



BUILDING THE AFRICAN UNION: ANY LESSONS FROM EUROPEAN INTEGRATION?

By John Palmer*
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An editorial commentator in an Indian newspaper recently observed that ‘The European Union appears to be more loved and respected from afar than it is at home.’ It was, perhaps, an unduly harsh – but not an unreasonable – observation. There is no denying the crisis through which the European Union has passed since the rejection by France and the Netherlands two years ago of a new constitutional treaty designed to further strengthen European integration. But whatever the doubts and controversies surrounding the debate on the future of the EU internally, the European integration and unification project remains a source of inspiration and practical guidance for those building regional communities and unions elsewhere.

The number of global regions which are now in the process of development continues to grow. Apart from the African Union (AU), the Association of South East Asian Nations (ASEAN) was established by five states four decades ago. It now plans a free trade area with its major east Asian neighbours, China, Japan and South Korea. Mercosur was founded by Brazil, Argentina, Uruguay and Paraguay in 1991 through the Treaty of Asuncion and has now grown to six Member States. Its immediate project is to create a common market and customs union but – as with ASEAN – cooperation between Member States already goes beyond this to aspects of environmental and security policy. Together with the countries of the Andean Community, Mercosur aspires in the future to create a South American Community of Nations. In the north American hemisphere, the North American Free Trade Area (NAFTA) brings together the United States, Mexico and Canada.

The model of the EU has been widely adopted as a key benchmark for the development of the new global regions. However the political and legal context in which the EU institutions work is strikingly different to that of most other emerging global regions during the past 50 years. The European Union has been quick to applaud the development of regional communities. It has sought – with varying degree of commitment and success - to prioritise closer relations not just with the individual Member States in these organisations, but also with the collective regional institutions which have been created.

This is not a question of institutional dogma. Rather it is driven by the need to streamline the complex and frequently overlapping (and sometimes conflicting) relations that individual European countries have with individual countries in Africa, Asia and Latin America. But this goal remains elusive insofar as state to state relations remain important for some of the larger EU countries. The resulting pattern of intra-regional relationships remains complicated and far from being fully transparent.

What makes the European Union different

It is important to note some fundamental differences between the stage of development of the European Union and that of the other global regions. Some of these differences have to do with the historic circumstances in which the European Economic Community (now the European Union) was launched in 1958 after the 1957 founding Treaty of Rome. In the aftermath of the Second World war there was widespread support for the goals of European integration – primarily as a way of avoiding

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further internal European conflict and a means of creating supra-national foundations for democracy and the rule of law.

During the past 50 years the EU has deepened the integration of its Member States – through the creation of a single market, a single currency and the emergence of common policies in a number of important areas. At the same time it has dramatically enlarged its membership from the original six founding Member States to the present 27 – in effect uniting almost all the continent of Europe for the first time in conditions of democracy.

A great deal of the day to day business of the European Union is still conducted on the basis of ‘inter-governmental cooperation’ between Member State governments. Unanimity is necessary for decisions of this kind. There is no involvement of EU supra-national law or no direct role of the supranational EU institutions created in the 1957 Treaty of Rome (the Commission, the European Parliament and the Court of Justice). But, unlike the other global regions, a growing proportion of EU decisions are now taken through this supra-national process based on the principle of shared sovereignty and not mere cooperation. Moreover many of these EU law based decisions are also now taken by means of a system of ‘majority voting’ in which individual countries no longer can employ a national veto.

In what is called ‘the Community’ decision making system, only the European Commission (the supra-national EU executive appointed every five years by the Member States) may propose new laws and regulations. Final decisions are taken by Member States (in the Council of Ministers) jointly with the directly elected European Parliament in a complicated three stage process. In these cases decisions form the basis of a growing corpus of supranational EU law (known by its French term as the ‘*Acquis Communautaire*’). If challenged they can be upheld by the European Court of Justice whose jurisdiction in these areas overrides that of even the highest national courts in individual Member States.

Some important areas of policy such as foreign, security and defence policy remain a matter of cooperation and require the unanimous agreement of all Member States. But an increasing proportion of decisions at the EU level are taken on a supra-national basis with the use of majority voting. As a consequence the European Commission and even more so the European Parliament and the European Court of Justice have come to play a major role in leading the process of European integration and, consequently, in the internal politics of Member States.

The evolution of the European Union is far from complete. The tensions which arise from the complex interplay of ‘national sovereignty’ and ‘shared sovereignty’ at the European level remain potent and sometimes lead to major ‘crises’ in the life of the Union. These tensions seem to have been further increased with continuing enlargement and the prospect that, by the end of the next decade, the EU could embrace some 35 or more countries.

