

# Sovereignty and the 'United States of Africa'

## Insights from the EU

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### Introduction

The transformation of the Organisation of African Unity (OAU) into the African Union (AU) has heralded new hope and aspirations for unity and integration for the continent. However, one of the greatest hurdles to such unity has been African states' grip onto their sovereign powers (Naldi in Evans & Murray 2002:1). This is despite the fact that since the World War II, international law has increasingly transformed the traditional concept of sovereignty. International and intergovernmental bodies such as the AU, the UN, the World Trade Organisation (WTO) and sub-regional economic bodies have also urged states to give up some of their sovereignty if they are to realise their full economic and political potential. Indeed, the future of the nation state in the global arena in terms of political and economic influence is dependent on closer cooperation and integration, as is aptly captured by Nyerere:

Africa must unite ... Together we the peoples of Africa will be incomparably stronger internationally than we are now with our multiplicity of unviable states. The needs of our separate countries can be and are being ignored by the rich and powerful. The result is that Africa is marginalized when international decisions affecting our vital interest are made. Unity will not make us rich, but it can make it difficult for Africa and the African peoples to be disregarded and humiliated. And it will, therefore increase the effectiveness of the decisions we make and try to implement for our development. My generation led Africa to political freedom. The current generation of leaders and peoples of Africa must pick up the flickering torch of African freedom, refuel it with their enthusiasm and determination, and carry it forward (Nyerere 2006:21).

However, the journey towards Africa's closer integration is arduous. Furthermore, states will have

to cede some of their sovereignty to bring about an effective union and institutions that have the powers to execute common competencies. Thus the realisation of a continental government or governing framework is premised on the willingness by states to give up some of their sovereignty – as experiences in other parts of the world portray.

While there may be other models<sup>1</sup> from which Africa could seek inspiration in its pursuit for a United States of Africa, the European Union (EU) model is examined for comparative purposes in this paper.

This is done in a bid to illustrate how states have and are willing to cede some of their sovereignty to effectively achieve common competencies through a supra-national entity. The choice of the EU<sup>2</sup> as a model for this survey is premised on the fact that there has been close integration within the EU that has warranted and occasioned its constituent states to cede some of their sovereignty to the supra-governmental body. The choice of the EU is also based on the recurring argument that the EU is 'emerging as the new form of a federal union' almost akin to the United States of America (Backer 2001:176). These

developments have resonated in the concept of the proposed 'United States for Africa' and could inform emerging debates on the proposed structure. The experiences and lessons from the model, it is hoped, will inform the architects of the African continental dream, and also inspire policy- and decision-makers in African countries to forge ahead.

This paper has five main parts. In the following part, the concept of state sovereignty and its application within the modern state discourse is traced, albeit briefly. In the next part, the concept of sovereignty in the pursuit for Africa's integration is dealt with. The focus is on the AU and the extent to which states in Africa have transferred some of their sovereign powers to the AU is discussed. The next part looks at the EU model and how its member states have ceded some of their state

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sovereignty to the EU institutions. How some EU states have sought to address the ceding of state sovereignty to the EU within their domestic legal framework is also addressed. In the last two parts, some points for further thought and a conclusion is offered.

### State sovereignty in the modern state discourse

State sovereignty is a concept that attracts varied interpretations and applications within domestic and international discourses (Crawford 2006:32). Sovereignty was traditionally understood to connote 'unlimited and absolute power within a jurisdiction' (Zick 2005:231; see also Lee 1997:243). Therefore sovereignty meant 'the whole body of rights and attributes which a state possesses in its territory, to the exclusion of all other states, and also in its relations with other states' (the Corfu Channel case, 1949 ICJ 39, 43). This was the exclusive right to exercise political authority which inter alia encompasses executive, legislative and judicial competencies within the state. The traditional understanding, which can be regarded as the classical concept of sovereignty, can be traced back to the 1648 Treaty of Westphalia. In terms of what has since become known as 'the Westphalian concept of sovereignty' the nation state had absolute power and authority over its internal affairs without external interference, political and foreign policy autonomy and border control (Jackson 2003:786).

Sovereignty and equality of states are also closely linked and 'represent the basic constitutional doctrine of the law of nations which governs a community primarily of states having a uniform legal personality' (Brownlie 2003:287). According to Brownlie (citing the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States 1970), the principal corollaries of the sovereignty and equality of states are:

- A jurisdiction, prima facie exclusive, over territory and the permanent population living there
- A duty of non-intervention in the area of exclusive jurisdiction of other states
- The dependence of obligations arising from customary law and treaties on the consent of the obligor

Sovereignty therefore demands that states are equal and, irrespective of their size, have legal personality in their relationship with other states. This means that states must 'refrain from intervention in the internal or external affairs of other states' (Brownlie 2003:290; see also Wachira & Ayinla 2006:474). The UN Charter prohibits intervention on matters essentially within the

domestic jurisdiction of any state (art 2, para 7). The OAU, the precursor to the current AU, also prohibited interference in the domestic affairs of a state (OAU Charter, art 3(2)).

However, the use of the term 'sovereignty' today is commonly linked to the 'totality of international rights and duties recognized by international law as residing in an independent territorial unit - the state' (Brownlie citing the Reparations Case, ICJ Report 1949:174, 180).<sup>3</sup> Developments within the international community and the continued breach of international norms by states whilst hiding behind the veil of state sovereignty, has called into question the non-interference principle (Oppenheim 1992:25). While generally giving regard to the concept of state sovereignty, the international community has acknowledged that intervention is required in the case of certain acts, such as serious violation of human rights and threats to international peace and security (Brownlie 2003:293; see also Zick 2005:235 and art 4(h) and (j) of the Constitutive Act of the AU, and art 4(j) of the Protocol Relating to the

Peace and Security Council of the AU). Therefore, while the interaction among states is largely dependent on consent, lack of express consent on the part of a state has not prevented international organisations and even members of the international community from executing or making decisions that impact on that state (Brownlie 2003:290, UN Charter, chap 31). It can be argued though that once a state commits itself to a treaty or to membership of an organisation, that act implies agreement to be bound by decisions from those institutions that are responsible for implementing and giving effect to the treaty.<sup>4</sup>

States have increasingly acknowledged that certain problems affect them collectively

Increased international interactions, inter- and supra-governmental organisations, globalisation, human rights and humanitarian law among other development have indeed challenged the Westphalian concept of sovereignty (see for example Annan 1999 and Ghali 1992; 1995). The modern application and use of the term have limited the absolute sovereign power of states in international law and relations.<sup>5</sup> States have increasingly acknowledged that certain problems affect them collectively and consequently their effective resolution can only be attained through global efforts. These issues include nuclear proliferation, trade, pollution and other global environmental issues, refugees, and criminal law issues such as war crimes, crimes against humanity, genocide and terrorism. It is on these and similar matters that international law through treaties, international customary law and related measures 'seeks either to regulate the activities or to coordinate national regulation efforts' (Tangney 1996:400).



