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Legal Personality of International Organisations: A Study of the African Union

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Abstract

The article "Legal Personality of International Organisations: a Study of the African Union" interrogates the concept of legal personality as it applies to international organisations, with particular focus on the African Union (AU). Legal personality in international law signifies the capacity of entities to possess rights, obligations, and the ability to engage in international relations. Employing a qualitative, analytical approach, the study examines the legal foundations, institutional practices, and relevant jurisprudence that affirm the international legal personality of the African Union. The article highlights how the African Union exercise its legal personality in varying degrees, shaped by historical contexts, constitutional frameworks, and political will. The findings reveal both common patterns and unique challenges, particularly in the case of the African Union, where structural and resource constraints often limit its external engagement. The paper recommends a harmonisation of legal frameworks among member states to strengthen the operational autonomy of the AU. It also advocates for increased institutional reforms and capacity-building efforts that would enable international organisations to fully exercise their legal personality in global governance. The study adopts the Positivism Theory, which is a legal theory that emphasises state consent in the practice of International Law. These

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measures are essential for enhancing their legitimacy, effectiveness, and contribution to international peace, security, and development.

Keywords: Legal Personality, International Organisation, African Union, International Law

Introduction

The international legal order has undergone a significant transformation from a state-centric framework to a more inclusive system that accommodates non-state actors, including international organisations. These organisations, once merely cooperative platforms, have grown into powerful entities with autonomous decision-making capabilities and substantial influence on international affairs. For these bodies to operate effectively, they must possess international legal personality, the recognition under international law that allows them to perform certain functions, bear responsibilities, and possess rights[4].This article explores the international legal personality of international organisations, focusing primarily on the African Union as it concerns the possession and effective use of its legal personality given to it by its constitutive treaty.

The article examines the concept and application of legal personality in international organisations, using the African Union as a case study, in order to evaluate the roles, recognition, and impact in the international legal system.

Theoretical Framework

This study is anchored on the Positivism Theory, which is a legal theory that emphasises state consent in the practice of International Law expressed through treaties, agreements, and customary practices. Positivists are particular about the importance of written agreements, such as treaties, in establishing international legal obligations.

Legal Personality in International Law

Legal personality is a feature recognised by law to any person capable of becoming a subject of law and, therefore, to gain rights and duties. Legal personality implies a legal capacity or juridical capacity reflected in the faculty to act as holder of rights and duties and to be a party in any legal relation. Legal personality of states and international organisations, entering the international legal order, is a matter of legal establishment and implies specific rights, duties and capacities[5]. International legal personality is considered a necessary condition for entities to be able to participate in the international legal process. A necessary corollary of international legal personality is the capacity to conclude international agreements, which is also based on the existence of the legal capacity in municipal law. Very often, the capacity to establish a right in

[4]Soirila, U. "Persons and Things in International Law and Law of Humanity." 2017.
[5]Purda, n. I. C. O. L. A. E. "aspects on the international legal personality of international organizations." 2012.

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international law is the consequence of the capacity or competency in national law. The principle according to which an international organisation must have its own legal personality to be able to enjoy more prerogatives and to be involved in major processes and relations of the governmental and legal world has its raison d'être[6]. It is true that without its own legal personality, any entity would be deprived of any opportunity of influence. The legal links and connections would be limited to various and too simple relations, and any governmental act would be unattainable. On the contrary, by legal recognition of its juridical capacity and, of course, its personality, the organisation receives high prerogatives and its rights and duties take action on multiple aspects. Its relations with international law are extended and its responsibilities greatly increased, so that compliance with this principle and with the derived obligations becomes one of the main tools of the governmental and legal action of the entity interested.

Criteria for Legal Personality

International organisations may be granted legal personality upon their establishment. The question is, how can an international organisation achieve a legal personality? Several recognised factors contribute - firstly, an international organisation must be established through an international agreement or treaty, setting out aims and objectives[7]. Acting pursuant to this agreement must be several recognised and well-defined subjects who are members of the organisation. This organisation will have a formal structure with rules of governance. Initially, such agreements only consider IGOS for legal personality, and it is only with time that other organisations may be granted legal personality, provided certain criteria are met.