Conditions for European Union membership

Any European country may apply for membership if it respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. Accession, however, can only follow if the given European country fulfils all *criteria of accession* which were fixed by the European Council in Copenhagen in 1993 and reinforced by the European Council in Madrid in 1995. These criteria are:

- political: stable institutions guaranteeing democracy, the rule of law, human rights and respect for protection of minorities;
- economic: a functioning market economy and the capacity to cope with competition and market forces in the EU;
- the capacity to take on the obligations of membership, including adherence to the objectives of political, economic and monetary union;
- adoption of the *acquis communautaire* (the entire European legislation) and its effective implementation through appropriate administrative and judicial structures.



More recently EU governments have stipulated an additional issue: the EU must be able to absorb new members, so it reserves the right to decide when it will be ready to accept them. With the possible exception of Croatia there can now be no further enlargement of the Union without the implementation of measures to reform and strengthen the EU's decision making institutions and processes as well as its democratic accountability. A significant proportion of EU citizens appear unenthusiastic about further significant or early enlargement because of wider concerns about the economic and social impact of migration from poorer countries to the east of the European Union.

For all these reasons, impressive though the progress of the European Union has been, its further evolution over the next decade remains the subject of fierce debate both nationally and at EU level. Whatever reservations some sections of public opinion have about the future direction of the EU, nearly all those involved in the European decision making process believe it essential to strengthen and reform the governance of the Union. Following the recent Berlin summit to celebrate the 50th anniversary of the signing of the founding Treaty of Rome, the hope is that further important steps to reform and strengthen the EU decision making institutions, including the creation of an European Union foreign minister and external action service will be agreed to come into force in June 2009 – the next election for the European Parliament.

It remains to be seen how many of the reforms set out in the proposed European Union Treaty agreed two years ago – but then rejected in referendums in France and the Netherlands – will be incorporated into any revised agreement on institutional reform in the near future. The most probable outcome will include a further extension of decision making by qualified majority vote in the Council of Ministers, a parallel extension of the co-legislative powers of the elected European Parliament, the creation of a 'European Union Foreign Minister' and an EU diplomatic service, an elected President of the Council of Ministers (instead of the present system of rotating the EU presidencies among Member States on a six monthly basis) – and the probable election of the President of the Commission through the European Parliament.

Among the many other matters still to be agreed is the future size and composition of the Commission – although in future it is accepted that there will be fewer Commissioners than there are Member States. At present every country is entitled to one Commissioner in each five year term of office. There is overwhelming support also for reallocating the votes cast by each Member State in the Council of Ministers – so as to better reflect differences in the size of population of the different countries.

Democracy and the rule of law

Over the past decade, in successive EU treaties, the values which unite and define the European Union have been spelled out in greater detail. They no longer simply codify the conditions for admitting new Member States. They can also now be invoked in cases where existing Member States are judged to have violated EU values. Indeed a range of sanctions may be imposed against a particular state found to have acted in such a way – ranging from financial penalties, to suspension of its membership rights and even complete expulsion from the EU.

The first time this became a live domestic political question for the European Union was after the admission to the centre right coalition government in Austria of the extreme right wing Freedom Party – led by Georg Haider – in 2000. Haider's sympathetic statements about Hitler's Third Reich had caused great offence throughout the European Union. The EU leaders of the 14 countries eventually concluded that the isolation of Austria was not politically sustainable and was probably counterproductive. A group of 'wise men' were asked to produce a report and the 'isolation' was formally lifted in September 2000.

However, in the European Union Treaty of Nice which was agreed later that year, rules were established setting out how the EU should react when 'a clear danger exists of a Member State committing a serious breach of fundamental rights'. According to Article 7 of the Nice Treaty the

European Council can in such circumstances declare the existence of ‘a serious and persistent breach of fundamental rights’. If this occurs, the Council may, by a qualified majority, then suspend certain of the rights of the country concerned.

This procedure is supplemented with a ‘preventive instrument’ that is very hard to activate. The text reads: ‘On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State.’ The values and principles are spelled out as follows: ‘The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.’

Austria is the only case involving an existing Member State where the imposition of sanctions – diplomatic in this case – was attempted. But more recently there has been debate over whether the provisions of the Nice Treaty might be used against Member States suspected (but not yet proven) to have collaborated with illegal CIA ‘rendition flights’ of suspected terrorists using facilities in a number of EU countries.

Issues generated either internally – through the Nice Treaty provisions – or in relation to aspirant Member States – through the Copenhagen criteria – should to some extent be differentiated from other, broader, questions concerning ‘good governance’. In this latter category should be included matters like official corruption, the quality of the judiciary and other state institutions and the extent of the openness and transparency of dealings between the state and private sectors.

At different times all of these questions have played an important part in assessing the readiness of particular countries for accession to the EU. In the case of Turkey there are still highly sensitive issues around the unfinished business of human and minority rights (the Kurdish question for example), the political role of the military, judicial reform and freedom of speech. But most observers believe Turkey’s EU vocation has contributed greatly to the progress which has already been made on these matters.