Membership of international, intergovernmental and supra-governmental institutions such as the EU has also transformed the traditional conceptualisation of sovereignty.<sup>6</sup> Some states have been willing to accept decisions, directives and regulations adopted by these institutions, in essence ceding some of their sovereign powers to the institutions (Tangney 1996). An example is the relationship between developing countries with Bretton Wood institutions (International Monetary Fund and World Bank) in which the countries involved on the whole adopt and implement the monetary and fiscal policies prescribed by the institutions (Tangney 1996:405).

However, these policies have not always been in the best interests of the states concerned and have often neither been legislated upon by the states or sanctioned expressly through the various mechanisms of state processes. To a certain extent one may argue that in adopting the policies, the states are exercising their sovereign powers but it could also be argued that the policies are directives from external authorities as they do not originate in the state's executive, legislative or judicial powers. They are therefore tantamount to external interference. In an effort to attain and meet development standards set by other global players, the states often embrace the directives without question. Nor do they have the capacity to determine whether the policies would be feasible in their particular circumstances. It should be noted that not all of these policies are unworkable and indeed various states in Africa and other parts of the world have derived some benefits in their search to attain western concepts of democracy and economic development and the outcomes related to them.

In Africa, membership to the AU could be regarded as one way in which states have agreed to cede some of their sovereign powers to achieve common objectives.<sup>7</sup> In terms of the AU Constitutive Act various organs with diverse competencies have been established whose effective execution is dependent on states transferring some of their sovereign powers to those organs. The institutions are the Assembly of the Union (arts 6-9), the Executive Council (arts 10-13), the Pan-African Parliament (art 17),<sup>8</sup> the Economic and Social and Cultural Council (art 22), the Court of Justice (art 18), the Commission (art 20), specialised technical committees (arts 14-16), the Permanent Representatives Committee (art 21), and the financial institutions (art 19). The aim of these bodies is to achieve the common objectives of the AU set out in the Constitutive Act and includes among others political, economic and social development; promotion of peace, security and stability on the continent; and promotion and protection of human rights (art 3).

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In the next section the extent to which member states of the AU have transferred some of their sovereign powers to the body and organs of the AU, and which has the potential of achieving the dream of a United States of Africa, are examined. For purposes of this discussion the relevant sovereign powers are those related to a state's exclusive authority to exercise executive, legislative and judicial powers over its territory and people.

### The concept of sovereignty in the pursuit of closer integration for Africa

Various efforts and initiatives aimed at Africa's closer integration include the 1981 Lagos Plan (United Nations Economic Commission for Africa/Organisation of African Unity 1980) and the African Economic Community (AEC)<sup>9</sup> in which development objectives and measures that Africa should undertake in order to achieve socio economic progress are set out. The focus of this paper is limited to the AU as the institution that offers a realistic possibility of achieving closer integration among its member states. In the preamble to the Constitutive Act of the AU, the heads of states and government stated that they are 'determined to take all necessary measures to strengthen their common institutions and provide them with necessary powers and resources to enable them to discharge their respective mandates effectively'(read the AU institutional framework). This seems to indicate that member states realise the need to grant powers to the common institutions, which in essence entails transferring some of their sovereign powers to the AU, if they are to achieve the objectives set out in article 3. It includes ceding some legislative powers to the Pan-African Parliament (PAP), judicial powers to the African Court of Justice and Human Rights, and powers over enforcement and implementation of decisions domestically.

One of the objectives listed in the Constitutive Act is defence of 'the sovereignty, territorial integrity and independence of its member states' (art 3(b)). While this may be reminiscent of its predecessor's preoccupation with preserving state sovereignty, which in essence came down to non-interference in the internal affairs of member states, the Constitutive Act allays fears of complacency by expressly stipulating that it has a right to intervene in 'grave circumstances, namely war crimes, genocide and crimes against humanity' (arts 4(h). It may also intervene upon request by a member state 'in order to restore peace and security' (art 4(j)).

On the face of it, this may not seem to amount to a transfer of sovereign powers to the AU, but member



states did in effect transfer some of their sovereign powers by ratifying the Constitutive Act which empowers the AU to intervene in such circumstances. However, apart from a few instances, the AU has generally avoided intervening in the internal affairs of member states<sup>10</sup> Nevertheless, the AU has recently deployed peacekeeping missions in Sudan and Somalia, which is evidence of the fact that the AU is determined to keep peace and security on the continent.<sup>11</sup> These examples not only point to the AU's departure from its predecessor's stance of non-interference in internal affairs, but also show that the AU is exercising some powers ceded to it by member states.

The Constitutive Act of the Union also envisages that member states will cede some of their sovereign powers to the organs of the AU (art 5), in order to effectively exercise their powers and competencies. The Assembly of the AU, its supreme organ, is composed of heads of states and government of AU members. Among others it 'determines the common policies of the union; monitors the implementation of policies and decisions of the Union as well as ensures compliance by all member states; and gives directives to the Executive Council on the management of conflicts' (art 9). In terms of these powers and functions, the Assembly is in charge of issues of common interest and ensures their execution, including imposing sanctions for non-compliance (art 23). These are competencies that are traditionally vested in the executive branch of a state. This means that states must cooperate and indeed cede some of their executive powers to the union to enable the AU Assembly to carry out the functions stated above and monitor and ensure compliance.

Decisions are ratified in the Assembly 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' (art 7). This means that even if not all members agree with a decision, they are bound by it regardless of their individual positions on that particular matter. The sovereign powers in question include those related to enforcement and implementation of decisions of the Assembly domestically. States should therefore accept and implement the common policies adopted by the Assembly which may include economic policies; research; monetary and financial affairs; trade, customs and immigration; transport, communication and tourism and such other issues of common interest to the members.<sup>12</sup>

However, apart from a few instances (Wachira & Ayinla 2006:485), the AU Assembly is still reluctant to interfere in the internal affairs of member states. This

is despite the fact that article 4(g) of the Constitutive Act provides for the principle of non-interference by any member state (and not necessarily the AU) in the internal affairs of another, which could be interpreted to mean that the AU can in fact interfere as an institution. With regard to human rights issues, for example, some member states have prevailed upon the Assembly to block publication of reports of AU organs which are unfavourable to them in the name of protecting their sovereignty.<sup>13</sup> The current situation in Zimbabwe for instance, where there is overwhelming evidence of massive violation of fundamental human rights and freedom of the citizens by the state but little if any concrete action has been taken by the AU Assembly, illustrates the Assembly's unwillingness to challenge the state presumably to avoid interference in its internal affairs (Mail and Guardian online).

