

**Addis Ababa University**  
**Faculty of Law**  
**Public International Law**

**Implementation of Trade Liberalization in the African Economic  
Community (AEC): Challenges and Prospects**

Submitted by: Teklit Yimesel

Advisor: Aman Assefa (LLB, LLM)

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partial fulfilment of the requirement of degree of masters in Public  
International Law

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## DECLARATION

I Teklit Yimesel, hereby declared that this dissertation (thesis) is original and has never been presented for a degree in any other university. I also declare that any secondary information used has been duly acknowledged.

Teklit Yimesel 25/01/2010  
Teklit Yimesel

### Approved by Board of Examiners

AMAN ASEPA  
Advisor

March 19, 2010 [Signature]  
Date and signature

\_\_\_\_\_  
Examiner

\_\_\_\_\_  
Date and signature

\_\_\_\_\_  
Examiner

\_\_\_\_\_  
Date and signature

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## DEDICATION

In memory of my father ***Ato Yimesel Baraki***, my ***mother W/ro Abreht Tesfamariam*** and my ***sister W/ro Desta Yimesel***. You all thought me vision, Courage, patience, hard working and love.

## ABSTRACT

In the 21<sup>st</sup> Century establishing regional economic integration has been taken as crucial strategy to foster economic development and growth among nations. Economic integration lead to improved trade, economies of scale, enhanced competition and increased technology development. Africa aspires to get integrated since post independence to tackle socio-economic problems of the continent. Founding fathers of the OAU/AEC come up with the AEC Treaty which provides a marvelous economic objectives and mechanisms to be realized through a gradual process within six stages in 34 years to declare economically united Africa.

Since the adoption of the AEC Treaty, the continent began to implement it in accordance to the modalities. The political and legal visions of establishing integrated Africa Contained essential precursors to the movement of economic integration. It is, therefore, the main theme of this thesis is to examine implementation of the AEC Treaty in the light of the modalities of the Treaty and gives emphasis to Challenges and prospects of trade liberalization. In the main, this thesis has tried to identify the major challenges of economic integration in Africa which appear to be impediments in implementing the Abuja Treaty.

The review of the issues indicates that RECs have completed phase one and two, and beginning to implement phase three. Nonetheless, sectoral integration, coordination, harmonization of projects and programme, intra-Africa trade remains too low. To this end, there are contributing factors, *interalia*, lack of political will, conflict and

instability, lack of effective supranational institutions, overlapping of membership, financial constraints, non-implementation of treaties and protocols and lack of adequate infrastructure are the key challenges.

This study concludes that the challenges in relation to establishing effective economic integration encountered Africa are not inherent weakness of the continent. On the other hand, prospects of the implementation of the AEC Treaty seems to be achievable since it has been theoretically and factually proved that economic integration is a survival strategy to the continent. In addition, the thesis argues regional integration in Africa has to be a viable option to overcome constraints arising from small domestic markets, increase bargaining power, a conducive environment to utilize common resources and combat problems, and can help to make national reforms deeper and irreversible. Moreover, basic lessons can be drawn from this thesis as far as it examines the theoretical and practical aspects of economic integration of the continent.

## Acronyms and Abbreviations

<b>ACJ</b>	African Court of Justice
<b>ADB</b>	African Development Bank
<b>AEC</b>	African Economic Community
<b>AHSG</b>	Assembly of Heads of State and Government
<b>AL</b>	The Arab League
<b>ARIA</b>	African Regional Integration Assessment
<b>ASEAN</b>	Association of South East Asian Nations
<b>AU</b>	African Union
<b>CEMAC</b>	Central African Monetary and Economic Community
<b>CEN-SAD</b>	Community of Sahel-Saharan States
<b>CEPGL</b>	Economic Community of the Great Lakes Countries
<b>CET</b>	Common External Tariff
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>DRC</b>	Democratic Republic of Congo
<b>EAC</b>	East African Community
<b>ECCAS</b>	Economic Community of Central African States
<b>ECJ</b>	European Court of Justice
<b>ECOWAS</b>	Economic Community of Western African States
<b>ECSC</b>	European Coal and Steel Community
<b>EEC</b>	European Economic Community
<b>EU</b>	European Union
<b>Euratom</b>	European Atomic Energy Community
<b>FLA</b>	Final Act of Lagos
<b>FTA</b>	Free Trade Area
<b>GATT</b>	General Agreement on Tariff and Trade
<b>IGAD</b>	Intergovernmental Authority for Development
<b>IOC</b>	Indian Ocean Commission
<b>LPA</b>	Lagos Plan of Action
<b>MIP</b>	Minimum Integration Programme

<b>MRU</b>	Mano River Union
<b>NAFTA</b>	North American Free Trade Agreement
<b>OAU</b>	Organization of African Unity
<b>OPEC</b>	Organization of Petroleum Exporting Countries
<b>PAP</b>	Pan African Parliament
<b>REC</b>	Regional Economic Communities
<b>REI</b>	Regional Economic Integration
<b>SACU</b>	Southern Africa Customs Union
<b>SADC</b>	Southern African Development Community
<b>TEU</b>	Treaty of European Union
<b>TOA</b>	Treaty of Amsterdam
<b>TON</b>	Treaty of Nice
<b>UEMOA</b>	West African Economic Monetary Union
<b>UK</b>	United Kingdom
<b>UMA</b>	Arab Maghreb Union
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNECA</b>	United Nations Economic Community for Africa
<b>US</b>	United States
<b>WTO</b>	World Trade Organization

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## CHAPTER ONE

### 1.1 BACK GROUND OF THE STUDY

Economic Integration is a major strategy for promoting regional trade, accelerating development and structural transformation. Process of economic integration arrangements in Africa had a long history beginning with customs union dating back to 1900.<sup>1</sup> However, these early economic integration arrangements were motivated and sponsored by former colonizers to enhance their economic interest in Africa. Assuredly, concrete movement for economic integration at the Pan Africa level has been started as early as 1968 and the Abuja Treaty (Treaty Establishing African Economic Community hence Forth) AEC was the cumulative outcome of previous declarations.<sup>2</sup>

Regional economic integration can be defined as a process of consisting group of countries that implement a set of preferential policies designed to enhance the exchange of goods and/or factors of production among member states.<sup>3</sup> Regional integration is also defined as a process whereby two or more countries in a particular area, i.e. economic dimension, join together to pursue common policies and objectives in a matter of general economic field of common interest to the mutual advantage of all participating countries.<sup>4</sup>

Economic integration in Africa is a necessity for its survival.<sup>5</sup> African countries have faced problems to tackle economic crisis unilaterally. The emerging trends and issues of globalization forced countries to establish common market. This is a reality in Africa that there is an inspiration among African Countries that economic integration could be a promising

1. M,Mwamadzingo, *Regional integration in Africa: Getting it right*, available at: <http://www.ilo.org/dyn/infoecon/docs/199/F506945503/123e.pdf>, Accessed: on 08/05/2009, P.7.
2. *Preamble of the Treaty establishing AEC, Nigeria, 03 June 1991; came in to force on May 12, 1994.*
3. R.Mukamunana, and K.Moeti, *Challenges of Regional Integration in Africa: Policy and Administrative Implications*, available at: <http://.ap.ac.za./dSPACE/.../2263/...pdf> (2005). PDF: Accessed: 28/08/2009, P.90.
4. *Ibid*
5. S.Regumamu, *Africa's Search of Regional Cooperation and Integration in the 21<sup>st</sup> Century*, available at: <http://www.acbfpact.org/.../acbfj%20working%paper%20no.%203.PDF>. Accessed: 08/05/2009.P.2.

vehicle for enhancing economic and social development in their respective countries. Studies on economic integration have been consistent in asserting that integration enables individual countries to attain greater economic benefits. Creation of regional economic integration provides larger markets and economies of scale and that coordination of national economic policies enables more rational mobilization and utilization of factors of production and lead to an accelerated economic growth.<sup>6</sup>

There are different approaches to realize regional economic integration. Process of economic integration can be viewed from maximal (immediate) or gradual approach. The former approach favours immediate integration, whereas, the latter advocates step-by-step integration up on a long period of time. These two approaches became issue of debate in African market integration.

