

Why Liberal Democrats should support the African Union



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Introduction

In South Africa, this title will provoke amusement, or bemusement, or sarcasm. Who can deny that even leftists denounced the African Union's former incarnation, the Organisation of African Unity (OAU) as a club of dictators? Who could deny that as recently as October the African Union (AU) summit voted to lobby for legal immunity at the International Criminal Court for sitting AU presidents and prime ministers? How many of the fifty-four AU member states rank honourably on those indexes of Freedom House, Transparency International, and the Mo Ibrahim Foundation?

This article argues that there are at least four sound reasons why liberal democrats ought to support the vision, principles, and norms of the AU and its affiliates, and support many of its actions.

First, ever since the era of the League of Nations, liberal democrats have been vociferous supporters of the concept of an international order based on the rule of law. They have led a century of campaigns to strengthen a variety of multilateral organisations to this end.

Second, the overwhelming bulk of actual operations on the ground by the AU and its affiliates have been complex peacekeeping operations to end civil wars, with all their accompanying atrocities and war crimes.

Third, ideals and values enshrined in the founding treaties and protocols of the AU and its associated organisations, mark, to date, the biggest acceptance and victory of liberal democratic principles on the continent.

Fourth, those treaties and protocols also unequivocally commit the signatory states to schedules to phase out protectionism in favour of a continental free trade area, which in turn should culminate in a continental common market. The creation of a continental free trade area would result in tariff reduction. Most liberal democrats favour tariff reduction as a means of promoting trade and investment.

At this point let me clarify that my references to the AU and its affiliated organisations include institutions such as the African Court of Human and Peoples' Rights, and the Pan-African Parliament, as well as regional organisations such as the Common Market of Eastern & Southern Africa (COMESA), East African Community (EAC), Economic Community of West African States (ECOWAS), and the South African Development Community (SADC).

Double Standards

Every reader of *Focus* will have already read something about the double standards between numerous AU resolutions. One of many examples is, stating in one breath, “unflinching commitment to combating impunity”¹, and then immediately following with proposals to protect incumbent presidents from being charged with crimes against humanity. South African media critiques and denigration of the AU family use higher criteria, and double-standards, that they never apply to contemporaries of the OAU and AU.

For example, they criticize the OAU-AU for having dictatorships as members, when they never criticize the United Nations (UN) for the same principle of universal membership. In fact, the AU has suspended the membership of some regimes for usurping power through *coups-de-etat* (such as Egypt) or in other ways (such as the Central African Republic and Madagascar), which is more than the UN has done.

Similarly, the AU family has undertaken peacekeeping operations on a vastly larger scale than the Arab League and the Organization of American States, and which would not even be contemplated by the North American Free Trade Area (NAFTA) nor the Association of South-East Asian Nations (ASEAN).

Recently, media commentators have condemned the AU and some of its heads of state for rejecting the jurisdiction of the International Criminal Court – yet they never criticize the leader of the free world for doing the same. In fact, AU presidents take a more moderate line than the United States Government. The US Government does not only reject the authority of the ICC over anyone in the USA, it also demands that AU states sign treaties which state that an African state will refuse to enforce any ICC arrest warrant against any US citizen who resides in, or visits their country. When the SA Government refused to sign such a treaty, the US Government cancelled some military aid to South Africa.

It is these double standards which help generate an African nationalist and Pan-Africanist backlash against the ICC and some other Western institutions.

The first principle: the rule of law in international affairs

One principle that both the OAU and then the AU insist upon is that borders on the day of independence must be respected, and border disputes resolved by peaceful means. When the Kingdom of Morocco invaded and annexed the Sahrawi Arab Democratic Republic (SADR), the OAU, after eight years of seeking a diplomatic solution, recognized the SADR. The OAU preferred the withdrawal of Morocco instead of backing down on its principles.

Another example of the AU’s belief in the importance of international law is non-interference. The AU believes that solutions can be found by working through multilateral organisations and the peaceful process of treaties, rather than through unilateral attacks and invasions. The long-term vision of the AU, like the European Union, is of the political integration of the continent. In the meanwhile, the AU operates as an inter-governmental organisation, stressing diplomacy as the first resort, and military intervention as the last resort.

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Liberal democrats can usually be supportive of the principle behind these endeavours.