It is submitted that there is a need to grant some sovereign powers (read executive powers) by member states to the Assembly, without undue interference by the states irrespective of adverse mention or adoption of measures against it. It is only through such powers that the Assembly will effectively ensure compliance with policies and decisions of the AU that are a prerequisite for achievement of common objectives. These policies and decisions are mainly formulated by the Executive Council and passed on to the Assembly for adoption, and therefore it is imperative that the Executive Council has sufficient powers, too.

The Executive Council comprises the ministers of foreign affairs or such others designated by the member states (Constitutive Act of the AU, art 10). Like the Assembly, decision-making is by consensus or where that fails, by a two-thirds majority on matters other than procedural matters which require a simple majority. The functions of the Executive Council include 'coordinating and taking decisions on policies in areas of common interest to the member states, such as foreign trade, agriculture, transport and communications, environmental protection, humanitarian action and disaster responses, nationality, residency and immigration matters' (Constitutive Act of the AU, art 13).

For effective execution, the Council must have some powers usually reserved for states. For example, in order to coordinate and take decisions on policies in areas of common interest such as foreign trade, states would have to grant the Executive Council powers related to determining trade tariffs, quotas, markets and standards of commodities and services for import and export. The decisions of the Executive Council would be based on sound advice of the specialised technical committees. (Constitutive Act of the AU, art

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14 and 15).<sup>14</sup> Member states will reap the benefits of economies of scale on common interests by doing so. This is particularly important if closer integration is to be achieved as envisaged by the PAP, which was established 'to ensure the full participation of Africa people in the development and economic integration of the continent' (art 17).

The PAP comprises five nominees each from member states, who should reflect the diversity of political opinion in the national parliaments (Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament 2001, art 4). The members are therefore not elected directly to the PAP by citizens of the member states. In its first term of existence the PAP shall only exercise advisory and consultative powers, but article 11 of the protocol envisages that the PAP shall be vested with legislative powers to be defined by the Assembly. Until such time the PAP is not empowered to legislate on issues of common interest, despite the fact that it is a prerequisite for an effective union which hopes to achieve common goals and objectives (see Magliveras & Naldi 2003:225; Demeke 2004:61- 66).

The power to legislate on issues of common interest such as immigration, common tariffs and customs, communication, agriculture, trade, monetary policies and regional security, will place the AU in a position to ensure that constituent states benefit from collective bargaining powers and strengths. States will be able to enjoy economies of scale, and a uniform execution and implementation of policies and laws, which will improve the welfare of all Africans. In particular, it is hoped that states will open up their borders and facilitate free movement of labour, goods and services among themselves that is essential for social cohesion and economic development. It is therefore envisaged that in the pursuit for closer integration and unity, member states will agree that it is necessary to cede some sovereign legislative powers to the PAP, once they are agreed on the common competencies that the PAP should deal with.

The PAP has thus far held six ordinary sessions and established ten permanent committees, all aimed at ensuring 'the full participation of African peoples, in the development and economic integration of the continent' in accordance with article 17 of the Constitutive Act of the AU.<sup>15</sup> The committees have broad mandates, including consideration of matters relating to development of sound policy for cross-border, regional and continental concerns within the areas of trade, customs and immigration; assisting the Parliament with oversight over the development and implementation of policies of the AU relating to

transport, communication, science and technology and industry; assisting the Parliament in its efforts of conflict prevention and resolution; and assisting the Parliament in its role of harmonising and coordinating the laws of member states (Constitutive Act of the AU, art 17; see also the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, art 11(3)). Effective execution of the competencies would entail and require that states cede and / or share some of their legislative powers with the PAP. This is particularly relevant to the process of harmonising various laws of member states to ensure uniformity or at least a common approach and legitimacy in dealing with community issues.

The PAP must also ensure that the Assembly and other bodies of the AU are held accountable to the African people in more or less the same way national parliaments must ensure that proper checks and balances are maintained to avoid abuse of power by the state institutions. The European Parliament offers some comparative experiences and lessons, and will be discussed in the next section.

### The PAP must ensure that the Assembly and other bodies of the AU are held accountable to the African people

The judicial framework of the AU centres on a proposed African Court of Justice established through a protocol, which however is yet to gain the requisite ratification to come into force. The court has been plagued by uncertainty since the AU has decided to merge the African Court on Human and Peoples' Rights<sup>16</sup> and the African Court of Justice (Protocol on the Court of Justice of the AU 2003) and has drafted a merger instrument to this effect (Draft Protocol on the Statute of the African Court of Justice and Human Rights, art 1). The draft instrument would replace the original protocols establishing the two (art 1).

The court, which will be known as the African Court of Justice and Human Rights (ACJHR) (art 2), will comprise two sections, namely a general and a human rights section (arts 5 and 16).

The court will hand down final and binding decisions (arts 47(1) & (2)) and the Executive Council will be charged with the responsibility for monitoring the execution of its decisions on behalf of the AU Assembly (art 44(6)). This means that the Executive Council will be charged with the duty to decide upon measures to give effect to decisions of the court, as well as steps to be taken in the event of non-compliance (art 47(4) and (5)), which will possibly take the form of sanctions in terms of article 23(2) of the Constitutive Act. Again, this will require that states not only share some of their judicial powers with the African Court, but also grant some of the sovereign powers to the other AU organs to ensure its decisions are executed within each country.

The protocol establishing the African Court on Human and Peoples' Rights is already in force with judges elected by the Assembly and is expected to become operational in the interim, pending the adoption and final ratification of the merger instrument. No implementation date has been set and as such one may only speculate on how the court will inform and influence the manner in which the AU functions. It is hoped that the court will ensure, among others, that all the organs of the AU function according to the Constitutive Act and related protocols, which will in turn ensure accountability and the rule of law. It is also hoped that the court will be inspired by the European Court of Justice, particularly with regard to the bindingness of its decisions (this is discussed in the next section).

At this point it is also useful to mention one programme of the AU, namely NEPAD,<sup>17</sup> that has demonstrated that member states of the AU may be willing to change their thinking and cede some of their sovereignty to achieve economic integration.<sup>18</sup> NEPAD established an African Peer Review Mechanism, a system of peer review to which a state may submit itself and receive feedback on its compliance with NEPAD governance standards including comparison with their peers, conformity with international standards, political governance and human rights.<sup>19</sup> The review entails self-assessment by the country, followed by a visit to the country by a panel of eminent persons. The implication is that member states accept scrutiny over their domestic affairs, relating to for example legislative, judicial and economic policies. A number of AU member states such as Rwanda, Ghana, Kenya and South Africa have already submitted to the peer review. By doing so and then undertaking to implement the recommendations of the assessment panel, member states illustrate their willingness to cooperate and empower the AU institution to achieve common objectives. It is hoped that these developments will inspire more and closer cooperation between AU member states.