Other approach of integration is related to the model of integration. Among others, market integration, development integration and regional cooperation can be cited. Market integration presupposes absence of various forms of discrimination between national economies. This form of integration consist linear progression of stages of integration. These are: establishment of free trade area, customs union, common market, and economic union and finally total integration.<sup>7</sup> This form of integration assumes implementation of some activities in hierarchy. Accordingly, it comprises free movement of goods, common external tariff, free flow of capital and labour, harmonization of macro-economic policies and creation of supra-national institutions.

The second model, development integration focuses on accelerating the social and economic development of member states, which explains the needs for state intervention in market mechanisms. Development integration requires political commitment of leaders. This model of integration faces a difficult arising from the implementation of compensatory and corrective measures.<sup>8</sup>

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6. R.Mukamunana *supra* note 3 , P.91.

7. *Id.* P.93.

8. *Id.*P.94.

The last model of integration is regional cooperation which presupposes cooperation between neighbouring countries with common interest cooperate to solve problems and create improved conditions in order to maximize economic, political and cultural benefits for each participating country. Regional cooperation allows countries to cooperate in areas of their interest consider or important without being obliged to liberalize their trade regime as is the case with market integration.<sup>9</sup> When one looks the form of integration in Africa, though there is a controversy on the approach and model, the AEC Treaty seems to favour market integration on gradual approach.

The Constitutive Act of African Union gives special attention to the implementation of the AEC Treaty. The preamble of the Constitutive Act makes clear that principles and objectives of the AEC treaty are primary agenda of the African Union in that accelerating the process of implementation enables the continent to face effectively the challenges posed by globalization.<sup>10</sup> Moreover, one of the reasons to establish African Union was to achieve ultimate objective of the AEC Treaty. Article 3 of the Constitutive Act under lines African economic integration is considered as a land mark and hence with member countries requested to harmonize policies between the existing and future regional economic communities hence forth RECs.<sup>11</sup>

One can understand from this legal instrument that states parties to the AEC Treaty are determined to realize African economic integration. The Abuja Treaty (AEC), which came in to force in 1994, provides for gradual integration process, which would be achieved through coordination; harmonization and progressive integration of the existing and future economic communities in Africa over a period of thirty four years. The Abuja Treaty considers the RECs as building blocks of the African Economic

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9. *Ibid*

10. *Preamble of the Constitutive Act of African Union, Lome, 11 July, 2000 came in to force 2002.*

11. *Id Article 3(c) and (i).*

community hence with the following RECs recognized. These are, the Economic Community of Western African States (ECOWAS), the Southern Africa Development Community (SADC), Intergovernmental Authority for Development (IGAD), East African Community (EAC), Arab Maghreb Union (UMA), Community of Sahel-Saharan States (CEN-SAD) the Economic Community of Central Africa States (ECCAS), and the Common Market for Eastern and Southern African States (COMESA). These RECs under their respective establishing treaties, *inter alia*, provides for creation of customs union through the removal of all trade and non-trade barriers and establishment of a common market. One may query why do the framers of AEC preferred RECs as a base for realization of total market integration in African could be a point of discussion.

The AEC Treaty comprises 106 Articles. This Treaty provides for principles, objectives and modalities, organs of the community, RECs and various dimensions of trade which has to be a ground for economic integration. This research for the sake of management or to be fairly manageable is limited to focus only on chapter five of the AEC Treaty, which deals about trade liberalization. Hence, the author would not discuss on other issues of the Treaty unless it has a close connection with the case in point.

The AEC Treaty provides for principles and objectives concerning the policy reason to the establishment of economic community. Article 3 (c) and (d) of the AEC Treaty focuses on trade related issues. These are: inter-state cooperation, harmonization of policies and integration of programs of harmonious development of economic activities among member states became one of the basic principles. Besides, under Article 4(a) and (d) objective of the AEC regarding the creation of market integration has clearly been stipulated. Accordingly, the objective of the community shall be (a) to promote economic... development and the integration of African economies in order to increase economic self reliance..., (b) to coordinate and harmonize

policies among existing and future economic communities in order to foster the gradual establishment of the community.<sup>12</sup>

In order to promote the attainment of the AEC objective, a means has to be employed. In this regard, strengthening the existing RECs and establishment of other communities where they do not exist; promotion and strengthening of joint investment programs in the production and trade, liberalization of trade through the abolition of customs duties, non-tariff barriers among member states in order to establish a free trade area at the level of each RECs; adoption of common trade policy vis-a-vis third states; establishment of common external tariff and a common market; gradual removal of obstacles of free movement of goods, establishment of appropriate organs for trade; and promotion of information flow among trading organizations stipulated as a means to achieve the main objectives of the AEC.<sup>13</sup>

Member Countries are obliged to harmonize their trade strategies and policies for the attainment of AEC objectives. The AEC Treaty urges member states to take legislative measures within the scope of provisions of the Treaty. Besides, if a member state persistently fails to honour its general undertakings under the AEC Treaty or fails to abide by the decision or regulations of the community may subject to sanctions.<sup>14</sup>

The AEC Treaty provides for administrative organs of the community. These are: the Assembly of Head of States and Government, the Council of Ministers, the Pan Africa Parliament, the Economic and Social Commission, the Court of Justice, the General Secretariat and the specialized technical committees.<sup>15</sup>

These organs as per their hierarchy except the Court of Justice empowered of policy making, detail implementation and supervision of the Treaty. The Court of Justice has a power to ensure the adherence to law, interpretation and application of the Treaty.

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12. *Supra* note 2, Article 4(a) and (d)

13. *Id* Article 2(a), (d) (e) (f) (g) (f) (g) and (h)

14. *Id* Article 5 (1), (s) and (3)

15. *Id* Article (7)

Article six of the AEC Treaty set out modalities for the establishment of the Community spanning over a period of thirty four years. There are six stages to pass through to achieve the ultimate goal of integration. The first stage expected to be accomplished within five (5) years concerned with the strengthening of the existing RECs and establishing where do not exist. The second stage within eight (8) years focuses on stabilizing tariff and non-tariff barriers, customs duties and internal taxes. Besides, sectoral integration at the regional and continental level like in trade, coordination and harmonization get attention. The third stage which expected to be realized within ten (10) years presupposes establishment of free trade area. During this period at the level of RECs a common external tariff will be adopted and a custom union will be created.

The fourth stage with in a period of not exceeding two (2) years will aim at the furtherance of a customs union. The fifth stage with in four (4) years is determined to the establishment of the African common market. The sixth and last stage within five (5) years will be devoted to consolidation and strengthening the African common market. The AEC Treaty stipulates that the cumulative transitional period shall not exceed forty (40) years from the date of entry in to force of this Treaty. According to this schedule, by 2028, among others, Africa will have a single continental market and a single currency administered by one supra-national bank.

There is a strong argument that economic integration in Africa is not an option but necessity. Further said, African economic integration as a viable option, achieves social, political and financial gains at continental level. To some, market integration promotes efficiency in that countries specialize in goods that can produce more cheaply and the whole continent gains, economies scale or creates larger regional market, experience and benefit of competition. Economic integration connotes a process of economic development which involves the elimination of discriminatory barriers

among economic units of national states. The main purpose of market integration, *interalia*, is that to achieve political and economic stability as well as rapid industrial development of respective countries. When this viewed from the process of African market integration, in Article 4(2) of the AEC Treaty provides, among others, liberalization of trade as a way to achieve objectives of the Treaty.

Liberalization of trade is among the top priority of the AEC Treaty to the attainment of its objectives. Chapter five of the AEC Treaty deals with implementation of Customs Union, and liberalization of trade. This chapter is an extension of Article 6 of Chapter two (2). As it said, Article 6 of the AEC Treaty provides modalities to be accomplished within six stages. Chapter five (5) of the AEC Treaty underlines the importance of elimination of customs duties, quota restrictions, other restrictions and administrative trade barriers as well as non-trade barriers in each member state of the RECs. Moreover, member states at the RECs obliged to establish a common external tariff, system of intra-community trade and to stabilize internal taxes. The AEC Treaty also provides exceptions and safe guard clauses. It further provides for the prohibition of dumping, non-discrimination, customs cooperation and administration, trade promotion in order to achieve the objective of the community and participates as a group in international negotiations with in the frame work of GATT/WTO, UNCTAD and other trade related negotiation forum to achieve its objective get emphasis under the AEC Treaty.

