Transition from the OAU to the African Union

Background

The highlight of the 2000 OAU/AEC Assembly of Heads of State and Government in Lomé, Togo was the adoption of the *Constitutive Act of the African Union*, in terms of the *Sirte Declaration* of 9 September 1999.

Following this event, a decision declaring the establishment of the African Union, based on the unanimous will of Member States was adopted by the 5th Extraordinary OAU/AEC Summit held in Sirte, Libya from 1 to 2 March 2001. In the decision, Heads of State and Government specified that the legal requirements for the Union would have been completed upon the deposit of the 36th instrument of ratification of the *Constitutive Act of the African Union*.

South Africa deposited its instrument of ratification of the *Constitutive Act of the African Union* on 23 April 2001 with the OAU General Secretariat and became the 35th Member State to do so. South Africa's ratification as one of these 36 member states means that it is a founding member of the African Union. On 26 April 2001 Nigeria became the 36th Member State to deposit its instrument of ratification. This concluded the two-thirds requirement and the Act entered into force on the 26th of May 2001.

Historical overview

The OAU was established on 25 May 1963 in Addis Ababa, on signature of the *OAU Charter* by representatives of 32 governments. A further 21 states have joined gradually over the years, with South Africa becoming the 53rd member in 1994. It had become evident and accepted as early as 1979, when the Committee on the Review of the Charter was established that a need existed to amend the OAU Charter in order to streamline the Organisation to gear it more accurately for the challenges of a changing world. Despite numerous meetings the Charter Review Committee did not manage to formulate substantive amendments. The result of this was threefold:

- The Charter was "amended" by being augmented through ad hoc decisions of Summit such as the Cairo Declaration Establishing the Mechanism for Conflict Prevention, Management and Resolution, etc;
- A growing realisation that the need for greater efficiency and effectivity of the Organisation required urgent action; and
- The need to integrate the political activities of the OAU with the economic and developmental issues as articulated in the Abuja Treaty.

Since the entry into force of the *Abuja Treaty* establishing the African Economic Community, the OAU has been operating on the basis of two legal instruments. The *Abuja Treaty* came into force after the requisite numbers of ratification in May 1994. It provided for the African Economic Community to be set up through a gradual process, which would be achieved by coordination, harmonisation and progressive integration of the activities of existing and future regional economic. Since the entry into force of the *Abuja Treaty* establishing the African Economic Community, the OAU has been operating on the basis of two legal instruments.

Extraordinary Summit in Sirte, 9 Sept 1999

It was by acclamation that the Assembly of Heads of State and Government in July 1999 in Algiers accepted an invitation from Colonel Muhammar Ghadafi to the 4th Extraordinary Summit in September in Sirte. The purpose of the Extraordinary Summit was to amend the OAU Charter to increase the efficiency and effectiveness of the OAU. The theme of the Sirte Summit was "Strengthening OAU capacity to enable it to meet the challenges of the new
This Summit concluded on 9 September 1999 with the Siirte Declaration aimed at:

- Effectively addressing the new social, political and economic realities in Africa and the world;
- Fulfilling the peoples’ aspirations for greater unity in conforming with the objectives of the OAU Charter and the Treaty Establishing the African Economic Community;
- Revitalising the Continental Organisation to play a more active role in addressing the needs of the people;
- Eliminating the scourge of conflicts;
- Meeting global challenges; and
- Harnessing the human and natural resources of the continent to improve living conditions.

To achieve these aims Summit, inter alia, decided to:

‘Establish an African Union in conformity with the ultimate objectives of the Charter of our Continental Organisation and the provisions of the Treaty establishing the African Economic Community.

Accelerate the process of implementing the Treaty establishing the African Economic Community, in particular:

- Shorten the implementation periods of the Abuja Treaty,
- Ensure the speedy establishment of all the institutions provided for in the Abuja Treaty; such as the African Central Bank, the African Monetary Union, the African Court of Justice and in particular, the Pan-African Parliament.
- Strengthening and consolidating the RECs as the pillars for achieving the objectives of the African Economic Community and realising the envisaged Union.
- Convene an African Ministerial Conference on Security, Stability, Development and Cooperation in the Continent, as soon as possible’.

Objectives of the AU

In general, the African Union objectives are different and more comprehensive than those of the OAU. The OAU has served its mission and was due for replacement by a structure geared towards addressing the current needs of the continent.