Within the EU, member states have yielded some of their sovereign powers to a supra-governmental institution, which increases the effectiveness of the EU's institutions with regard to executing their common competencies. The next section contains a brief overview of the EU model, to extract instances that may be replicated in the pursuit of a United States of Africa.

### **The European Union model**

The current EU framework is the product of various treaties by member states which govern the membership

and scope of common matters.<sup>20</sup> The treaties establish the main EU institutions and bodies, including the European Commission, the Council of the European Union, the European Council, the European Central Bank, the European Court of Justice and the European Parliament. The EU is currently founded on three main pillars. The first is the European Community, which is concerned with economic, social and environmental policies; the second the Common Foreign and Security Policy, which is concerned with foreign policy issues such as immigration, security and the military; and the third is the Police and Judicial Cooperation in Criminal Matters.<sup>21</sup> Effective execution of these policies calls for increased cooperation by member states not only to benefit from economies of scale but also a common market. Cooperative bargaining with other countries and institutions is also a tremendous advantage. Naturally, as the EU members forge closer ties, its institutions have wielded more powers which were traditionally the preserve of the domestic states. Member states have thus increasingly yielded sovereign powers to the EU.

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The extent to and manner in which member states have ceded sovereign powers to the EU institutions is discussed against the background of four key institutions of the EU, namely the European Commission, the Council of the European Union, the European Parliament and the European Court of Justice. These four are particularly relevant because the AU – the framework within which a United States of Africa government could be based – has three similar institutions already. These are the Executive Council, the PAP, and the African Court of Justice.

### ***The extent to which member states have yielded sovereignty to the EU institutions***

The EU institutions are vested with various competencies for the effective functioning of the union. The functioning and exercise of some of the powers of these institutions entail some dilution, albeit limited, of the sovereignty of member states.<sup>22</sup> However, the limits are set out in the union treaties, which means that member states have consented to those limits (Dashwood 1998:201-216, 209). The effect is that member states retain their sovereignty and yield the required amount necessary for effective and efficient functioning of the institutions, for the common good and interests of all EU members (MacCormick 1999:123-136, 133).

The European Commission is the equivalent of an executive branch of a national government and is currently composed of one member from each state. Although member states nominate members, they

must be approved by the European Parliament and are expected to be independent of national influence and have security of tenure (EC Treaty, arts 213-14; McCormick 1999:102). It is important to note the difference in the roles of the European Parliament regarding a say in the composition of the European Commission, as against the AU where the PAP does not have an express mandate to approve members of the AU bodies. The powers the European Parliament wields are crucial to its success, because it ensures proper checks and balances as well as accountability. It serves as a preventive measure against political interference by member states through their nominees, which could compromise the independence of the latter. The European Commission is responsible for formulating and implementing EU laws and implementing policies, as well as management of the day to day running of the EU (McCormick 1999:111-112). The European Commission is headed by a president nominated by the European Council and ratified by the European Parliament.

Given that the European Commission is in charge of formulating and implementing legislation, it wields considerable powers in terms of various treaties. This is particularly important as national laws are subordinate to EU laws in the specific areas of common interest and competence.<sup>23</sup> It is important to note that there is no blanket supremacy, for states retain 'an indispensable source of legitimation for Community authority as well as sufficient competencies and responsibilities on all other matters of state' (Zalany 2005:624). A balance is maintained between the supremacy of the EU law and laws of members states by means of a principle of subsidiarity, which provides that the 'Community shall take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community' (EC Treaty, art 5).

The effect of the checks and balances are that member states determine firstly what sovereign powers are granted to the EU, that they undertake to be bound by them and that they are necessary to give effect to the EU policies and laws. In this regard the commission 'ensures that EU legislation is applied correctly by the member states through legally binding decisions and the power to bring states that fail to fulfil their obligations before the European Court of Justice' (Zalany 2005:629).

A possible African equivalent to the European Commission (at least based on names) could be the AU Commission. However, the AU Commission has little

if any powers and is only an administrative secretariat of the AU. Rather, the functions and powers of the AU Assembly and Executive Council could be equated to those of the European Commission. The Assembly has the power to determine common policies of the AU, as well as monitor their implementation. But unlike the European Commission, the Assembly and the Executive Council do not initiate AU laws. This responsibility is supposedly vested in the PAP but, as was discussed above, its legislative powers have not yet been defined. Furthermore, although failure to implement decisions of the Assembly is tantamount to inviting sanctions in terms of article 23(2) of the Constitutive Act of the AU, the Assembly has on the whole avoided such a step despite instances of blatant disregard of some of its decisions.<sup>24</sup> It is hoped that in the pursuit of closer integration in Africa, the Assembly and the Executive Council could follow the example of the European Commission and ensure that their decisions are legally binding. Effective mechanisms and processes should also be instituted to guarantee that the decisions are indeed enforced in practice, with attendant consequences in the event of default.

### A possible African equivalent to the European Commission could be the AU Commission

A second highly important institution of the EU is its Council, commonly referred to as the Council of Ministers, which is composed of national ministers responsible for areas related to the specific competences of the EU (EC Treaty, art 103). The council's mandate is to legislate on specific issues under its auspices, such as economy, agriculture, foreign affairs and transport (McCormick 1999:119). EU member states have transferred some of their sovereign powers to the council, enabling it to legislate on those clearly defined issues. This impacts particularly on decision-making at council level: although it

initially depended on unanimous agreement, 'qualified majority' voting is now the basis for acceptance (McCormick 1999:130-131). This means that while some states may be opposed to an issue, all are bound by it if it is carried by a qualified majority vote (Craig 1997:117).

The AU Executive Council and its specialised technical committees approximate the Council of the European Union and although they do not have legislative powers, they do have powers to coordinate and take decisions on policies in areas of common interest. Therefore, states who are party to the AU should confer on these two institutions the powers that would enable them to actually achieve the common objectives embodied by such policies. They would for example have to cede some sovereign powers to enable AU institutions to determine and adopt policies on trade, agriculture, economic, customs and immigration matters as envisaged by sections 13 and 14 of the AU

Constitutive Act. Furthermore, member states would be required to streamline their own policies and laws to ensure effective coordination and implementation of the common policies of the AU.