An international organisation is described as an 'organised arrangement with recognised membership, a charter, formal structures and a degree of permanence and autonomy.' For an international institution to act with autonomy means it is acting independently from outside influences. Accordingly, the ability of an organisation to act with autonomy is a fundamental principle on which recognition as a legal person occurs. An organisation must also act in good faith, not contrary to its founding principles, and it is a party to international norms and principles[8].

With the particular intention of securing legal personality, it is usually inserted within the treaty establishing the organisation that it shall have legal personality upon a certain date or completion of certain conditions. As a matter of practice and policy, the issue of legal personality is not a consideration for international organisations at the outset of their creation, and it is the decision of individual states as to whether or not an entity has the requisite qualities for legal personality. If an organisation is non-recognised, it is devoid of rights so

[6]Soirila, U. "Persons and Things in International Law and Law of Humanity." 2017.
[7]Crawford, J. and Baetens, F. "The creation of states in international law." Leading Works in International Law, 2023.
[8]Laaser, Knut, and Sharon Bolton. "Absolute autonomy, respectful recognition and derived dignity: Towards a typology of meaningful work." International Journal of Management Reviews 24.3 (2022): 373-393.

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that no action may be brought before national or international courts, nor disputes with other entities settled publicly. International organisations exist in a global society with a high prevalence given to the concept of legal personality in international law.The concept considers the presence of an organisation as a subject with which rights are vested, and duties and obligations acquired. The positive effects of legal personality recognition are, therefore, multifaceted and considerable[9]. An international organisation may easily stand in the stead of its formative treaty. Thus, a wide-ranging regime of rights and obligations derives from the treaty and applies to all subjects who are members of the organisation.

Legal personality of the African union

The African Union (AU),though with a new nomenclature, is not a new player on the international scene, emerging from the African Economic Community and the Organisation of African Unity. The Treaty Establishing the African Economic Community was signed in 1991; therefore, AU law can apply to issues of a foreign investor, and the AU is competent in this matter. The methods to found the African Union (AU) were adopted in Addis Ababa by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) during its thirty-sixth ordinary session on 26 and 27 April 2001[10]. The methods, which consist of the Protocol and Statutes of the African Court of Justice, are designed to establish an institutional framework for the AU. The Protocol to the Statute of the African Court of Justice provides for the establishment of an African court of justice with both general and special jurisdiction[11].

On 26 May 2001, the Organisation of African Unity adopted in Addis Ababa the Constitutive Act of the African Union, a new organisation replacing the OAU. By virtue of its preamble and of Article 1, the new organisation is legal, ratified, and in force[12]. The AU, like all organisations, is the product of a treaty or convention. Such a treaty complies with the requisites of legal personality in international law and therefore extends the capability of the African Union to conduct diplomatic, political and legal relations with other countries and organisations. It has been arbitral, worked out, and unreservedly ratified by forty-two of the forty-nine African States. It was furthermore ratified by a consent evidenced by the heads of ratifying States signing. It gives authority for diplomatic and legal action, including, but not limited to, the prosecution of international crimes and the right to challenge the legality of the UN Security Council's referral in crises such as the Darfur Situation and to act in the International Court of Justice[13].

[9]Slagter, T. H. and Van Doorn, J. D. "Fundamental perspectives on international law." 2022.
[10]Stapel, Sören, and Sören Stapel. "The Organization of African Unity and African Union: Following the Design of Reference Models." Regional Organizations and Democracy, Human Rights, and the Rule of Law: The African Union, Organisation of American States, and the Diffusion of Institutions (2022): 237-275
[11]Dannenbaum, T. "A Special Tribunal for the Crime of Aggression?" Journal of International Criminal Justice, 2022.
[12]'Nyane, H. "An Analysis of the African Union's Constitutive Act." Journal of African Union Studies, 2023.
[13]Gwatiwa, T. and G. "The African Union and African agency in international politics." 2022.