The aims of the OAU are:

- To promote the unity and solidarity of African States;
- To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;
- To defend their sovereignty, territorial integrity and independence;
- To eradicate all forms of colonialism from Africa; and
- To promote international cooperation.

Comparatively, the objectives of the African Union, as contained in the Constitutive Act, are to:

- Achieve greater unity and solidarity between the African countries and the peoples of Africa;
- Defend the sovereignty, territorial integrity and independence of its Member States;
- Accelerate the political and socio-economic integration of the continent;
- Promote and defend African common positions on issues of interest to the continent and its peoples;
• Encourage international cooperation, taking due account of the *Charter of the United Nations* and the *Universal Declaration of Human Rights*;
• Promote peace, security, and stability on the continent;
• Promote democratic principles and institutions, popular participation and good governance;
• Promote and protect human peoples’ rights in accordance with the *African Charter on Human and Peoples’ Rights* and other relevant human rights instruments;
• Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
• Promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
• Promote cooperation in all fields of human activity to raise the living standards of African peoples;
• Coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
• Advance the development of the continent by promoting research in all fields, in particular in science and technology; and
• Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

**OAU/AEC Summit, Lusaka 2001**

The main objective of the Lusaka Summit was to look at the implementation of the African Union.

The Secretary General was mandated to work out the modalities and guidelines for the launching of the organs of the Union, including the preparation of the Draft Rules of Procedure of such organs and to also ensure the effective exercising of authority and discharging of their responsibilities. The priority organs are the Assembly, the Executive Council, the Commission and the Permanent Representative Committee. Rules of Procedure for all these organs will have to be developed prior to the First Summit of the African Union in July 2002 (the Pan-African Parliament will develop its own Rules of Procedures).

**Decisions of the Lusaka Summit re implementation**

• The Secretary-General was mandated to, in consultation with Member States, work with Member States through their Permanent Representatives and Experts. A Representative Committee of Ministers will be established for this purpose, which will oversee the process and present its proposals and recommendations to the Council.
• The Secretary-General was mandated to, in consultation with Member States, submit proposals regarding the Structure, Functions and Powers of the Commission.
• It is the responsibility of each Member State to popularise the African Union and should in doing so, also involve citizens.
• NGOs, Professional Associations and Civil Society Organisations should be involved in the formulation and implementation of the Economic, Social and Cultural Council (ECOSOCC) Programmes. Proposals and recommendations on Structure, Function, Area of Competence and relationships should be submitted to the next Council of Ministers meeting. Recommendations should also include the Procedure and Criteria in selecting members of ECOSOCC as well as the Rules of Procedure.
• The ECOSOC (Economic and Social Council) as provided for in the Abuja Treaty ceases to exist at the end of the transition period.
• The Mechanism for Conflict Prevention, Management and Resolution (Central Organ) must be incorporated into the Union as an organ and the Secretary-General should undertake a review of its structure, procedure and working methods, including a possible change of name.  
  o The Secretary General should consult the Regional Economic Communities (RECs), and RECs should be involved in the formulation and implementation of all Programmes of the Union. The Protocol establishing the relations
between the AEC and REC should be amended or a new Protocol be prepared. Summit also called upon the policy organs of the RECs to initiate a reflection of their relationships with the Union.

- The Secretary-General should undertake a review of existing OAU Specialised Agencies and make recommendations on possible incorporation as Specialised Agencies of the African Union.
- The Secretary General should prepare and submit a report on all aspects of the functioning of the Specialised Technical Committees.
- 25 May will remain a commemoration day and an official public holiday of the African Union, while 2 March will be recognised as a Union Day (see paragraph 4.11 above).
- The transitional period will be one year following the adoption of this Decision (Decision AHG/Dec. 1 (XXXVIII)), that is from 11 July 2001 to 10 July 2002.
- The Secretary General should continue using the OAU symbols, i.e. Logo, Flag and Anthem until such time that new symbols are decided upon. The processes to decide on the new symbols should involve citizens and competitions.
- The Secretary General should take the necessary measures for the devolution of Assets and Liabilities of the OAU to the Union. The Secretary General should review and seek where necessary, amendment of the OAU Agreements with the Parties, including Headquarters and Host Agreements.

