All Roads Lead to Rome? Trying to make sense of the Legal Configuration for the Realisation of the African Economic Community (Part I)

By:

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In 2018, the AU adopted two monumental instruments intended to alter the socio-economic, and even, political relations among African States and the peoples of Africa, in a potentially positive way, if implemented. These are: the Agreement establishing the African Continental Free Trade Area (AfCFTA); and the Protocol to the Treaty establishing the African Economic Community relating to Free Movement of Persons, Rights of Residence and Right of Establishment (Free Movement Protocol).

Neither of these instruments has come into force pending the attainment of the required number of ratifications. One of the many questions that comes to mind

is: how have these instruments been configured into the overall framework of Africa's integration? Are they necessary or merely adding to the pile of the many instruments and policies that emanate from the continental bodies, but not as enthusiastically implemented? Should we view them with some optimism or, rather, some scepticism? I will build my argument by going back in history to trace Africa's economic integration trajectory. When the Organisation of African Unity (OAU) was founded, it had as part of its objectives, 'to promote the unity and solidarity of African States', and to 'achieve a better life for the peoples of Africa'. Yet the OAU Charter was considered to be more biased towards political than economic integration.

This is quite understandable considering that the OAU was borne out of the African struggle for independence. It soon became clear, however, that there were new threats that African states had to overcome. These included: rampant poverty, economic underdevelopment, and globalisation, which in trade terms, disadvantaged African states in the global economy. The prospect of economic integration became more attractive, despite some earlier post-independence efforts that had failed at the sub-regional level, such as the earlier East African Community (EAC), although some were, like the Economic Community of West African States (ECOWAS) more or less taking off. Following a protracted discussion, African States adopted the Treaty establishing the African Economic Community in 1991 (AEC Treaty or the 'Abuja Treaty'). This treaty, regarded as a 'prerequisite for the realisation of the objectives of the OAU', arguably, among legally binding documents, serves as the blueprint for Africa's economic integration.

Under the AEC Treaty, integration was envisaged to occur mainly through the regional economic communities (RECs), a number of which pre-existed the AEC Treaty. Some of these RECs were at a more advanced stage than what was set out as the initial integration phases of the AEC. For instance ECOWAS was already implementing the free movement of persons. The strategy was therefore to strengthen the existing RECs, and establish some where there were none. The stages of integration outlined in the Treaty include the establishment of: a) a free trade area; b) a customs union; c) a common market, leading to the gradual removal of obstacles to the free movement of persons, goods, services and capital, and the right of residence and establishment; d) an economic and monetary union; harmonisation of existing

and establishment of necessary institutions, among others phases. For any scholar of economic integration, the phases of integration, starting with a free trade area and sometimes going all the way to economic or political integration, depending on the regional scheme's objectives, follow virtually successively.

Under the AEC Treaty, this would seem to be the case, reading specially article 6. 4 that seems to envisage a sequenced and transitional approach to the various stages of integration. Moreover, the various activities and measures for each stage shall be implemented *concurrently*(Article 6.2 and 6.3). As I shall illustrate shortly, it would appear that the present approach to African integration reflects a conflated application of these provisions, the result of which is more reflective of a concurrent implementation of the very stages of integration rather than a sequenced and transitional approach.

In 2001, the OAU metamorphosed into the African Union (AU) which merges both the political and economic integration objectives of the continent. The AU arguably breathed new life into the integration aspirations and some of the present developments are probably a testimony to that fact. In an attempt to bring about the realisation of the AEC objectives, three RECs, i.e. COMESA, EAC and SADC, adopted the agreement establishing the Tripartite Free Trade Area (TFTA). The TFTA with its 27 member states stretching from North to Southern Africa, if it joined with ECOWAS with its 15 member states would inevitably fast track the attainment of the AfCFTA. The TFTA was also intended, in part, to solve the complexity of overlapping state memberships to various RECs. One of the problems of overlapping memberships is that most states are lagging behind not only in their financial obligations, but also in their respective legal commitments and obligations. As integration efforts continue within the RECs (all of which face challenges, some rather antithetical to their objectives), and TFTA efforts among the RECs are yet to be concretised, in comes the AfCFTA, with its own set of obligations, time frames, mechanisms and machinery.

This raises a number of concerns: can African countries, still struggling to attain the integration at the initial phases in their respective RECs, realistically take the great leap by taking on a further set of commitments? Laudable though the adoption of the AfCFTA treaty may be, does it signify a change in course from the RECs' building-blocks strategy of the AEC treaty, or is it meant to be a catalytic effect for the operationalisation of the AfCFTA? Is the AfCFTA treaty a

laudable juggling act, a strategic and feasible manoeuvre; or a parallel move, creating competing interests and demands on states, bringing to full circle the overlapping membership issue?

In summary Africa boasts of at least eight RECs (or potential and existing FTAs) recognised by the AU, one emerging TFTA, and, a budding AfCFTA. All these efforts are meant to lead to the realisation of the AEC! Will all these roads eventually lead to Rome- the AEC? *In the subsequent pieces, I shall discuss the relationship between the AEC Treaty and the AfCFTA Treaty; and the AfCFTA Treaty and the Free Movement Protocol.*

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