Unlike the PAP, the members of the European Parliament have since 1979 been elected directly by all the citizens of the member states for a five-year term (Berman et al 2002:51). The effect has been to accord the European Parliament great legitimacy in the eyes of the citizens of the member states, with regard to both community legislation and its supervisory mandate (Zalany 2005:636). In Africa, however, it is debatable whether direct elections for members of the PAP would be feasible at this point, despite the positive outcomes it could yield, given the huge differences in the political and economic terrain.

One point of similarity with the European Parliament is that the PAP also began as a consultative and advisory assembly. However, through activism and wide interpretation of its mandate, the European Parliament of today has achieved co-legislative powers with the Council of the European Union. It has been transformed into a legislative and supervisory body and functions in a triangular relationship with the council of the EU and the commission with regard to legislative matters (Demeke 2004:64, 56). The European Parliament wields considerable powers over legislative matters, including 'veto powers over several policy areas'. Apart from these powers, the European Parliament and the Council of the EU also share budgetary powers (Neuhold 2000:4 cited in Demeke 2004:57). The implication of these powers is that it enables the Parliament to exercise some control over the priorities of the EU institutions and execution of common competencies.

The European Parliament also has a supervisory mandate over all other EU institutions, in essence ensuring proper checks and balances are maintained.<sup>25</sup> This is a function that an effective AU should strive to emulate, so that the PAP could ensure accountability of other AU organs. Citizens of EU member states may also petition the European Parliament directly on issues of alleged violation of human rights. While it is not a judicial body, the Parliament has pressed member states whose laws may violate human rights to institute amendments (Demeke 2004:61). Similarly, in Africa, article 11(1) of the PAP stipulates that one of its key concerns will be to uphold fundamental human rights and consolidate democracy on the continent. In this regard it will hopefully be inspired by the European Parliament and ensure that laws and government policies protect and respect the fundamental liberties of Africans. The powers that the European Parliament

exercises have resulted in EU institutions functioning more effectively, while being accountable to EU citizens. Again, this would not have been possible if member states had not been willing to give up some of their sovereign powers regarding legislation on areas of common interest.

The European Court of Justice is the judicial institution charged with the task of interpreting and adjudicating on issues set out in the treaties of the EU. The court comprises judges nominated by member states, with the president elected from among those nominees (EC Treaty, art 221). The European Court of Justice is the ultimate 'judicial authority to check the power of the EU policy making institutions by ensuring that member states' ultimate sovereignty is respected' (Zalany 2005:639).

Of particular importance, and noteworthy with regard to Africa, is that decisions of the European Court of Justice are binding on national courts of member states (Cohen 1996:421, 425-26). Although the envisaged African Court of Justice stipulates that its decisions will be binding on member states, the current framework for enforcement of decisions leaves a lot to be desired (Wachira & Ayinla 2006:487-492). The European Court of Justice has been instrumental in granting EU law supremacy over national laws where the two are inconsistent. It can declare any national law or rule null and void if it conflicts with a law of the European Community or the treaty itself. The court has also held that some community law has 'direct effect' in member states. In the process, the court has changed the perception that sovereignty is the preserve of the nation state (Henkel 2001:153-179; Weiler 1991:2413, 2414). While the court has so

The powers that the European Parliament exercises have resulted in EU institutions functioning more effectively while being accountable to EU citizens

far gone largely unchallenged in its expansion of the EU competencies and the supremacy of community law, not all states are comfortable with this state of affairs (Swaine 2000:5). These concerns are discussed briefly in the next section.

The foregoing makes it clear that EU member states have of their own volition yielded some of their sovereign powers, by means of the Union's institutional framework, to achieve common objectives. The transformation of the EU has been heralded as a triumph, and is feted as having redefined the traditional notion of sovereignty (Cohen 2007:1). Although some member states are reluctant to forge closer ties possibly in the form of a federation, there are efforts underway to bring about such a goal (Treaty Establishing a Constitution for Europe 2004).

Admittedly issues of increased cession of sovereign powers to EU institutions continue to raise concerns





among some leaders and the general public, the progress made so far by the EU is inspirational.<sup>26</sup> The EU has undoubtedly become a force to reckon with both in political and economic terms. The introduction of the Euro, for example, has provided a global alternative to the dominance of the dollar as the medium of exchange in international commerce. The EU has also been able to remove trade barriers and tariffs, facilitate free movement of EU citizens, improve free commercial and competitive economic exchange, limit wars and hostility between member states, and play a greater role internationally in peace, security and developmental issues (Cohen 2007:103, 111).

The positive results of the EU have prompted calls for even greater integration of member states. While some leaders support closer integration, others are wary of the prospect of losing further sovereign powers.

### ***The transfer of state sovereignty to the European Union within the domestic legal framework of member states***

In most jurisdictions domestic constitutions are the supreme laws which set out the organs of each state, how they function and what competencies they exercise. (It is noteworthy that some states, such as the UK, do not have a written constitution.) Further, the national judiciary then has the task of interpreting a country's legal framework. Therefore, an overview of the interpretations of constitutions by courts of EU member states to ceding of sovereign powers to the EU will inform the debate on Africa's pursuit for more integration. Comparable situations in Europe and Africa are bound to yield comparable solutions, despite different experiences and backgrounds, since the aim of both is effective functioning with regard to common competencies, through a supra-national body.

Although the constitution is generally the supreme law in EU member states, membership of the EU demands concomitant recognition of the EU legal and institutional framework. But, as was stated above, in cases of conflict, EU laws take precedence over the domestic laws on such common issues that members have ceded to the EU.<sup>27</sup> If a national law is therefore inconsistent with EU law, it is declared null and void to the extent that it is inconsistent. National constitutions and statutes are therefore expected to conform to the provisions of the treaties entered into under the auspices of the EU.

National constitutions of member states provide guidance on the scope of the relationship between the state and the supranational body (Albi & Elsuwege

2004). One of the key issues that needs to be clarified is the extent to which the state may cede sovereign powers to such a body. In the case of the EU, some member states have amended their constitutions so that they may legitimately cede powers to EU institutions.<sup>28</sup> The provisions generally yield sovereignty to the EU with regard to matters of common concern. It is important to note, however, that member states retain the 'ultimate authority and only the exercise of delimited powers can be transferred' (De Witte 2001:78 cited in Albi & Elsuwege 2004). If African states are serious about achieving closer integration, member states may be compelled to harmonise their laws with those of the AU. This could entail constitutional and legislative revisions and amendments to bring about legitimacy and authority to the common institutions.