## **1.2 Statement of the Problem**

Pan African economic integration is an essential factor for economic survival strategy aimed at tackling marginalization of Africa from the global economy.<sup>16</sup>

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16. Alemayehu Geda and Haile Kibret, *Regional Economic Integration in Africa: A Review of Problems and Prospects with a case study of COMESA*, available at, [http://www.Soas.cauk/economics/research/working\\_papers/file\\_28853](http://www.Soas.cauk/economics/research/working_papers/file_28853). PDF: Accessed: 28/08/2009, P.2

African leaders at the Sirte Declaration of Sep,1999 makes it clear that speedy implementation of the AEC schemes would be a priority agenda. There is an argument that the process of African economic integration has been implemented in a manner the Treaty so provides. On the other hand, there is a debate saying that the process of liberalization of trade within vital primary objective of total market integration in Africa is not as effective as the AEC Treaty aspires. The validity of these arguments can only be asserted through critical analysis of the existing practice of states parties and legal frame work of the AEC Treaty.

Treaties that establish the RECs as their basic objective provides for economic integration in each sub region of the continent. The Practice is however; there are problems that became obstacles to achieve the intended goals. Among others, poor economic growth, low level of intra-regional trade, stringent control measures on movement of goods, and inability to attract investments. One can find a controversy on the issue why economic integration failed in Africa; whether it has connection to the selected model which was assumed as similar to the European model of market integration or not. For many, economic integration cannot be effective without political commitment, political stability, having suitable infrastructure and fair distribution of cost and benefits of integration. Validity of these arguments deserve analysis in due time.

It is said that implementation of trade liberalization in Africa cannot be effective without having legal frame work that empowers organs of the community. One can find that the effect of economic integration in the form of trade liberalization is creating mutual duty by limiting once own sovereignty and transferring it to supra-national institutions. Transferring sovereignty to the organs of the community empower them to implement words and spirit of the AEC Treaty, *interalia*, to tackle tariff and non-tariff barriers as well as to solve commercial disputes at continental level.

African states which are party to the AEC Treaty represent at least four main legal systems. These are: common law, the Roman Dutch law, the Islamic and Civil law. Every country has its own legal traditions, its own system of legal thought, its own of law making and its own process of judicial determination of disputes. When one look the diversity of legal system and languages may query that does this could be an obstacle to establish single market system in Africa or not. On the other hand, what could be the impact of diversity of legal system in creating supra-national institutions in the continent?

Worth noting that economic integration (trade liberalization) in Africa, requests extra-commitment and doing home assignment of respective member states. If political leaders jealously guard their sovereignty, border conflict, civil war, lack of good governance, lack of collective commercial policy and financial instability may makes market integration impossible. Besides, scarcity of resources to finance projects, lack of stable fiscal policy undermines the process of integration. Other important point that needs evaluation is that the challenges of handling ethno-religions differences, fear of dominance of legal system, economy and religion could be threat in the process of trade liberalization.

From the above detailed points, therefore, how member states are doing their level best to implement the AEC treaty on issue of market integration against the challenges faced Africa is still ongoing problem. By taking in to consideration the above mentioned back grounds and facts of the research, the specific statement of the problem is setting up as follows:

*Whether trade liberalization under the AEC Treaty, has been implemented as effective as per the stipulated modalities or not.*

Thus, to discuss the above problem, basic research questions have to be raised. The main question and some more relevant questions, which seek reliable answers, are stated here under. Accordingly;

*The central question is that what are the challenges and prospects in the process of trade liberalization in the AEC Treaty.*

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In order to deal this main question adequately we need to address relevant issues as well:

- What are the essential prerequisites to make effective trade liberalization in the AEC?
- To what extent national sovereignty diversified legal system and economic nationalism could be an obstacle to market integration?
- What are the implications of border conflict, civil war, financial constraint and lack of skilled human resources in the process of trade liberalization in Africa?
- Does the AEC Treaty provides effective mechanisms to tackle hindrance of economic integration in due time?
- Are African leader's committed to formulate common trade policy and to provide essential supra-national institutions to facilitate market integration?
- What would be the implications of the exceptions and safe guard clauses provided under the Treaty in case of trade liberalization?
- What basic lesson can be drawn from the European Union to facilitate trade liberalization in Africa?
- To what extent can affect seeking concurrent member ship in more than two RECs?
- What would be the implications of the two approaches which favours immediate or gradual integration in case of trade liberalization?

### **1.3 Objective of the Study**

The overall aim of this study is to make legal analysis on the implementation of trade liberalization in the AEC with special reference to challenges and prospects. The specific objectives of this study are:

- Examine whether the process of economic integration in line with the AEC modalities or not.

- Identify the major challenges and prospects of the African economic integration which influences the wave for full realization of the main objectives of the AEC.
- Analyze the main arguments on the approaches of market integration in Africa.
- Examine the importance of fulfilment of prerequisites of economic integration.
- Make some concluding remarks and suggest possible solutions.

#### **1.4 Significance of the Study**

This research paper is intended to make contribution to the ongoing process of and review the possibility for full realization of the market integration in Africa. The research would try to create awareness by identifying challenges and prospects of trade liberalization and implication in socio-economic development of the continent. The significance of this paper then can be summarized as follows:

- It would provide an input and increase knowledge for states parties to the Treaty and policy makers as to how trade liberalization in AEC create efficiency, economies of scale, experience and benefit of competition.
- Create common understanding on the challenges and prospects of trade liberalization in the AEC.
- Contribute to literature and knowledge in the topic and/or can serve as reference by legal practitioners and students.
- Helps as a spring board for further researches in the area of regional economic integration in the AEC.
- Influence on the implementation of the Treaty.

#### **1.5 Research Methodology**

The study is largely a desk top based which includes analysis of the literature including the relevant primary and secondary sources of data. Some of the basic approaches were stated as follow:

- Critical analysis of relevant Treaties, protocols, declaration, books, articles which have relevance to the implementation of the AEC treaty.

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- Looking practice of states parties to the Treaty within the African Union, UNECA, RECs and other inter governmental organizations.

### **1.6 Limitations of the Study**

Process of economic integration is a complex system because of the existence of sovereign nation's socio economic policies and legal frame work. In respect to this concept, process of trade liberalization comprises legal, political, economic and social factors. Therefore, the research faces some limitations. Among others:

- It examines implementation of the AEC Treaty giving emphasis to trade liberalization. In this case, problem has been created regarding to have adequate data owing to the culture of African leaders decision making process held in camera and hence with adequate official documents are not as much as accessible.
- All relevant organs of the AU/AEC and RECs have not office here in Addis and as a result some relevant facts, data, report and researched materials in this specific area were not accessible as adequate as required.
- This research is inter-disciplinary in its nature that involves law, economics and political science. Though at most effort has been made to familiarize these concepts to readers as the case in point demand, it cannot be claimed that it is exhaustive. Moreover, the writer basically, focuses on legal instruments or documents.
- To fill in the gap, the author has conducted interview with expert of economic integration in the African Union.
- Different websites of the AU/AEC visited to collect relevant materials. Besides, extensive review of published and unpublished documents has been made.
- Library of intergovernmental organizations of the AU/ECA were visited exhaustively.
- The author, to fill the gap, had participated on the sixth session of the committee on Trade, Regional, Cooperation and Integration conducted 13-15 October 2009 Addis Ababa Ethiopia.

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## **1.7 Chapter Outline**

The scope of the study is limited by the objective of the research. This study thus comprises of six chapters. Chapter one introduces the back ground of the study Statement of the problem, Objective of the study, Significance of the study, methodology, limitation and solution of the study. Chapter two gives an over view of theoretical perspectives of regional economic integration. Chapter three examines models of economic integration with much emphasis to the EU. Chapter four, deals about the AEC Treaty with special reference to economic principles, objectives and modalities of trade liberalization. Chapter five discusses the practice, challenges and prospects of liberalization of trade in the AEC. Chapter six presents the overall conclusions and recommendations.

