

PROLOGUE – IDENTIFYING THE AUDIENCE

Who is the imagined audience?

This book was animated by a desire to dig deeper. Until now, much of the legal literature on the Organization of African Unity (OAU) and, later, the African Union (AU), may be characterized as being ‘architectural’. Detailed descriptions were offered of the legal instruments developed under the aegis of the (O)AU or of the institutions established by the (O)AU. What this literature was successful in was describing in varying detail the blueprint(s) of a continental project. However, an idea is only as valuable as its execution.¹ While this literature was not remiss in highlighting foreseeable challenges in the implementation of the ideas so eloquently described in terms of their structure and organization, far littler effort was spent in actually examining the actual impact of these ideas and how and by whom this impact was experienced.

After years of study of the primary and secondary literature of the (O)AU, after innumerable conversations with observers, stakeholders and staff of the (O)AU and after years of working within the AU myself, what I noticed was that some of the probable reasons for this limited attention paid to the impact of this continental organization is the limited attention paid *within* the organization itself to measure in any sophisticated manner the different ways it has impact and, consequently, the limited availability of complex tools or limited use of these tools to measure how and why the initiatives launched on this continental platform have any real effect.

Realizing this gap in what we know and what we do not know about the AU, I set as goal for this research to construct a framework that would allow a better understanding of the practices surrounding this commitment to continental cooperation. Rather than take at face value the different formalized norms, institutions and procedures, developed seemingly in some linear fashion – at least that is the impression I got from the majority of (O)AU scholarship – I sought to build a framework that would help make sense of the tensions, contestations and contingencies – in short, the struggles – behind the development of these continental initiatives.

The framework I envisaged and tried to elaborate in this book aims at making explicit the conditions for conflict as well as for conflict resolution in pursuing continental agendas. The framework also aims at making visible what thus had largely remained invisible in terms of the specific contextual factors that shape the nature, dynamics, motivations, characteristics and scope of continent-wide initiatives.

1 I thank Bart De Pauw for sharing this insight with me.

While this research project started out with discontent about the (in)ability or (un)willingness to measure the performance of the (O)AU in more sophisticated ways, I realize that my contribution falls short in providing definite answers about the actual measurement of impact. Rather, what I have hoped to have achieved is the elaboration of a more nuanced lens through which those measurements can be launched and based on which the respective measurement tools can be calibrated. In other words, I hope to have contributed to the scholarly and practitioner community by conducting an important ground-clearing exercise and by developing key theoretical insights and a conceptual vocabulary that would allow for greater analytical rigor in assessing the performance of African international legal practice.

Therefore, the audiences I imagine for this book are, first, the observers of the AU – as the primary institution producing African international law – whereby the framework developed in this book may help these AU observers better understand the meaning of African international law, the different ways in which it may have an impact as well as its various constraints.

In the same vein, I also anticipate that the actors actively, directly or indirectly, engaged in the making and implementation of African international law may draw benefit from this more nuanced account of the mental and material operations lying behind the development of African international law.

This latter group, which I call *African international lawyers*, are not restricted to ‘lawyers’ in any formal sense, for example, based on a formal education in law and who might be associated with a professional community of legal practitioners, such as a bar association or law society. Rather, the *African international lawyers* I have in mind as a primary audience for this book include all sorts of actors on the national *and* continental level, who share some kind of understanding of a continental identity, based upon which they advance projects to fulfil particular needs of supposedly common concern, using legal methods as their tools. These legal methods may include litigation procedures before national or international tribunals applying continent-wide norms, legislative or administrative law-making processes drawing on or (re)producing continental norms, or deploying (non)governmental techniques to ensure compliance with and enforcement of continental norms.

The multitude of actors involved in these processes include, but are not limited to, members of parliament, government, public administration, the judiciary, the diplomatic community, national human rights institutions, ombudspersons, academia, non-governmental organizations, the media, bar associations and law societies, the private sector and African international organizations.

This brief overview of who I consider to be *African international lawyers*, albeit in varying degrees and roles, highlights the multiplicity of avenues and actors that take part in developing African international law. It is my hope that for all of them there is at least some nugget of wisdom in this book that may help them attain a better understanding of their work and how it relates to the development of African international law.