In the case of the recent accession of Bulgaria and Romania (and earlier some of the other new Member States from central and eastern Europe) attention has focused more on questions about corruption and the efficacy of both the independent judiciary and the public administration. The responsibilities acquired by new EU Member States on joining are formidable: the existing corpus of legal obligations runs into tens of thousands of pages.

Globalisation – a driver of regional integration

In the decades after the two European and world wars in the 20th century – and in particular after the defeat of the Nazis – popular support for European unity was also a major force behind the initiatives which led to the Treaty of Rome in 1957 and the launch of the European Community. But today a major challenge facing the European Union is how to rekindle among Europeans such a sense of historic purpose behind closer European integration now that the continent is so largely united.

It is at this point that it is useful to explore a little more closely the main drivers at work today behind global regional development and integration – in Europe, in Africa and elsewhere. The evidence suggests that a major driver behind efforts to build broader communities of states is globalization. Of course the term ‘globalization’ covers a multitude of complex economic, social, political and security factors. They embrace the gradual emergence of a global market economy, globally driven financial forces of enormous power and speed of reaction, instant global communications, the creation of a global labour market (itself driven in large measure by population movements which are themselves

primarily the product of poverty and underdevelopment), a delicate planetary environment vulnerable to threats such as global warming which do not respect national frontiers, and new dangers from transnational crime and terrorism.

Governments almost everywhere are conscious that globalization brings both great opportunities along with daunting challenges and potential dangers. They also know that a globally inter-dependent economy is evolving far more rapidly than the world has been able to agree new rules of global governance. But without an agreed system of global governance, the impact of globalization could prove more of a threat than a boon to the world's poor and disadvantaged. An overriding preoccupation of the new global regional developments is a desire to leverage cooperation between relatively weak states in order to exercise greater influence in the debate on global governance. This is all the more urgent since much of this debate takes place within existing global institutions, such as the United Nations, the International Monetary Fund, the World Bank, and the World Trade Organisation where African countries are under-represented and often without the influence they merit.

A profound question facing all the global regions is whether they and their Member States will be able to respond to the pressing challenge of how to manage globalization without taking major steps to strengthen their own internal collective decision making. Quite simply will cooperation between sovereign states be sufficient to achieve these goals? Or will the emerging regions have to move beyond cooperation and agree to at least some elements of sovereignty sharing and supranational integration – in the way the European Union has attempted? If so, will it be possible to carry through such an ambitious project without far greater agreement among participating states about a law based process and greater democratic accountability?

Conclusions

1. The further development and the democratisation of the African Union is essential not just in the interests of the peoples of Africa but as part of the construction of a fairer, more equitable global order. A critical precondition for the further development of the AU will be to give greater priority to democracy, human rights, good governance and a greater willingness by AU states to move beyond cooperation to sovereignty sharing. The goal of an AU directly elected Parliament might be set both as a means of strengthening democratic accountability and reinforcing a popular sense of common African interests.
2. Notwithstanding the terrible problems of poverty and oppression in regions of Africa, there are also encouraging signs of economic development and a more self confident political role in world affairs being played by African states. The experience of the European Union suggests that in its next phase of development the AU should prioritise the creation of far freer internal African trade – leading to a future, full continental common market. This, in turn, to judge from European Union experience could prepare the way for a possible future common African currency – something which could contribute significantly to improving the terms of trade between Africa and the more developed economies.
3. The creation of an African common market – in stages – might also provide a constructive starting point for the AU to move from decisions among governments based entirely on consensus to one based on some form of qualified majority vote. There can be no denying the sensitivity of this issue – but European experience suggests that it is essential in the creation of any lasting trans-national community.
4. As the basis of a future African common market is created there will also need to be common policies for African regional aid and development programmes. The EU offers limited but valuable lessons – both positive and negative – about how such regional and structural aid policies might be developed. Of necessity such programmes will initially be modest but they would help to underpin a wider sense of pan-African solidarity in civil society.
5. The commitment by the AU to important peace keeping responsibilities in a growing number of regions in Africa has been a development of the greatest importance in the recent past.



However this underlines the prior necessity for the AU to strengthen genuinely common foreign and security policy as the foundations for such a continent wide security role. The obvious interest of the EU and the wider international community in this should be converted into more ambitious programmes of assistance for AU peace keeping and peace enforcement capacities.

6. The successful evolution of an African Union capable of giving voice and influence to African people in world affairs depends on the willingness of OA states to move beyond cooperation to areas of genuine sovereignty sharing. However confidence in sovereignty sharing would be assisted with the construction of an African Union supra-national judicial system which could over time win respect for the integrity of its judgements – especially when upholding wider African interests against those of particular states or regimes. Among the EU institutions, the European Court of Justice has played an enormous role in helping make the process of European integration irreversible.

The views expressed in this paper are those of the author and do not necessarily reflect those of AfriMAP or the Open Society Institute.