## CHAPTER TWO

### THEORETICAL PRESPECTIVES OF REGIONAL ECONOMIC INTEGRAION

#### 2.1 Introduction

In this section two essential concepts would be defined. Namely: regional economic integration and trade liberalization. Defining the concepts of regional economic integration and trade liberalization helps us to understand features of each concept, scope, similarities and differences in the light of the AEC Treaty. Besides, it would shed light on the overall features of economic integration.

##### 2.1.1 Regional economic integration defined

Different scholars come up with various types of definitions of regional economic integration. Among others, the first definition of regional economic integration as quoted from Belassa defines the term as follow: “a process in which a group of nations reduce tariff and non tariff barriers to allow free flow of goods, services, factors of production including labour and capital”.<sup>1</sup> Regional economic integration could also be defined as: “Regional integration is a process by which two or more nations within a geographic region voluntarily adjust economic and other policies to produce a fusion of their economies and political institutions.”<sup>2</sup>

In the words of J.Daniles, regional economic integration defined as a political and economic concords among countries in which it brings mutual benefit in a way that it gives them an advantage over other non member countries.<sup>3</sup> The last definition, according to Fantu, quoting Davis, “Economic integration refers to a process in which the economies of individual countries are merged (in whole or in part) in to a single regional entity.”<sup>4</sup>

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1. Mekong Resource centre *Regional Economic Integration and the poor (2002)*, available at <http://www.mekng.es.usyd.edu>. accessed:29/10/2009,P.2.

2. G.Genna, and T.Haroi “*power preponderance and domestic politics: Explaining Regional Economic integration in Latin America and Caribbean, 1960-1997*” (2002), available at [http://www6.miami.edu/Centre/Genna\\_working\\_paper.pdf](http://www6.miami.edu/Centre/Genna_working_paper.pdf). Accessed: 29/10/2009, P.4.

3. J. Daniels, *International business environments and operations (2007)*, P. 238-239.

4. Fantu Cheru, *African Renaissance: Road Maps to the Challenge of Globalization (2002)*, P.123.

These definitions lead to conclusion that regional economic integration has its own features. The first definition focuses on removal of tariff and non-tariff barriers among economically integrated nations. The purpose of such activity as indicated in this definition is that to allow free movement of goods, services and capital. This definition is limited in scope it does not go beyond the level of common market. The second definition considers integration as a process. Besides, it takes initial prerequisites of geographic proximity as a necessary condition of economic integration. However, this definition contradicts with practice of states which have formed economic integration though they do not have geographic proximity. Asia-Pacific economic cooperation group goes beyond geographic proximity in which it comprises United States, Japan, Australia, Canada, South Korea, and China which are found in a different continent.<sup>5</sup>

The third definition underlines importance of economic integration in which it brings mutual benefit to member countries. This definition is a defective one which ignores the cost of integration. The fourth definition tries to explain the effect of economic integration. As Fantu noted, economic integration has to be created when member countries harmonized economic policies. The above stated definitions do not show the whole concept of regional economic integration. Rather they explain some aspects of economic integration.

Regional economic integration is a broad concept in which it goes beyond these narrow definitions. As will be discussed in detail manner in section 2.4 regional economic integration has at least six levels which have a peculiar nature in each level. Hence then, the definition of regional economic integration has to be depend on the level of integration. If member countries reached at establishment of the Free Trade Area, it has its own feature on the other hand, if member countries reached at the level of economic union, there are some specific indicators which used to evaluate whether economic union is achieved or not.

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5. R. Schaffer, B. Earle and F. Agusti, *International Business Law and Environment* (5<sup>th</sup> ed. 2002), P.12.

Therefore these definitions are limited in scope to show the whole concept of economic integration. However, we can define general aspects of regional economic integration by taking in to account the minimum elements of regional economic integration. Firstly, regional economic integration has to be formed, in most cases, among sovereign nations. Secondly, economic integration presupposes elimination of tariff and non-tariff barriers so as to encourage intra-community trade. Thirdly, though not claimed as absolute criteria; integration bases on geographic proximity. Fourthly, relative balance of economic development is required. Fifthly, economic integration is a process in which it has a peculiar nature in every level of integration.

### **2.1.2 Trade Liberalization**

The second point that deserves discussion is the concept of trade liberalization. This concept defined by scholars as follows. According to R.Schaffer and etal “trade liberalization refers to the efforts of government to reduce tariff and non tariff barriers to trade.”<sup>6</sup> In line to this definition, D.Cass defines trade liberalization “...opening of trade, capital, and financial markets by a variety of means including reduction of tariff, privatization and deregulation.”<sup>7</sup> The term trade liberalization also defined in the following manner:

*Removal or reduction in trade practices that thwart free flow of goods and services from one nation to another. It includes dismantling of tariff (such as duties, charges, and export sub sides)as well as non tariff barriers(such as licensing regulations, quotas, and arbitrarily standards).<sup>8</sup>*

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6. R.Shaffer, B.Earle and F.Agusti supra note 5, p.461.

7. D. Cass, *The Constitutionalization of the World Trade Organization: legitimacy, Democracy, and Community in International trading System (2005), P.62.*

8. Available at [http://www.business.dictionary.com/definition/ trade liberalization](http://www.business.dictionary.com/definition/trade liberalization) Accessed: 29/10/2009.n.p.

Trade liberalization according to the African development report defines it in a broad manner. This definition identifies three basic concepts. Accordingly, first liberalization of trade is a policy which removes all forms of trade barriers. Second, government has to be neutral from subsidizing or giving incentive to some sectors or goods produced in domestic market or imported, third it is a policy which replaces non tariff or administrative barriers with tariff.<sup>9</sup>

Trade liberalization can be defined in narrowly or broadly manner. If trade liberalization adhere only to reduction of tariff and non tariff barriers said to be a narrow form of trade liberalization. On the other hand, as indicated in the definition made by D. Cass and African Development Report, reduction of tariff and non-tariff barriers considered as one element and it goes to the extent of opening financial market. Hence, scope of trade liberalization in an integrated economy goes beyond the narrow definition; which comprises other additional elements when member countries reach at the highest level of economic union.

One may query whether REI has a difference with trade liberalization or not. Economic integration is a broad concept goes beyond the concepts of trade liberalization. REI calls for establishment of supra national institutions, harmonization of socio-economic policies, and formulating common policies other than trade issues likewise in agriculture, transport, communication and etc. When we see trade liberalization it is one of the initial prerequisites to test feasibility of regional economic integration. Hence then, trade liberalization is a necessary condition for the realization of regional economic integration. Therefore, REI comprises other than elements of trade liberalization such as security, infrastructure social policies like the right to residence and establishment.

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9. *African Development Report, Africa in the Global Trading System (2004), p. 138.*

## **2.2 Theoretical Perspectives of Regional Economic Integration**

Integration is a complicated process which lacks uniformity throughout the globe. When we look in to the practice of states no single theory is developed. Consequently, process of regional economic integration is a cumulative result of pragmatic movements of member nations and some formulated theories. Theory of integration has got attention among scholars by considering some models of integration. Never the less, there are still unsettled questions as to when and how member states should form economic integration? Which model of integration has got emphasis and why? What would be the best model to form irreversible economic integration? Addressing such questions would be beyond the scope of the study. Hence, the author limits its study to discuss succinctly only the basic theories of integration.

Theories of regional economic integration have flourished owing to the dynamic nature of integration. Nevertheless, as said above the study limited to discuss briefly only four basic theories. Namely: Functionalism, neo functionalism, neorealism, intergovernmentalism, and supra-nationalism. In this regard selection is made by considering relevancy of these theories to the case in point. The first theory of integration is functionalism. In the words of P. Craig and G. Deburca quoting J. long defines the theory of functionalism as follow:

*Functionalism starts from the premise that by promoting functional cooperation among states it may be possible to deter them from setting disputes over competition for scarce resources aggressively. The logic behind the approach is to prevent war not negatively keeping states apart but positively by engaging them in to cooperative ventures... to establish functionally specific agencies, initially in what were then seen as non-contentious area like welfare.<sup>10</sup>*

Main features of this theory is that it gives attention to « learning process, consensus building and functional specificity».<sup>11</sup>

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10. P. Craig and G. Deburca, *EU Law Text, Cases, and Materials (1998)*, P.5.