Article 4 (h) of the AU Treaty establishes the union's powers and purpose. The responsibility of the AU to intervene in the internal affairs of other members for grave circumstances is a vestige of the old OAU. Article 4 (h) goes on to vest the power to suspend governments with unconstitutional origins. The AU is also directed in Article 3 (g) to pursue the improvement of the African position in the international economy and community. Article 3 (g) also contains the most important difference with Councils of Government, namely, the power to provide legal certainty. In these instances, the power to provide legal certainty means a commitment and obligation for African authorities to respect and obey the law. This provision gives validity to unsigned treaties and human rights accords and sends a message to foreign investors that their investments will be recognised and legally protected[14]. Even after this cautious start, the Union will nevertheless need independent authorities and courts at least in cases of manifest disregard for the law.

The AU Assembly can take decisions regarding the application of AU law, and its effectiveness will not be affected. Furthermore, the Court of Justice of the AU is competent in situations related to this issue[15]. The AU has as one of its objectives the acceleration of the political and socio-economic integration of the continent. The AU peace and security architecture is compared and contrasted with the confidence and security-making processes of the CSDP, the UN and NATO. It promotes continental unity, peace and security, which will be ensured by the establishment of sustainable peace through the peaceful settlement of disputes, counteracting foreign aggression, supporting a common defence policy and the establishment and strengthening of continental infrastructure, or as provided in the Non-Aggression and Common Defence Pact. In this sense, by the establishment of the Common African Defence and Security Policy, AU law becomes directly applicable and effective for questions of potential foreign aggression to overcome the lesser effectiveness due to the AU being considered as an endorsement institution. Nevertheless, the content of declarations and the pertinent instruments is unknown as well,and there is no example of an area with the endorsement of the AU. It was only after the transformation of the OAU into the AU that the new institution gained the legal personality of the international order[16]. Since then, the AU has taken on an expanded role and increased its participation in conflict resolution, prevention, mediation and peacekeeping on the continent. Thus, a practical approach to the AU as an international subject can be taken; it not only focuses on the normative aspect, but also on the operational one.

Implications of Legal Personality of the African Union

The recognition of the AU as an international legal entity has been undertaken by various regional and international organisations, as well as by numerous states in Africa and on other continents of vital interest for the AU. This

[14]Aluou, A. M. "Sovereignty and Humanitarian Intervention: A legal challenge of Art. 4 (H) of the African Union Constitutive Act." East African Journal of Law and Ethics, 2024.
[15]Rodriguez Yong, C. "Legal certainty and foreign investment in Africa: let's call the African union." 2016.
[16]'Nyane, H. "An Analysis of the African Union's Constitutive Act." Journal of African Union Studies, 2023.

recognition has mainly been done in formal instruments, indicating the African Union as an international organisation[17]. Those instruments are referred to by scholars as an "Act of Recognition", pointing out the highlights of the international legal personality of the AU. The only exception is the case of Morocco, where the corresponding instrument indicates the African Union in general and its organs in particular as an initiative in exchange against bilateral investments[18].

The AU has been acknowledged in a Decision of the Summit of Heads of State and Government of the OAU, a Decision of the Executive Council, a Decision of the Council of the OAU, a Resolution of the Ministerial Council of the OAU, a Letter of the Secretary General of the OAU, an instrument addressed to SADC and an instrument addressed to ECOWAS, both issued by the Secretary General of the OAU[19]. The major decisions taken by the OAU based on the conclusions of the First World Summit on Sustainable Development held in Johannesburg speak of the AU explicitly as a regional international organisation. These essentially consist of declarations addressed to leaders in general, detailing the principles that ought to govern their countries, such as good governance, respect for human rights, economic cooperation, etc[20]. The intended recipient forms part of regular bilateral interstate correspondence and, in such format, remains as an act of acknowledgement of the AU as an entity on the international scene.

There are diverse UN instruments addressing the AU, some of them explicitly acknowledging its character as an international organisation, while others merely refer to some AU organs or bodies. Among those explicitly rapprochements to the AU as an international organisation, mention can be made of two Resolutions of the General Assembly, three Resolutions of the Security Council, a UN Document, a letter of the Secretary General of the UN, and a Declaration of the General Assembly. Among these, it is worth noting that Resolutions 56/166 and 61/208 are addressed to the AU as an entity and explicitly declare the character of the Union as a regional international organisation[21].