On the domestic judicial level, the establishment of the EU and increased integration has forced national courts to determine the extent to which 'a state may delegate its powers without losing sovereignty' (Albi & Elsuwege 2004). In what are regarded as landmark decisions, the German Constitutional Court (German Maastricht decision 1993:57-108) and the Danish Supreme Court (Danish Maastricht decision 1993:855-862) established a number of criteria to 'assess the permissible level of integration, so that sovereignty would not be lost' (Albi & Elsuwege 2004:745). The courts held that the only powers that may be delegated are those that do not compromise a state's autonomy and independence (German Maastricht decision 1993:91, in Albi & Elsuwege 2004:862).

The courts listed amongst others the following reasons why the Treaty Establishing the EU (Maastricht Treaty) did not compromise the independent sovereign states of Germany and Denmark.

First, the negotiation and ratification or accession of treaties is the preserve of the state, and as such any delegation of powers to EU institutions was consensual and in accordance with the laws and procedures of the member state (German Maastricht decision 1993:84, 91 & 97, in Albi & Elsuwege 2004). The state remains in control of the extent to which it is willing to cede sovereign powers to a supranational entity.

Second, the powers conferred on the supranational entity by the state were specific (German Maastricht decision 1993:84, 89 & 105, and Danish Maastricht decision 1993:858 in Albi & Elsuwege 2004:858). This meant that the EU could not at its discretion extend its powers to matters beyond the scope agreed upon and envisaged by the states. Therefore the free will and consent of states in permitting the EU to exercise these

The positive results of the EU have prompted calls for even greater integration of member states. While some leaders support that, others are wary



powers remains a fundamental factor in the relationship between each state and the supranational body.

Finally, the three state bodies, namely the executive, legislative and judicial, remain the principle institutions that uphold state sovereignty. Even if the state delegates some of its powers to the supranational body, the state retains substantial control over its own affairs. The three institutions therefore ensure the state remains accountable to its people and that the national judicial processes ultimately determine 'whether EU institutions act within the powers conferred upon them by member states' (German Maastricht decision 1993:89 and Danish Maastricht decision 1993:861, in Albi & Elsuwege 2004:861).

Although the French Constitutional Council reiterated that the EU treaties 'should not undermine the essential conditions for the exercise of national sovereignty', the French have opted for constitutional amendments to reflect the developments within the EU (Albi & Elsuwege 2004:747).<sup>29</sup> The essential conditions 'include the states' institutional structure, independence of the nation, territorial integrity and fundamental rights and liberties of the nationals' (Albi & Elsuwege 2004, footnote 36).

It is noteworthy that the EU still has to deal with uncertainties regarding the sovereign powers of member states and of EU institutions. This was highlighted during the bid to harmonise the extent of powers ceded by individual states by means of an EU constitution.<sup>30</sup> The proposal entailed merging the three pillars into a single structure to simplify and unify the operations of the EU. Several countries have held referendums on the matter, in what according to some commentators parallels the Philadelphia Convention in 1787, where the American constitution was created (Albi & Elsuwege 2004:748; see also Rosenfeld 2003:375-376).

The premise was that the EU needed a common constitution to entrench democracy, transparency and efficiency in the operations of EU institutions (Albi & Elsuwege 2004:742). While some EU states have endorsed the proposed constitution, key nations such as the French and the Dutch, who are among the founders of the EU, rejected a common constitution for Europe through referendums held in 2005.<sup>31</sup> The reasons for rejecting the proposed constitution are linked to concerns over the increased move towards closer integration and by extension the limitations on national sovereignty. Some voters thus rejected the proposed constitution because they feared the power the EU institutions and the implications for national policies and liberties (<http://news.bbc.co.uk/1/hi/>

[world/europe/4601439.stm](http://world/europe/4601439.stm)). From this it is obvious that some states and their citizens are not yet ready to yield all their sovereign powers to a supranational entity, but prefer to retain their national identities and independence. Nevertheless, most member states acknowledge that some functions are best executed collectively and that the institutions charged with these responsibilities should be empowered to discharge their mandate effectively.

From the foregoing it should be clear that states are prepared to consensually delegate only some of their sovereign powers to the EU. Most EU member states still prefer to retain sovereignty and autonomy with regard to a number of aspects, and only cede those powers which are a prerequisite for common functions to the supra-national body.

### Food for thought

Although the EU model does contain lessons for the proponents of closer integration in Africa, one must bear in mind that the two continents have very different backgrounds, at least with regard to economic and political aspirations. Unlike Europe, who has advanced national institutions, particularly with regard to legislative and judicial bodies, their African counterparts are generally still in the process of achieving legitimacy. In some African countries instances of judicial interference, lack of separation of parliamentary and executive powers and even unconstitutional and undemocratic changes in government (notwithstanding elections taking place regularly) are still common. These and other constraints, such as lack of the necessary economic capacity to support even the most common institutions, will of necessity hinder the achievement of closer integration in Africa.

It would seem that integration is a long and tedious process that demands sacrifice and commitment beyond individual state interests. It is also a process that should be approached with caution, with measured steps that incorporate and ensure proper and wide consultation with all stakeholders, and particularly the citizens of member states.<sup>32</sup> It also requires a thorough understanding of the meaning and consequences of integration. The citizens of all African states should be consulted and allowed to participate actively in issues that affect them. In view of the political and economic disparities and differing levels of development in Africa, it is important that integration efforts are well thought out and carried out in sequential, logical steps. It should start with the identification of matters which states agree are of common interest and on

Lack of the necessary economic capacity to support even the most common institutions, will hinder the achievement of closer integration in Africa

which they would be willing to delegate powers to facilitate collective achievement.

Such common issues would form a foundation from which states would act collectively. From this should follow other steps to expand areas of common competencies. These common issues include those identified in the Constitutive Act of the AU.<sup>33</sup> However, a prerequisite for achievement of those objectives is that the necessary powers to execute them are conferred upon the AU and its institutions. Member states will thus have to transfer sovereign powers to AU institutions to further common objectives. For example to ensure peace, security and stability on the continent, particularly in times of civil strife and unrest within a state, the AU must have the necessary power to enable it to send a peacekeeping force to the relevant territory. This in turn implies that a common defence policy and laws to manage and coordinate such AU peacekeeping efforts. The further implication is that domestic policies and laws will not only have to reflect the common policy, but that states will have to be willing to ensure that they are consistent with such common policies. The next implication is that states will have to confer sufficient powers on the PAP to enforce harmonisation of AU and domestic laws. Furthermore, the Assembly and the Executive Council will require a mandate, and concomitant powers, to ensure and monitor their implementation. From this it is obvious that one step leads inevitably to the next if effective integration is to be achieved.