11. Ibid

This theory mainly focuses on sectoral integration in which institutions and political elite do not have meaningful role to speeding up the integration agenda.

The second theory of integration is neo functionalism. Basically theory of neo functionalism shares some features of theory of functionalism. According to P. Craig and G. Deburca, “neo-functionalists have a common starting point with functionalists in their attachment to the collective pursuit of mutually beneficial goals leading to enhanced economic prosperity”<sup>12</sup>. In the words of these writers the main difference between these two basic theories (functionalism and neofunctionalism) is on the role of key actors. In the case of neo functionalism economic and political elites not only take part to negotiate in the process but also become key players.<sup>13</sup>

G.Genna and T.Haroi explains the essential nature of neo functionalism in the following manner:

*... (N)eo functionalism posits that regional integration arises due to increasing technological, economic, and other complexities and problems that countries cannot longer effectively solve at the nation state level. According to this perspective, governments likely to enter cooperative arrangements in order to cope with various functional needs... once the political elite establishes a cooperative arrangement, the theory predicts that integration would become self perpetuating through a “spill over” process.<sup>14</sup>*

This theory mainly focuses on integrating low political sectors, *interalia*, trade as an example. Liberalization of trade with in regional economic communities leads to harmonization of overall economic policies. The concept of spill over underlines step by step change from a single sector to Custom Union trade liberalization and then to political union.

The third theory of integration is neo realism which emphasis on “distribution of power among states as a central factor influencing international out comes.”<sup>15</sup>

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12. Ibid

13. Ibid

14. G.Genna and T.Haroi *supra* note 2, P.5

15. Id. p.6

This theory presupposes when there is unequal gain from regional integration schemes it hampers the integration agenda.<sup>16</sup> Moreover, this theory makes plain that those who became losers of integration schemes expected to oppose the development.

Theory of realism associated with transfer of power to supra-national institutions. If member states have compatible preferences on their common interest, they can transfer power to centre peacefully to enhance regional economic integration.<sup>17</sup> This theory focuses mainly on identifying common interests which are suitable for effective integration.<sup>18</sup>

The fourth theory of integration is inter-governmentalism and supra national institutionalism based on the assumption that the role of states or supra-national institutions can make effective process of economic integration. This theory of inter-governmentalism "the central players are the national executives of the member states, who bargain to produce common policies."<sup>19</sup> According to this theory countries and their governments should take the lion share to speed up integration process. Jurisdiction to make decisions over specific policy domains within the territory comprised by member countries.<sup>20</sup>

On the other hand, the supranational institutionalism theory deals with empowering supra-national institutions with meaningful jurisdiction to make decisions over specific policy domains within territory comprised member countries. This proposition underlines the importance of transferring some portion of sovereignty to the supra-national institutions. In this case supra-national institutions have a mandate to decide on common interests of member states likewise a federal form of government.

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16. Ibid

17. Ibid

18. Ibid

19. A.Stone and W.Sandholl, *European Integration and Supra-national Governance (1997)*, available at <http://www.informaworld.com/...contentmdb=all~content=a778385803pdf>. Accessed: 25/11/2009, P.10-11.

20. Id, P, 11.

When reference is made to the theory of integration, they have one feature in common which is the existence of common interest which enshrined at the heart of each theory. Hence, trade liberalization can be a common interest that postulates economic interests as driving forces for regional integration. Sensitive questions asked at the beginning of this section related to economic integration. Scholars have never agreed on single model integration theory. Laursen concludes that though the European integration process was initially functional, over time it has been changed by expanding powers of the European parliament.<sup>21</sup> On the other hand, P.Schmitter summarizing the issue that “... no single theory ...” has the capability of describing the dynamic nature of integration.<sup>22</sup>

Integration is a process which takes a long period of time to reach at its apex (political union). These discussed theories have their own merits on the process of regional economic integration. Functionalism favours pragmatic way of integration without having strong supranational institutions. On the other hand, neo-functionalism focuses on selected sector integration among members' countries with active involvement of political actors.

This could be multi-face cooperation regarding to the geo-political situation of a given country. If trade is the possible way, it has to be selected. When we come to neorealism it adheres to distribution of power among nations lead to compatible preferences. Inter-governmentalism on the other hand emphasis on political decision of member countries as a tool for further integration where as supra- national institutionalists advocate on transferring some portion of sovereignty to enhance integration schemes.

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21. F.Laursen, *Theory and practice of Regional integration (2008)*, Vol.8 No.3 available at: <http://www6.miami.edu/eucenterpdf>. Accessed: 25/11/2009 P.17.

22. Schmitter, Philipe, *Neo-Neo-functionalism (2002)*, available at: <http://www.eui.eu/documents/.../...pdf> Accessed: 25/11/2007 p.39.

## 2.3 Rationales for Regional Economic Integrations

Regional economic integration has been introduced as a viable option for mutual economic development of member countries. In the words of Amponsah, rationale for economic integration is that it may lead to stronger economic growth, improve regional economic performance, it is a main incentive to gain greater access to market and it brings overall economic development.<sup>23</sup> By the same token, R.Carbaugh argues that regional trade arrangements has been the “prospect of enhanced economic growth, allows economies of large scale production, promote (encourage) specialization and learning by doing, attract foreign investment and promoting regional security.”<sup>24</sup>

It is believed economic integration changes economic out comes for the better. As A.Thirlwall explains it rightly, regional integration promotes larger political community, better alternative to consumers and creates sense of Compromise among member countries.<sup>25</sup>

In line with this argument, the rationale for regional integration outlined by UNECA as follows:“Scale of economies, competition, investment, knowledge sharing, development of infrastructure, political benefits to address peace and security and enhancing democratic and other human right values”.<sup>26</sup> Rationale for economic integration relates with its purpose in that it fulfils the trade theory of demand and supply in which countries do not produce adequate goods in the quantity they require; on the other hand, factors of production are not equally distributed throughout a given region.<sup>27</sup>

According to J. Daniels, rationale for the establishment of regional economic integration has been justified in a way that regional economic integration would be established on geographic proximity of nations.

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23. W.Amponash, *An Analytical and Empirical Trade policy Effects of regional Integration for Africa* (2002), P.17-18.

24. R.Carbaugh, *International Economics* (2004), P.266.

25. A.Thirlwall, *Trade, Trade liberalization and Economic growth; Theory and evidence* (2002), available at <http://www.afdb.org/fileadm....> Accessed: 15/09/2009, P.10.

26. United Nations Economic Commission For Africa: Main streaming regional integration at national level (2009), p.2

27. J. Harvey, *Intermediate economics* (1983), P.309.

The reasons for such integration is that the distance goods need to travel among such countries is short, consumers tastes seeming similar and a distribution channels can be established without problems in an adjacent countries, neighbouring nations may have a shared history and interests, and they may be more willing to coordinate their policies.<sup>28</sup>

According to these scholars, the whole idea behind regional economic integration is to enable member states to have vision of out ward looking rather than inward looking for their longer term effect.

#### **2.4 Types of Regional Trading Arrangements**

Regional trading arrangements take a diversity form of integration. The process of economic integration differs from one another based on the nature and purpose of integration. In most cases, regional economic integration arrangements recognizes preferential trade area, free trade area, customs union, common market, economic union and political union.<sup>29</sup> These six forms of integration have their own features.

*The first* type of integration presupposes application of lower tariffs to imports from members than imports produced by non-members. Moreover, member countries can establish their own tariff on imports from non-members. The second form of integration underlines free trade area, in which countries have no tariff barriers among themselves on imports from one another.

*The third* type is customs union which is an advanced type of integration that member nations impose common external tariff on non-members. It also favours transfer of some portion of sovereignty to a single customs administration.

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<sup>28</sup>. J. Daniels, *supra* note 3, P. 240.