The second principle: peace-keeping and peace-building²

The end of the Cold War saw the number of civil wars in Africa steadily decline over the next two decades. One reason is that first ECOWAS through the 1990s, and then the AU ever since it was constituted in 2002, have led peacekeeping operations from Liberia in the west to Somalia in the east. AU troops also account for a large proportion of the hybrid forces under UN leadership in Darfur, Sudan, and in the Democratic Republic of the Congo. While the formal launch of the African Standby Force has been postponed to 2015, it *de facto* already has 25 000 boots on the ground, and has been in action continuously for two decades. In essence, the African Standby Force has, even before its ceremonial launch, evolved into a permanent African *Standing* Force.

Obviously, the only way to protect human rights, promote democratic principles, and halt genocide is to interfere in a state's internal affairs. Clearly, what actually happens on the ground is decided on a case-by-case basis by who out-lobbies and outvotes who in the AU.

ECOWAS and the AU may be lauded for going beyond making efforts to keep the peace after a ceasefire between two conventional armies – current operations do not fall under the mandate of traditional peacekeeping. The contemporary usage of the concept “peacekeeping” is in fact a mildly Orwellian euphemism for full-scale fighting against one side in a civil war (as in Liberia and Sierra Leone), or against dozens of constantly mutating³ splinter rebel militias (as in Darfur and the DRC).

Liberal democrats will certainly support these operations, which include combatting mass rapes and other war crimes. The same applies to AU mediation seeking to build a post-war sustainable order.

The third principle: democratization of Africa⁴

The African Economic Community (AEC) Treaty of 1991 and the Constitutive Act of the African Union of 2000 might be two of the world's most ambitious attempts at norm diffusion. They show a dynamic contestation between the OAU Charter's 1963 African nationalist narrative and a twenty-first century human rights assertiveness. The AEC treaty moves beyond defending national sovereignty to introduce the phraseology of “inter-dependence” (Article 3a) and “harmonisation of policies” (Article 3c).

The Constitutive Act confrontationally juxtaposes “non-interference in internal affairs” (Article 4g) with “promote and protect human rights & peoples' rights” (Article 3h); “promote democratic principles and institutions, popular participation and good governance” (Article 3g); and the “right to intervene in genocide, crimes against humanity, & other grave circumstances” (Article 4h).

Obviously, the only way to protect human rights, promote democratic principles, and halt genocide is to interfere in a state's internal affairs. Clearly, what actually happens on the ground is decided on a case-by-case basis by who out-lobbies and outvotes who in the AU. Nonetheless Article 4(h) is a world first in giving an intergovernmental organization the power override sovereignty. The UN did not intervene in genocide in Rwanda or mass murder in Cambodia.

A key principle of liberalism is the separation of powers. The AU has set up a Pan-African Parliament (PAP) which is indirectly elected. The European Parliament took twenty years to evolve to direct elections, and four decades before it asserted serious authority as a check and balance against the EU Commission. So if the PAP is able to act as a counterweight earlier than that, it will be a considerable Pan-African achievement.

There are other reasons that liberal democrats should support the PAP, and lobby for it to move to direct elections. Since the AU is structured as an inter-governmental organisation, it is inescapably, as some critics complain, a union of presidents and not a union of peoples. Direct elections for the PAP would serve as a democratic way for the AU to broaden out from an elite comprising of heads of state, ambassadors, cabinet ministers, and top civil servants, and rather draw in popular participation and support. The PAP has already made it an early priority to send election observers to national elections in African countries, as a measure of transparency and accountability. The belief is that the presence of election observers will help prevent authoritarian incumbents from rigging the elections.

An unexpected advance in developing human rights norms in Africa has come from courageous judicial activists. Regional courts have been asserting their jurisdiction over a vastly broader range of cases than those specified in their foundational protocols. Traditionally, such courts are founded to settle peacefully border and other disputes between states. Only decades later do governments consent that their own citizens may take cases or appeals above the highest courts of their own country to such international courts. This was the judicial evolution in the EU, for example; and the COMESA Court of Justice similarly confines itself to inter-state disputes.

Indisputably, these judicial rulings, treaties, and protocols have not to date freed any political prisoners from detention, nor unbanned newspapers suppressed by censorship, nor rescued opposition political parties from persecution.

The Zimbabwean Government lobbied the SADC presidents and prime ministers to dismiss all the judges of the SADC Tribunal, and to narrow the court's range of jurisdiction. This took the regional rule of law back to 1898 when President Kruger fired Chief Justice Kotze. But this temporary defeat in the struggle for the rule of law should not blind us to unexpected victories elsewhere in the continent.