The granting of legal personality significantly affects the rights and responsibilities of international actors. Here, the practical effects and broader implications of this legal institutional character for international organisations are sought. The main claim is that legal personality can be understood in terms of a right-responsibility nexus. First, the rights that come with legal personality are exposed. It is shown that these rights allow recipient IOs to sue or be sued

[17]Gelot, L. and Söderbaum, F. "Legitimation struggles in international organisations: the case of the African Union." Globalizations, 2024.
[18]Abourabi, Y. "Governing African migration in Morocco: The challenge of positive desecuritisation." International Development Policy, 2022.
[19]Agara, B. O., and Morris KO Edogiawerie. "African Union (AU) and the Governance Question in Africa." Journal of Social Sustainability Impact 1.1 (2023): 17-26.
[20]Denters, E., Ginther, K., and de Waart, P. J. I. M. "Sustainable development and good governance." 2023.
[21]Zouapet, A. K. "States and Regional International Organizations." International Organizations Law Review, 2024.

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before national and international courts, to form contracts, convey and acquire goods and immovable property, bring new or pending disputes before friendly settlement, and to invoke international law as a claim in their favour as well as a norm against their counterpart. Second, the concomitant duties are elaborated in direct relation to the assertion of those rights[22]. These envisaged obligations apply to questions of transparency regarding legal assets, the respect and compliance with international norms and agreements, the accession to socialisation processes or engagement with best practices in fields of activity, rendering of accounts for the discharge of rights-responsibilities, and the engagement of cooperative acts to protect the general interest or common values. Legal personality, thus, is analysed as a toolbox of rights and duties. The balance and symmetric preservation of this will be understood as a guarantee for the functionality and the soundness of legal institutions and of the relations entwined among them. Such a way of examining the legal personality of IOs refers to potential strategic ways for optimising the right-responsibility ground[23].

The implications of legal personality are analysed in relation to international laws and international relations, paying attention to their extra-legal feature. Attention is first paid to consequences for international organisations, such as the acquisition of rights by the international organisation, but also the development of new obligations and mutual rights and obligations to the member States and international organisations existing respective of internal and external relationships[24]. Attention is then turned to the reception of legal personality by international organisations as a challenge for cooperation among them, and to the equilibrium that has to be kept between States and international organizations before the achievement of this cooperation.

Rights and Duties

This refers to international organisations as subjects of law. The unilateral or multilateral act by which states create an international organisation and recognise it as such has legal effects and generates the legal personality of this organisation[25]. The date of creation and operating structures of the organisation, not the general rules and principles of international law, generate its own legal personality[26]. Each international organisation shall possess the capacity necessary for the exercise of its functions and the fulfilment of the tasks assigned to it by the present Charter. The general rules regarding the legal personality of international organisations are outlined in their constituent instruments; therefore, in case something is not stipulated in these documents,

[22]Keating, G. C. "Reasonableness and Risk: Right and Responsibility in the Law of Torts." 2022.
[23]Li, L., Gao, H., and Cui, C. ""Norms" as the noumenon,"functions" for use: A new idea of cultivated land administrative protection in China." Frontiers in Environmental Science, 2023.
[24]Louis, M. and Maertens, L. "Why international organisations hate politics: depoliticising the world." 2021.
[25]Haas, E. B. "Beyond the nation-state: Functionalism and international organisation." 2024.
[26]Purda, n. I. C. O. L. A. E. "Aspects on the international legal personality of international organisations." 2012.

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the provisions of the headquarters agreements apply there[27]. With a view to the quick settlement of disputes which might endanger the maintenance of peace and security, directorial of the general rights and duties of the members of the Organization, the Security Council may, upon recommendation of the General Assembly, and in conformity with the special agreements or agreements by the parties, decide on the establishment of the special council or commissions of conciliation or investigation[28]. The person shall intercede directly in the discussion of any matter which subsequently is the object of the discussion. Besides those provided for in consideration of agreements, the Security Council shall be able, in discussing any matter, to make such a recommendation to the parties as it deems necessary to settle any disputes it feels could have broken peace and friendly settlements with the member states of the Organisation[29]. Each case considered as being dealt with, the party or parties shall each notify the Security Council of its acceptance of the recommendations within 15 days of the dispatch of the Council theory, conforming to the 5th demand, attempts to give note of their efforts to maintain and demands upon the theory and try to explain why it gained wide acclaim[30].