<sup>29</sup>. R. Carbaugh note 22, P.266.

Common market has its peculiar nature in that it allows free movement of goods, capital and labour across national borders within the integrated territory.<sup>30</sup> Economic union characterized by market with integrated monetary and fiscal policies including a single currency within the union. The political union type of integration is the final and highest stage of integration that member countries need to be transferred their political power to the supra-national institutions.<sup>31</sup> At this level of integration, member countries may have unified executive, judiciary and parliament.<sup>32</sup> One may query whether or not the six forms of integration have been arranged in hierarchy or not. There is no hard and fast rule to this question because member countries at liberty to choose one of these forms of integration based on their political commitment.

However, in practice nations seem to favour launching integration process from the simplest form to the most complicated one, that is, starting from preferential trade area is the most common way to full scale regional economic integration.

**Tabel-1**

**Feature of regional integration arrangements <sup>33</sup>**

Type of arrangement	Free trade among members	Common commercial policy	Free factor mobility	Common monetary and fiscal policy	One government	
Preferential trade area	No	No	No	No	No	
Free trade area	Yes	No	No	No	No	
Customs union	Yes	Yes	No	No	No	
Common market	Yes	Yes	Yes	No	No	
Economic union	Yes	Yes	Yes	Yes	No	
Political union	Yes	Yes	Yes	Yes	Yes	

30. ECA Policy Research Report: Assessing Regional Integration in Africa I (2007), P.10.

31. Ibid

32. Ibid.

33. Ibid

## **2.5 The necessity and benefit of regional economic integration in Africa**

For many, Africa is a voiceless continent in the international arena because of internal and external factors. Among others, Africa though it has huge population and natural resources, has been marginalized. Hence then, it lacks a collective power to take an advantage in international trade. Though late, process of African economic integration has got special attention. The establishment of the African economic integration has been stated in the official documents of the African union and legal instruments. Under this section, we will briefly discuss the main reasons for the process of regional economic integration. Regional integration and cooperation in Africa is considered as a crucial strategy for development.<sup>34</sup> This broad statement gives a clue that economic integration is a core strategy for overall socio-economic development of the region.

As Amponsah pointed out “ regional trade integration tends to be viewed as an instrument for fostering diplomacy and regional stability”.<sup>35</sup> He states that the necessity for economic integration based on two basic advantages. Integration promotes and encourages close ties between or among Countries. Furthermore, integration secures stability. In this case, Amponsah further argued that trade among neighbouring countries create sense of trust among the people of those nations by increasing the stake that each nation has in the welfare of its neighbour.<sup>36</sup>

The necessity of regional economic integration in Africa according to ECA briefing paper, associated with its decisiveness to completely change the existing African economic situation.<sup>37</sup>

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34. ECA and Africa: Fifty years partnership (1958-2008), (2008), p.46.

35. Amponsah Supra Note 23, P.11.

36. Ibid

37. ECA: Regional Integration in Africa: Key issues and ECA briefing paper (2002), pp1-2.

It further argues economic integration is an essential condition for the transformation and growth of African economies as well as to be integrated with global economy; it promotes competitiveness within the continent, it also makes Africa part of the world economy and it addresses shared political problems of the continent.<sup>38</sup>

When one look this statement critically, it makes clear that integration results on economic development of the continent. It also creates efficiency in production and specialization based on the theory of comparative advantage. African countries can effectively produce goods with better exploration and use natural resources at their disposal.

It is believed regional economic integration makes African economy competitive, production increases in quantity and quality, factor mobility, harmonization of monetary and fiscal policy. Economic integration favours competition among industries and business while it forces some inefficient undertakings and industries to improve their system of doing business or to fade away. Moreover, competition gives choice to consumers and wider opportunities for domestic and foreign investment.

As M.Thandika and S. Charles make plain, Africa's economy is small in size, disadvantageous and such situation is a basic ground for adopting regional integration schemes.<sup>39</sup> Because small size economy faces difficulties to compete in the world economy. That is why integration inspires beyond the narrow issues of trade and intends to create a lager economic and political union that enable countries to negotiate collectively and more effectively in international trade forums. The economic integration process in Africa is a base line for the establishment of African political union.<sup>40</sup> In practice, Africa does not have effective experience of solving common political problems and fighting external threats. In this contest as Amponsah pointed out integration has an effect of solving common problems and promote political cooperation between members.<sup>41</sup>

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38. Ibid

39. M.Thandika and S. Charles;*African Voices of structural adjustment (2003), P.80.*

40. Ibid

41. Amponsah *supra* note 21, P. 17-18.

Evaluating the theory and practice of regional economic integration, necessity for regional integration in Africa has been driven from many justified grounds. Regional integration in Africa creates stronger economic growth and improved economic performance. Moreover, it enhances policy credibility in that collective action may influence all members to adhere to a common reform agenda.<sup>42</sup> It also motivates home grown and foreign investment, geographic proximity reduce transaction costs; and it helps to prevent conflicts.<sup>43</sup> The necessity of regional economic integration in Africa became an indispensable scheme in that nations should take integration as an important “economic survival strategy”<sup>44</sup> aimed at fighting marginalization from the global economy. African economic integration has been a necessary condition to economic development of the continent.

## **2.6 Arguments on African Economic Integration**

The process for African regional economic integration does not go without criticisms. In fact the challenges Africa encountered will be discussed in detail manner in chapter five Section 5.2. Here, general analysis is made briefly on few points. There are voices which opposing or doubting the process for Africa economic integration based on two main issues. Namely: the low socio-economic development of the continent and the selected model as well the relationship between regional economic integration and multilateralism.

The first point, which deserves discussion, focuses on importance of socio-economic development of the region to establish an integrated economy. Some argue, economic integration can only be effective in an advanced economy. Inline to this argument, Fantu questions the feasibility of African economic integration by examining the selected model which designed to suit advanced market economies, the AEC is a “Carbon Copy of the European Community does not take sufficient account of the actual, economic, political and cultural realities of the continent.”<sup>45</sup>

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42. Id, p.19

43. Ibid

44. African development forum III “Defining Priorities for regional integration” (2002), p.3.

45. Fantu, supra note 4, P.128.

He further argues economic integration cannot get far unless the participating countries deal effectively with their domestic economic, political and social problems.<sup>46</sup> Moreover, N.Chary Strengthening this argument identifying problems associated with process for economic integration in developing countries. According to him, negative integration or elimination of tariff and non-tariff trade barriers brings limited benefit to developing countries; on the other hand, member countries do not have capacity to finance projects or promoting positive integration.<sup>47</sup>

Besides, he states, developing countries face difficulties on setting priorities on development of industries, import substitution and protection of local industries.<sup>48</sup> The above discussion makes plain that unless some preconditions fulfilled regional economic integration cannot be effective.

The second point which relates to international and WTO obligations. The question here is whether regional economic integration is building blocks or stumbling blocks to a multilateral trading system or not? Almost all member countries to the AEC Treaty are at the same time members to the WTO. Member countries to the AEC/WTO face difficulties on the issue of harmonizing regional and international obligations. The relationship between regional integration and multilateralism is still ongoing argument.

To this end, M.Matushia and etal concludes the issue in the following manner:

*The relationship between RTA/FTA and WTO is complex. On the one hand, there is a conflict in principle between them in the sense that RTA/FTA are oriented toward preferential treatment of the participating parties while the WTO is designed to an international trading order in which the most important principle of non-discrimination.*<sup>49</sup>

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46. Ibid

47. N. Chary, *Elements of International business* (2006), P.160.

48. *Ibid*

49. M.Matushia, T.Shoenbaumanc and P. Mavroidis, *The World Trade Organization Law, practice and Policy* (2<sup>nd</sup> ed.2006), P.913.

The main idea of this proposition is that regional economic integration may have effect of discriminating international trade. This issue is not yet settled in a manner satisfying all interesting groups.