The same progression would have to be followed with regard to the AU's objective of promoting and protecting human and peoples' rights. All 53 member states of the AU are party to the African Charter on Human and Peoples Rights. This means that they are agreed, at least on paper, that human rights are fundamental to the realisation of greater unity and solidarity of the African peoples. Based on this overwhelming acceptance of the importance of fundamental human rights, member states would be duty bound to accept the jurisdiction and decisions emanating from the envisaged AU judicial framework, and even the quasi-judicial organs that are in place at this time.<sup>34</sup> Again, to give effect to and enforce these decisions at a national level, member states would have to be willing to grant the institutions some of those sovereign powers that are usually reserved for the domestic judicial framework and executive branches. Only then would it be possible to ensure that the decisions are actually implemented. Further, states would have to be willing to accept as binding the decisions of the proposed African Court of Justice and Human Rights and also be prepared to review and amend national legislation and policies that are

inconsistent with the AU laws (Constitutive Act and other protocols).

The steps necessary to achieve a closer continental union, with the final goal of a United States of Africa, include the need to define the legislative powers of the PAP – thus the common areas on which the PAP should legislate. These could include trade and market related matters such as common tariffs, monetary issues, immigration, and peace and security. In the meantime, the PAP should interpret its powers, as defined by the Protocol establishing it, widely and progressively and exercise them in cooperation and consultation with other institutions of the AU. Future powers would include oversight and supervisory powers over budgetary matters and oversight over other institutions of the AU. This would require a say in the appointment of members of the AU Commission and other AU bodies.

In view of the present inability of many African states to ensure that members of the PAP receive a direct mandate from all their citizens, it is imperative that the process for election of the five representatives of each state to the PAP be rationalised. This will enhance its legitimacy as a voice of the people, which will in turn improve its capacity to challenge policies and legislation at odds with the will of the people.

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### Conclusion

From the foregoing discussion it should be apparent that the traditional concept of sovereignty has diminished and continues to be restated. The increased need for state cooperation and interactions to meet the new global challenges demand that states review and rethink the concept of sovereignty. Today it is acknowledged that international law, institutions and processes have compelled states to forge closer 'to assert and enforce broadly agreed international community policies, interests and values, such as those concerning human rights, international peace and security, arms control, environmental degradation, poverty, health and management of the international commons, even when this may impinge upon a state's traditionally exclusive internal authority' (Bilder 1994:16). The implication is that whether states enter into closer integration treaties or not, there are certain matters in which their sovereign powers will be limited in any event. On the whole, the benefits to be derived from freely entering into treaties for a common economic, social and political purpose, far outweigh the disadvantages.

Therefore it is imperative that, in the pursuit of a 'United States of Africa', existing institutions such as

the AU are able to exercise the required powers to discharge their functions effectively. As in the case of the EU, the legitimacy of such powers should originate from treaties entered into by the member states. Only member states are in a position to ensure that the common institutions are able to function and execute their mandates effectively. A collective stance will enable member states to reap the benefits of economies of scale and greater bargaining powers, vis-à-vis other global players. The obverse is of course that states cede some of their sovereign powers to the common institution.

There is no doubt that the AU remains the most viable vehicle for achieving a United States of Africa, to be realised through closer integration of its member states. It is hoped that member states of the AU will seize the moment and consolidate their powers so as to achieve the common objectives they have already set out in the Constitutive Act. In this way they will attain greater unity and solidarity among countries in Africa and the peoples of Africa. In the light of the envisaged collective benefits, the transfer of some sovereign powers to the AU by members, which will ensure greater coordination and effectiveness in executing common competencies, is justifiable.

## Notes

- 1 Other models could be for example the USA, which is briefly mentioned later in the paper but only to the extent that its constituent states have conferred certain sovereign powers on the federal government but which a number of states in the EU and certainly Africa would find problematic to cede to a supranational body.
- 2 For a historical background to the EU generally, see the call by Winston Churchill in 1946 for a United States of Europe; the Robert Schuman Declaration of 9 May 1950 which led to the European Coal and Steel Community; De Witte (2001:65); and Albi and Elsuwege (2004:743).
- 3 See also the following reference to sovereignty by Max Huber, the arbitrator in the *Island of Palmas* case (*USA v Netherland*) [1928] 2 R Int'l Arb Awards 821, 838: Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise there, to the exclusion of any other states, the function of a state.
- 4 See article 14 of the Vienna Convention on the Law of Treaties which provides that '[t]he consent of a state to be bound by a treaty is expressed by ratification when, inter alia, the treaty provides for such consent to be expressed by means of ratification, or the consent of a state to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification'. See also Brownlie (2003), Wachira and Ayinla (2006:471-473), Dugard (1992:266) and Harris (1991:747).
- 5 In *Heller versus US* [1985] 776 F 2d 92, 96-7 (3<sup>rd</sup> Circuit 1985) the United States Court observed that the definition of sovereignty as the supreme, absolute and uncontrollable power by which an independent state is governed was unacceptable.
- 6 Such institutions include the UN, the Bretton Woods Institutions, the World Trade Organisation, the International Criminal Court, and the AU.
- 7 For example, article 4(h)(p) of the Constitutive Act of the African Union provides for the right of the union to intervene in a member state.
- 8 See also the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, which was adopted in 2001 and came into force in 2003.
- 9 Treaty Establishing the African Economic Community, adopted on 3 June 1991, came into force in 1994. With the transformation of the OAU to the AU the AEC forms an integral part of the AU. Its provisions are valid in so far as they do not contradict the Constitutive Act of the AU (art 33(2)). See Compendium of key human rights documents of the African Union, PULP 2005:3. For an expose of the AEC Treaty, see Naldi and Magliveras (1999:601).
- 10 Wachira and Ayinla (2006:485) cite the example of Madagascar, which was barred from the AU inauguration summit in 2002 because of doubts over the legitimacy of its president, in accordance with article 4(p) of the Constitutive Act of the AU. The AU also suspended Togo and urged its members to impose economic and travel sanctions on the Togolese government during an unconstitutional change of leadership in February 2005.
- 11 The AU website contains details and sets out some of the problems faced by these missions, at [http://www.africa-union.org/root/au/News/Press/2007/April/press\\_release\\_on\\_Darfu.doc](http://www.africa-union.org/root/au/News/Press/2007/April/press_release_on_Darfu.doc).
- 12 See article 9 of the Constitutive Act of the Union, read together with functions of other organs such as the Specialised Technical Committees in article 14.
- 13 Notably, some states have recently even taken to pressurising the AU Assembly, through the Executive Council, to suspend the publication of the African Commission's Annual Activity Report for incorporating unfavourable resolutions and recommendations (Assembly/AU/Dec 49 (III)). The AU Assembly suspended the publication of the African Commission's Seventeenth Annual Activity Report, at its 4th Summit in Addis Ababa, Ethiopia at the behest of Zimbabwe, since it incorporated a report on a fact-finding mission to that country (Assembly/AU/Dec 101(VI) para 1). The AU Assembly also wanted to delete certain aspects of the Nineteenth Activity Report before publication, at the Assembly's 6th Summit in Khartoum, Sudan. The report among others contained resolutions on the human rights situations in Eritrea, Ethiopia, Sudan, Uganda and Zimbabwe.
- 14 The specialised technical committees of the AU perform various functions as well as some delegated to it by the Executive Council. Their efficiency and effectiveness would depend on cooperation from member states which goes further than political rhetoric. These include