By contrast, the ECOWAS Community Court of Justice, and the East African Court of Justice surprised their member states by accepting litigation from citizens against their own governments. The more democratic states within these regional communities have accepted adverse rulings against them. The AU also inherited from the OAU the African Commission on Human and Peoples' Rights, and the African Court on Human and Peoples' Rights (hosted in Arusha). As their titles imply, these authorities are concerned about human rights, and have an extensive list of case rulings accessible on-line.

Indisputably, these judicial rulings, treaties, and protocols have not to date freed any political prisoners from detention, nor unbanned newspapers suppressed by censorship, nor rescued opposition political parties from persecution. Nonetheless, liberal democrats will swiftly grasp their importance for the following reasons:

First, each time African presidential despots and tyrants freely and voluntarily signed all these treaties and protocols, they contradict their beliefs that human

rights are western cultural imperialism, or are imposed by western imperialists on Africa.

Second, these judgements rely on the soft power of naming and shaming. They set norms for the conduct of domestic affairs in African states. If the authoritarian states reject these rulings, there is no reason for the democratic African states to not uphold the rule of law themselves, and consolidate a democratic culture.

Similarly, both the AU and its NEPAD affiliate have organised conventions to combat corruption, supported by significant numbers of states in their struggles to reduce corruption. Liberal democrats will also be supportive of the African Charter on Democracy, Elections and Governance of 2007, which is

“seeking to entrench in the continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies”.⁵

The fourth principle: towards a continental common market

The African Economic Community Treaty of 1991 proposed importing into Africa lock, stock, and barrel, the norms and institutions of the EU. This treaty lays down a 34 year schedule specifying this in unprecedented detail.

The Southern African Customs Union is the oldest existing customs union in the world, and the East African Community has resurrected – and expanded – the customs union of colonial yore.

So far, most of the countries in SADC and COMESA have signed treaties allowing them to become part of free trade areas for most goods. The current struggle is to get these governments to implement these agreements. The Southern African Customs Union is the oldest existing customs union in the world, and the East African Community has resurrected – and expanded – the customs union of colonial yore. ECOWAS has spent a decade dragging its member states, kicking and screaming, to implement the common external tariff to which they agreed years ago.

Currently, SADC, COMESA, and the EAC have entered a decade of tripartite negotiations to harmonize their trade regimes. This will create a free trade area stretching from the Cape to Cairo, embracing five hundred million people in twenty-seven countries.

Liberal democrats have been the most enthusiastic and sustained campaigners to build the EU, against opposition from both ends of the political spectrum. The same ought to apply to the Pan-African vision of progress towards a continental common market. This would certainly unleash significant economic growth.

Conclusions

“The treaty provisions establishing these African institutions anticipate international organizations charged with discharging the kinds of plenary executive, legislative, and even judicial powers once associated exclusively with national governments.”⁶

The above quotation from a law scholar pithily sums up the Pan-African project, where the more democratic states contemplate a polycentric sovereignty, and where the executive may be subject to judgements from international African courts. In short, there is a serious case for liberal democrats to show, strong support where

it is due for the democratic norms and principles underscoring the Constitutive Act, the Charter on Democracy, Elections and Governance, and the PAP and international African courts.

The Coalition for an Effective African Court on Human and Peoples' Rights is typical of the NGOs that seek to strengthen institutions for democracy and the rule of law on our continent. The UN Association has for generations organised "Model UNs" on campuses and some high schools. It would be good for liberals to invite others to join them to discuss setting up a non-partisan AU Association with national chapters, and to facilitate founding an African Union Association.

NOTES

- 1 Assembly/AU/Dec.221 (XIII) (2009)
- 2 Devon Curtis & Gwinyayi Dzinesa (eds). 2013. *Peacebuilding, Power, and Politics in Africa*. Johannesburg: Wits University Press.
- 3 I owe this phrase to Adekeye Adebajo. 2011. *UN Peacekeeping in Africa. From the Suez Crisis to the Sudan Conflicts*. London: Lynne Rienner.
- 4 Keith Gottschalk. 2012. The African Union and its sub-regional Structures. *Journal of African Union Studies*. Vol. 1, issue 1: 9-41.
- 5 http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf
- 6 Jose Alvarez. 2005. *International Organizations as Law-Makers*. Oxford, OUP. 2005: 116