The author shares with those writers who argue on importance of regional economic integration. Moreover, the writer is opinion that arguments forwarded against African economic integration do not seem tenable. Firstly, it is clear that Africa is a developing country and faces some challenging problems. Nonetheless, challenges related to African economic integration are not inherent weakness of the continent. If member countries committed to solve such problems it is possible to overcome them. Economic development needs sound policies and harmonious efforts of member states. Conflict and instability in Africa can be solved peacefully if member countries committed to do so. Secondly, though member countries acted unilaterally to overcome challenges, socio-economic problems on the continent did not yet get solution. Unilateral actions of member countries in most cases did not bring tangible results. Hence then integration as an option comes in to picture to tackle common socio-economic problems.

Thirdly, despite the fact that currently the EU is economically advanced region, at its inception member countries were begun from small sectoral integration. In practice, EU member countries created a competitive economy, economies of scale and strong bargaining power in international arena. Besides, when we look the history of NAFTA, it became a large market and there is an increment on trade, investment and job opportunity. Fourthly, globalization is a driving force for cooperation and integration. African countries have shared values, common interests and problems so that forming an integrated economy enable them to rectify deep rooted continental socio-economic problems. Therefore, economic integration is achievable target and it is an essential tool to bring economic development and to solve common problems. Indeed, issue of multilateralism and regionalism needs somehow harmonization and further effort has to be employed to address the stated difficulties.

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## CHAPTER THREE

### MODELS OF REGIONAL ECONOMIC INTEGRATION: AN OVER VIEW

Theory of regional economic integration is closely related with the socio-economic situation of a particular region and its history. In this chapter the writer would examine among the bulky groupings some of the major models of integration which been exemplary success of integration in the contemporary international trade arrangements with much emphasis to the European Union.

#### 3.1 The European Union

Studies have consistently showed that the two world wars opened a new chapter and as result European leaders realized the need to establish supra national organization to speed up Europe's recovery and to bring political unity, as a result the ECSC was formed in 1951, EURATOM in 1951 and the EEC in 1958.<sup>1</sup> The ECSC was established to control the whole of the iron, steel and Coal resources of the six founder nations. Namely: France, West Germany, Italy, Holland, Belgium and Luxembourg as well as the Atomic Energy Community established with the sole purpose of peaceful use of Atomic Energy; the last organization EEC inspired to develop a common market between the founding six nations.<sup>2</sup> All the three communities have now been merged and established the European Union.<sup>3</sup>

The European Union from its inception up to current status have made a significant progress. When one looks briefly historic development, EU treaties were enacted to address actual problems. The Single European Act (SEA), which entered in to force on July1, 1985, considered as a major amendment to the founding treaties, which provides for the concept of European Union and deeper political cooperation as well as economic integration.<sup>4</sup>

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1. Harvery Jack and Erine Jowsey, *Modern Economics, Eighth edition, (2007) p.514-515.*

2. Ibid

3. Id. P.515.

4. G.Bermann, R.Goebel, W.Davey and E.Fox, *Cases and Materials on European Union Law (2<sup>nd</sup> ed. 2002), p.13.*

Moreover, this Treaty focuses mainly on realization of the internal market by identifying the problems of having multiplicity of national standards, eliminating all the remaining legal, technical and physical obstacles to the free movement of goods, persons, services and empowering the EU parliament's legislative power.<sup>5</sup> In December 1991 at Maastricht, the European Council reached at an agreement on the European Monetary Union.<sup>6</sup> The Maastricht Treaty further provides for institutional and procedural reforms.

The Treaty on European Union (TEU) came in to force 1, November 1993 which provides for expanding the competence of the communities by introducing two new pillars in addition to the European communities; namely: Common Foreign and Security Policy (CFSP) and cooperation in Justice and Home Affairs.<sup>7</sup> In addition, it amended the voting procedure to be majority vote; and elimination of all forms which have the effect of discriminating trade.<sup>8</sup>

The Treaty of Amsterdam came in to effect 1 May, 1999 mostly consists restructuring EU institutions, extend the objective of the union moving it away from inward looking of economic integration.<sup>9</sup> This treaty recognize the three pillars but the 2<sup>nd</sup> and third pillars cannot be challenged and brought before European Court of Justice.<sup>10</sup> The Treaty of Nice(TON) came in force on 1 February 2003, mainly focuses on reforming the institutions in preparation for the enlargement of membership of the communities.<sup>11</sup> Moreover, this Treaty underscores the importance of protecting fundamental rights in which if member countries breach treaty obligations, among other things, liberty democracy, respect for human rights, fundamental freedoms and rule of law it introduces suspension of membership by majority vote.<sup>12</sup>

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5. Id P.15.

6. Id P.13.

7. J. Fairhurst and V.Christopher, Law of the European Community, (fourth ed. 2003), p.13.

8. Id. P. 18.

9. Ibid

10. Ibid

11. Id.P.24.

12. Ibid

It further gives emphasis to security and defence cooperation among member countries and foster cooperation aimed at strengthening the objective of the union.

The European Union try to come up with new constitutional Treaty which named as Lisbon Treaty. As F.Laursen explains it rightly, "... the union needs a constitutional arrangement to create reliable commitments and legitimate governance."<sup>13</sup> The draft constitution Treaty also called a reform Treaty which includes the institutional innovations. The Lisbon Treaty is not yet came in to effect. It is on the process of ratification among member countries.

As J.Fairhurst and V.Christopher pointed out, the secret of European economic integration is associated with a desire "not to repeat mistakes made by the victorious powers" in inter-state war years, attempting at protecting national economies by tariff barriers were largely in effective, failure of League of Nations to avert war.<sup>14</sup> However, at its initial European countries were not at the same vision to establish the European family because countries like UK were reluctant due to its strong connection with common wealth.<sup>15</sup> P.Craing and G.Deburca make analysis on inception of EU integration and asserted in that development of European integration is closely related with security issues. They state: "most accounts of European integration begin with the aftermath of the Second World War, and with the desire to secure a lasting peace between European nations."<sup>16</sup> The ECSC was considered as a corner stone in that it laid down foundations for the establishment of common bases for economic solidarity with in the continents of Europe.<sup>17</sup>

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13. F.Laursen, *Theory and Practice of Regional Integration (2008)*, Vol.8 No.3 P. Available at <http://www6.miami.edu/eucenter...pdf>: Accessed: 25/11/2009 p.17.

14. J.Fairhurst and V.Christopher supra note 7.p.3.

15. Id.p.4.

16. P.Craig and G. Deburca, *EC Law Texts, cases, and Materials (1995)*, P.2.

17. Id. P.5

On the other hand, the EEC provides for the four freedoms of the common market i.e. free movement of goods, labour, business and capital.<sup>18</sup>

When one make analysis on inception, development and major achievements of the European economic integration, it could be clear that there are concrete reasons for the effective integration process. To begin with though it has been developed recently, EU has clear membership criteria for the new candidate or applicant country. This makes the EU a typical model of integration which is not a common criterion in any other regional economic arrangements. As P.Carbaugh pointed out:

*the criteria for EU membership require that the candidate countries has achieved stability of institutions, guaranteeing democracy, the rule of law, human rights and respect for protection of minorities; the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the union; and the ability to take on the obligation of membership, including adherence to the aims of political, economic, and monetary union.*<sup>19</sup>

This legal, economic and political criterion of membership has to be fulfilled by candidate countries to join the EU legal system. The accession (Copenhagen criteria) which was adopted in 1993 has become a key pre-requisite to apply member-ship in the EU. This accession procedure makes easy the process of harmonization of socio-economic policies among member nations and the applicant country.

The EU Treaties clearly demonstrate that the integration has been realized due to successful achievements of supra-national institutions. The EU has five principal institutions: the European Council, Council of Ministers, the Commission, the European Parliament, the Court of Justice.<sup>20</sup> Each organ of the EU is empowered with meaningful tasks to enhance the integration process and implement community Treaties. The EU commission is well

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18. Id.P.7

19. R.Carbaugh, *International Economics*, (2004), P.278.

20. N.Foster, (ed), *Black stone's EC Legislation 1999 -2000 (1999)*, P.4 Article 7(1)

organized and staffed with competent, independent commissioners to lead the overall functions of the community. Among others, the commission has the power to initiate legislation, to formulate general policies for the community as a whole, represent the EU on international transactions, “responsible for the functioning and development of the common market and is the ‘guardian’ of the EEC treaty”.<sup>21</sup>

The Council of Ministers comprises representatives of all member nations of every relevant Minister. Main function of the Council of Ministers is ensuring coordination of the overall economic policies of the union by rendering appropriate decisions. <sup>22</sup> The council of Ministers mainly focuses on national interests of each member nations. Another institution which has ultimate authority on the business of the European community is the European Council.

