereignty by which states are supposed to subject their sovereignty to the implementation of AU legal instruments, aimed at promoting democratic governance in member states and enhancing the integration agenda. Unfortunately, intergovernmentalism continues to determine the attitude of African leaders to the ratification and implementation of AU legal instruments. Therefore, the time is now ripe for AU leaders to change their 'operational gear' towards the promotion of supranationalism as an effective option for the acceleration of the AU integration agenda.

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