Legal Actions and Immunities

Legal personality of an international organisation allows the organisation to institute proceedings either against other legal entities or natural persons before the national or international courts or tribunals. Therefore, the legal status of an international organisation in many cases implies a personal right to bring an action. In other words, international organisations can be parties to the court proceedings[31]. Thus, it is plain that rights, but also obligations, are associated with the existence of the legal personality. Another issue linked with the legal personality of international organisations is the privileges and immunities granted to them. These are necessary for the fulfilment of their functions. A number of international agreements establish restrictions regarding the personal immunities of the officials of international organisations. The realisation of the right to legal protection before domestic jurisdictions is the sine qua non condition for the existence and effectiveness of the legal personality of each legal entity, including international ones. In some cases,an international organisation can waive the immunity enjoyed, but such waivers are not commonly accepted. The granting and receiving of the immunities are generally incorporated in the constitutive instruments of the respective international organisations[32]. Furthermore, it is often emphasised that the granting of immunity to an organisation is always linked with the granting of the same to its officials and vice versa. The privileges and immunities granted to

[27]Hartoyo, Rudi, and SulistyowatiSulistyowati. "The Role of the Legal Aid Post Is in Providing Legal Assistance to Disadvantaged People in order to Obtain Justice inthe Courts of the Holy Land." JIM: JurnalIlmiahMahasiswa Pendidikan Sejarah 2023
[28]Schulmann, E. and Galeotti, M. "A tale of two councils: the changing roles of the securityand state councils during the transformation period of modern Russian politics." Post-Soviet Affairs, 2021.
[29]Sonnenfeld, R. "Resolutions of the United Nations Security Council." 2024.
[30]Klabbers, J. "An introduction to international organisations law." 2022.
[31]Klabbers, J. "An introduction to international organisations law." 2022.
[32]Muller, A. S. "International organizations and their host states: aspects of their legal relationship." 2023.

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any international organisation usually include, among others, a tax exemption, inviolability of its premises, the archives, correspondence, etc.

Challenges to Legal Personality of the African Union

Legal personality of the international organisations has been a subject of scholarly analysis spanning a diverse set of disciplines, including law, political science and international relations. In the legal literature, there continue to be challenges and controversies concerning the exact nature of the legal personality of the AU. Issues have been centred on whether the legal personality of the AU is sui generis with respect to that of states and natural persons. In such literature, it is argued that international organisations like the AU are not like natural persons[33].

The overall perception of the AU as a legal personality varies greatly from member state to member state, depending on each country's legal history, constitutional jurisprudence, philosophy of law and political leaning. The African Union has emerged as a response to the unprecedented challenges and opportunities in Africa today and has attempted to elaborate and share a common vision. One of the first concerns of the AU was to enhance unity and promote stronger political and economic integration of the continent. Most of the member states see a deeper integration than the establishment of Free Trade Areas, Customs Unions and Monetary Unions/Governance[34]. However, the intention of using the AU as a more integrated legal entity has not yet been achieved. The incapacity of member states to see eye-to-eye with competing interests but equally weighty concerns to share in prioritising policies that affect a continent suggests that the AU must and should be seen as an organisation that augments and leverages its member state similarities in addressing these questions. This will depend on the levels of capacity sharing. If member states see scope along and hence, at different levels of policy options that augment each other, then the AU should be granted the necessary powers to formalise and institutionalise this integration. Member states should also submit in good faith and in a timely fashion powers, responsibilities and functions to the AU on matters of continental concern and thus permit the AU to fast-track the harmonisation of legislation and agency capacity development underpinning adopted policies[35].

Member states must share in good faith and on time information, knowledge and data that enhance the capacity, inclusive of cost efficiency of the AU, in a manner that ensures compliance with AU legal instruments that source this obligation. Equally, the AU must faithfully discharge its mandate and in a timely, capable and effective manner. Natural persons exist as subjects of states and as individuals at the same time, while states exist as subjects of the international

[33]Lake, D. A., Martin, L. L., and Risse, T. "Challenges to the liberal order: Reflections on international organization." International organization, 2021.
[34]Rodriguez Yong, C. "Legal certainty and foreign investment in Africa: let's call the African union." 2016.
[35]Morgenstern, F. "Legal problems of international organizations: reissue with new foreword by Jan Klabbers." 2024.