Design of the African Union

Of crucial importance in the establishment of the organs of the Union is the challenge to move away from the overly state-centric character of the OAU and its concomitant lack of civil participation. The cooperation of African NGOs, civil societies, labour unions, business organisations are essential in the process of cooperation and implementation of the Abuja Treaty, as was expressed in the Ouagadougou Declaration and provided for in the Sirte Declaration.

During the Lusaka Summit several references were made to the African Union being loosely based on the European Union model, in which respect it was said that Africa 'should not re-invent the wheel'. However, it was agreed that the African Union should be something new, with the emphasis on being an African experience.

Whereas the OAU was in principle a political organisation that also discussed matters of economic and social concern, the African Union should be an organisation aimed at economic integration and social development, which should lead to political unity.

Organs of the African Union

Assembly

The Constitutive Act is very specific about the functions and powers of the Assembly as the supreme organ of the AU comprising of Heads of State and Government. South Africa has participated in the development of the Rules of Procedure for the Assembly, and the same process has taken place at SADC level.

Executive Council

The Executive Council is a meeting of Ministers of Foreign Affairs or other Ministers charged with the responsibility of dealing with the AU. The issues discussed by the Executive Council will have to feed into the Assembly.

Permanent Representatives Committee
The Permanent Representative Committee is composed of Permanent Representatives and other Plenipotentiaries to the Union. This structure was not formally recognised under the OAU, even though the Ambassadors do meet on an ongoing basis. The PRC, amongst other things, will work closely with the Commission; be involved in the process of nomination and appointment of Commissioners; look into the selection and appointment of consultants and follow-up on the implementation of Summit decisions. The work of the PRC will feed into the Executive Council.

Commission

The Commission will be based at the Headquarters of the AU and will be headed by the Chairperson of the AU. The Chairperson will be assisted by a Deputy Chairperson and Commissioners, as well as other members of staff.

Specialised Technical Committees

There will also be Specialised Technical Committees (STCs) established within the Secretariat and headed by Commissioners. The STCs will deal with issues such as Rural Economy and Agricultural Matters, Monetary and Financial Affairs, Trade, Customs and Immigration Matters, Science, Technology, Transport, Communications, Education, Culture, amongst other things.

Pan-African Parliament (PAP)

The Protocol establishing the Pan African Parliament was adopted in 2000 during the OAU Summit in Lomé, Togo. The Protocol is now open for signature and ratification. So far 21 member states have signed and three have ratified. Article 22 of the PAP protocol provides for the Protocol to enter into force after deposit of the instruments of ratification by a simple majority of the member states.

Though the Constitutive Act of the African Union does not elaborate on the functions and powers of the Pan African Parliament, the Protocol provides that, for the first five years of the Parliament's existence, it will have advisory and consultative powers only.

Economic, Social and Cultural Council (ECOSOCC)

The Lusaka OAU Summit requested the Secretary General to submit to the 76th Ordinary Session of Council, i.e. July 2002, a report on ECOSOCC with recommendations on structure, areas of competence, criteria for selecting members of ECOSOCC, relationship between ECOSOCC and African regional NGOs and professional groups, ECOSOCC's Rules of Procedure and its work programme. This is one organ of the AU that will provide for civil society participation. The Lusaka Summit decision on ECOSOCC directs that member states will have to decide on the structure, functioning, areas of competence selection criteria, Rules of Procedure and work programme of the ECOSOCC.

Court of Justice

The Constitutive Act of the AU provides for the establishment of the Court of Justice and for a Protocol on its statute, composition and functions. It is still unclear what the exact functions and powers of the Court will be, and whether it will have jurisdiction over states or nationals. The functions and powers of the Court will be elaborated upon in a Protocol, which will clarify what the impact on domestic legislation will be.

Financial Institutions

Article 19 of the Act provides for the establishment of financial institutions whose rules and regulations shall be defined in protocols relating thereto. The implications of hosting these
organs will only become apparent once the relevant protocols have been concluded. The institutions are:

- The African Bank
- The African Monetary Fund
- African Investment Bank

**Challenges**

It is of critical importance that member States are active in the design and implementation of the African Union. In this way it will foster a sense of ownership and Member States will be able to address those aspects of the day-to-day functioning of the organisation which will streamline the implementation of decisions.

*Source: Department of Foreign Affairs, Republic of South Africa, May 2002*