- the committees on monetary and financial affairs, trade, customs and immigration matters.
- 15 See <http://www.pan-african-parliament.org/committees.htm> for a description of the committees (PAP committees) and their functions.
  - 16 Adopted by the Assembly of Heads of State and Government of the OAU in Ougoadougou, Burkina Faso, on 9 June 1998 and came into force on 25 January 2004 (OAU/LEG/MIN/AFCHPR/PROT (111)). However, the 3rd ordinary session of the Assembly of the AU decided to integrate it with its Court of Justice (Protocol of the Court of Justice adopted by the 2nd ordinary session of the Assembly of the AU in Maputo, 11 July 2003) Assembly/AU/Dec 45 (111).
  - 17 The New Partnership for Africa's Development (NEPAD) is 'a pledge by African leaders based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth in the world economy and body politic' (NEPAD Declaration (2001) adopted in Abuja, Nigeria in October 2001).
  - 18 For other views on NEPAD, see Gumedze (2006:144).
  - 19 The African Peer Review Mechanism (APRM), Base Document (2003) adopted at the 6<sup>th</sup> summit of the NEPAD Heads of State and Government Implementation Committee, March 2003, Abuja, Nigeria.
  - 20 See the Treaty Establishing the European Atomic Energy Community of 25 March 1957, 298 UNTS 167, 5 Eur YB 454; Treaty Establishing the European Economic Community of 25 March 1957, 298 UNTS 11, 4 Eur YB 412 (Treaty of Rome); Treaty on the European Union of 7 February 1992, 1992 OJ (C 224) 1 (the Maastricht Treaty or TEU); Treaty of Amsterdam of 2 October 1997, 1997 OJ (C 340) 1.
  - 21 See the Maastricht Treaty as amended and also the official website of the EU at [http://europa.eu/abc/history/index\\_en.htm](http://europa.eu/abc/history/index_en.htm) (accessed on 24 March 2007).
  - 22 See *NV Algemene Transport- en Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1, 12 (case 26/62) and *Flaminio Costa v ENEL* [1964] ECR 585, 593 (case 6/64), cited in Evans 2003:23.
  - 23 See *Internationale Handelsgesellschaft GmbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, 1970 E.C.R. 1125 (case 11/70) and *NV Algemene Transport en Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1 (case 26/62), cited in Zalany 2005:623.
  - 24 See Wachira and Ayinla (2006:482-485) for an analysis of the categorisation of decisions of the Assembly and instances where the recommendations of the African Commission on Human and Peoples' Rights have been disregarded, but where the authors argue that, on adoption by the Assembly, they become decisions of the Assembly.
  - 25 For example in 1998, the European Parliament set up an independent ad hoc committee of experts to investigate irregularities in a report over allegations of mismanagement of expenditures by the European Commission, which led to the resignation of the entire commission, including its president (Demeke 2004:59).
  - 26 See Cohen's (2007:6) expressing the view that some countries in the EU, for example Poland, Czech and the UK, look to the EU as 'more of a market than a political force and as a loose alignment that strategic Union'.
  - 27 *Van Gend en Loos* [1963] ECR 1, 12 (case 26/62); in *Costa v ENEL* [1964] ECR 1251 (case 6/64) the court among others stated that 'the executive force of Community law cannot vary from one state to another ... without jeopardizing the attainment of the objectives of the Treaty'.
  - 28 Albi and Elsuwege (2004) cite for example article 88(1) of the French constitution, article 23(1) of the German Constitution, article 7(6) of the Portuguese constitution, chapter 10, article 5 of the Swedish Government Act, article 29(4) of the Irish constitution and article 28 of the Greek constitution.
  - 29 Decision No 92-308 DC, 09.04.1992 [www.conseil-constitutionnel.fr/decision/1992/92308dc.htm](http://www.conseil-constitutionnel.fr/decision/1992/92308dc.htm), cited in Albi and Elsuwege (2004:747).
  - 30 See the treaty establishing a constitution for Europe, signed in Rome on 29 October 2004. Available at [http://www.europa.eu/constitution/index\\_en.htm](http://www.europa.eu/constitution/index_en.htm) (accessed 23 March 2007).
  - 31 At present 17 out of the possible 27 member states have ratified the Constitution either through parliamentary action or referenda. Available at <http://news.bbc.co.uk/2/hi/europe/4592243.stm> (accessed 20 March 2007).
  - 32 In Europe for example, there is a wider participation of people from EU countries in matters that will affect them, such as the use of the euro. The Finnish people, for instance, after consultation agreed to use the euro, whereas Denmark, Sweden and the UK refused. The people's views were respected without compromising EU integration. In East Africa a process has been initiated to consult the citizens of the constituent states, Kenya, Uganda Tanzania, Rwanda and Burundi, on the consequences and effects of joining an East African Federation. So far a number of citizens from these countries have voiced concern over a possible dilution of their countries' sovereignty (You must be nationalists before being East Africans, available at [www.eastandard.net](http://www.eastandard.net) (accessed on 5 April 2007)).
  - 33 Constitutive Act of the AU, article 3 (that is, to achieve peace and security, promote and protect human rights, promote sustainable development, promote research in science and technology, eradication of preventable diseases, international cooperation).
  - 34 These include the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' rights (Wachira & Ayinla 2006:481-487).

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## About this paper

Member states of the African Union have proposed an ambitious integration effort designed to create a continental government. The success of such a bid will be dependent on the resolution of various legal, political and economic issues that are crucial to a government of this nature. One of the fundamental questions that states have to deal with is the extent to which they are willing to cede sovereign powers they currently enjoy to a continental body or government to enable it to achieve their common objectives. Comparable experiences from the European Union institutional framework illustrate that enhanced economic and political unity demands closer cooperation and self-sacrifice that sometimes conflict with traditional notions of state sovereignty. In this paper the concept of sovereignty is discussed as well as the extent to which states have been willing to and will be ready to transfer some of their sovereignty to an overarching institution in a bid to form a solid and effective supranational governmental body.

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