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order and can also be regarded as composite entities. In contrast, international organisations exist solely within the corpus of international law[36].

The question of the legal personality of the African Union (AU) raises several questions. In the first instance, is the AU a legal person? If not, is the AU supposed to have legal personality according to the Intent? If legal personality is granted to the AU, does the AU, on this basis, have rights and duties, and how can they be enforced? Contrary to the position expressed by some, there are convincing reasons in light of Article 1 in conjunction with Article 2 of the AU Intent to posit that the AU is a legal person, i.e., as an entity with rights and duties, and with the capacity to sue and be sued. The plurality of expression constitutes a noteworthy basis for concluding that the founding states set the AU up as a distinct legal personality[37]. However, there exists around the AU a legal order, which is proper to and distinct from the legal orders of the member states. Since its inception, the AU has acted as if it has legal personality in the sense of paragraph (a). For instance, the AU's bodies have been able to adopt binding decisions; establish rules of procedures; appoint officials; enter into a variety of agreements and signature missions; bring proceedings, both civil and criminal, against member states or individuals; and initiate negotiation and dispute settlement[38].

The practical inclusion of citizens as individuals in African democracy has not been clearly articulated and applied, except for uncontroversial provisions that authorise the establishment of an African Court of Human and Peoples' Rights. Considerably more work needs to be done to flesh out competence, procedures and organisational matters before the AVSM can be meaningfully invoked. Communication capacity is crucial. Not all African governments have suffered from undemocratic governments, greed, and misappropriation practices, with the degree of "natural justice" in commentaries varying markedly from opaque and illiterate proclamations being accepted (or trenchantly criticised) by fellow states. The resolutions and the Charter are being adopted at the AU "Executive Council level" and are proposed to be submitted to Heads of States soon thereafter. Little is said of how the process would roll out and if the resolution could pass at the Summit, where opposing states are scheduled to be present. But the effect of the resolutions on subtly changing the culture of these debates is highlighted[39].

Conclusion

As foreseen by the various provisions of the African Union's constitutive instruments, it can be argued that the African Union possesses legal personality in its inception and establishment. Nevertheless, the argument on the

[36]Muller, A. S. "International organisations and their host states: aspects of their legal relationship." 2023.
[37]Gwatiwa, T. and G. "The African Union and African agency in international politics." 2022.
[38]Agara, B. O., and Morris KO Edogiawerie. "African Union (AU) and the Governance Question in Africa." Journal of Social Sustainability Impact 1.1 (2023): 17-26.
[39]Gelot, L. and Söderbaum, F. "Legitimation struggles in international organizations: the case of the African Union." Globalizations, 2024.

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international legal personality of the African Union rests primarily on its constitution, complementary protocol, charter and declaration. The African Union was constituted or established by the Constitutive Act of the African Union, which entered into force on May 26, 2001 within the framework of the Organization of African Unity as it had undergone an intricate, thorny and tedious moral philosophical conceptual adjustment to newly reflect Africa's universally privy, the celestial society at large; its hopes, aspirations and desiring, whilst strengthening the foundation and bedrock upon which Africa as a world continent rebounds and springs on. In brief, it can be maintained that the African Union possesses a full-fledged international legal personality.

It can be opined that the African Union attributes an unlimited type of de facto or de jure legal personality derived from the Constitutive Act, as argued and demonstrated in the explanations above. Moreover, the provisions of the various treaties and agreements treated, with the regulations dealing with the formation and establishment of the courts, make it abundantly clear that if the African Union did not possess legal personality, it would have been impossible in any of these tertiary sources to talk about its stipulations, compositions, establishments or the like. It is imperative that each assumption ought to be disproven, supported by an opposing case law and judgment thereof. If then questions can still be posed as to whether the African Union possesses legal personality, it could be, only in imparting to safeguard the rights and protection of obligations.

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