The European Council comprises the Heads of state or government of the member countries and president of the commission.<sup>23</sup> The European Council is one of the decisive institutions which play an indispensable role in realizing the vision of the community in to effect. In doing so, European Council passes a number of decisions. The European Council Performs its business for the development of the community by formulating policies which can play positive role to more integrate Europe with in and to act collectively for external relations with non member states.

The decision making and voting procedure of European Council is carefully articulated so as to respect the interest of every member states and the intra community. The largest member states do not have a free hand to impose their decision over small members as in serious cases unanimity or qualified majority is required which is at least 54 out of 76 votes are required to adopt a proposed agenda.<sup>24</sup>

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21. P.S.R.F, Mathijsen, *A Guide to European Community Law*, (5<sup>th</sup> ed. 1990) P. 52-53.

22. *Id.* P.44.

23. *Id.* P.35.

24. *Id.* P.37 EEC, Article 148(2): According to their size of population weighted as follows: Belgium 5, Denmark 3, Germany 10, Greece 5, Spain 8 France 10, Ireland 3, Italy 10, Luxembourg 2, Netherlands 5, Portugal 5, and United Kingdom 10, have votes respectively. This voting procedure revised when new member countries are recognized as a member. See sub Article (2) of Article 205 of the treaty establishing the European Community.

The European Union in cases of accession of new states, harmonization of tax legislation takes extra caution in the decisions. In fact, Treaty of European Union amended the voting procedure since 1993. The first European parliament had been delegates of their national parliaments. This was replaced with direct election of representatives to the parliaments it since 1979; pursuant to the decision of the Council in 1976.<sup>25</sup> “Members of European Parliament( MEPS) sit in the parliament according to political grouping, rather than according to nationality”.<sup>26</sup> This is to say parliament members who have been elected directly by universal suffrage from each member countries with the same political programme acts collectively.

The general role of the parliament can be summarized as legislative role supervisory role, participate on budgetary procedure and litigant role.<sup>27</sup> Comparing with other institutions of the union, though the parliament seems to have insignificant role, it has decisive role in creating federated and integrated Europe. It also introduces the system of check and balance among the European Union inter-governmental Supra institutions.

The European Court of Justice (ECJ) plays a central role in interpreting and applying the European Community Treaties. The Court consists one judge from each respective member states whose independence is beyond doubt.<sup>28</sup> Jurisdiction of the Court is explained in a broad manner in that it became an indispensable organ in entertaining cases that arise among members states and institutions, among institutions as well as private companies in realizing the implementation of Community law.<sup>29</sup> For many, the ECJ is considered as an effective institution of the European Union that “accelerated the cause of integration; giving flesh and substance of the treaties.”<sup>30</sup>

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25. P.Craig, and G.Deburca, *EU LAW, Text, Cases and Materials* (2<sup>nd</sup> ed.1998),P.67-69

26. Ibid

27. Id. P, 67-78.

28. P.Carig and G.Deburca *supra* note 15, P. 87.

29. P.S.R.F, P. Mathijsn and *Supra* note 21, P.71.

30. P.Carig and G.Deburca *supra* note, 15.P.79-87.

Elimination of tariff and non-tariff barriers within and establishing common external tariff of the continent made effective the system in realizing its integration. Free flow of goods has achieved a meaningful result by 'wealth creation in the community as a whole' and consumers had got choice.<sup>31</sup> However, this achievement was not without obstacles. In the early 1980, "The Community entered a period of Euro pessimism and Euro stagnation."<sup>32</sup> The process of economic integration in the form of trade liberalization can be only effective if only member states harmonize their economic policies and make continues assessment on the key challenges. In this regard, the European commission produced a "White Paper" to move forward the plan of completion of full market integration.<sup>33</sup>

The white paper was produced by the European Commission in June 1985 aimed at completing the internal market integration by removing physical, technical and fiscal barriers of trade.<sup>34</sup> Besides, the White Paper was considered as a blue print for the remarkably successful program so as achieve the Europe of 1992.<sup>35</sup> This document had get attention of political leaders. Accordingly as G.Bermann and etal noted: "the European Council decisively endorsed the white paper's program in Milan on June 28-29, 1985."<sup>36</sup> In practice the white paper had produced a dramatic success so much so in speeding up the integration scheme.<sup>37</sup> Hence, the white paper come up with legal and institutional reforms and as a result it achieved the intended target of moving forward the integration scheme.

For many, European economic integration is the cumulative effort of member states which have taken half a century. When one looks the inception of European economic integration, it based on two main justifications. According to P.Gray: Firstly, it would be more difficult for

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31. *Id* 15, P.549.

32. R.Goebel, W.Davey and E.Fox, *Cases and Materials on the European Union Law* (2<sup>nd</sup> ed. 2002), P. 540.

33. *Ibid*.

34. *Id*.p.35.

35. *Ibid*

36. *Ibid*.p.544.

37. *Id*.p.544.

countries to wage war on each other when their economy is interdependent; Secondly, the fear of relapse of war and failure of national economic strategy for development made the integration paramount.<sup>38</sup> European economic integration and its destination of political union is still ongoing process.

One may query why the European model of integration became successful. Needless to discuss a lot, among other things we can point out the major reasons. The first point that can be mentioned as a milestone is political Commitment of leaders of the continent. The second point, associated with policies formulating Treaties which can be implemented through supra-national institutions. European leaders have showed commitment to transfer their portion of sovereignty to supra-national institutions.

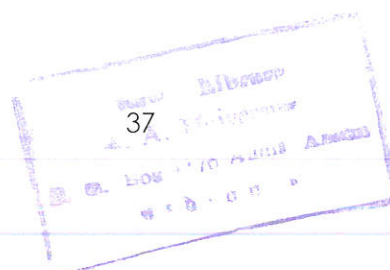
European institutions have well been organized and staffed with skilled and competent professionals. Treaties empowered the supranational institutions to play significant role on economic integration. The accession treaty is overarching instrument that enables member states to harmonize their socio-economic policies. Besides, it is a tool to bring harmonization of policies, stability and rationalization.

Harmonization and rationalization of economic policies is pre-requisite to regional economic integration. The continent of Europe has a good track-record in this situation that member states are committed on the philosophy of free market and democratic governance. Moreover, institutions of the union have meaningful power to pass decision against a violator member state. Therefore, it is suffice to say; a lesson can be drawn from the EU model of integration in that it is a successful model in putting clear criteria of member ship, establishing effective and independent institutions, has clear implementation mechanism, achieved economic growth by declaring four freedoms and has got powerful bargaining power throughout the globe. As P. Gray pointed out, the benefits of economic integration in the EEC results in increase in the size of the market for individual business, and enlargement of market size permits, increased competition.<sup>39</sup>

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38. P.Gray, *International Economic Problem and Politics* (1987), P. 238.

39. *Id.*P-240-241.



### **3.2 The Association of South East Asian Nations(ASEAN)**

The ASEAN was established in 1967 and consists of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam with a market size more than 500 million people.<sup>40</sup> The member countries showed their commitment to enhance cooperation in various areas like trade and through the ASEAN free trade area to cut off tariffs on all intra-zonal trade to a maximum of five percent by January 1, 2008.<sup>41</sup> According to N.Chary, evolution of the ASEAN can be viewed from two points of view. One this association was born with sole purpose of ensuring peace and stability in the region; second, it also has a mandate to fight the expansionist theory of communism.<sup>42</sup>

ASEAN has become ambitions to establish a single market (Asian Economic Community) by 2010.<sup>43</sup> the benefit of ASEAN regional economic integration has been controversial. Some argued, it has been Asian miracle. Nonetheless, there are strong arguments regarding to the achievement of ASEAN integration in that it is a loose integration, the region suffered with internal strife, terrorist organizations and insurgencies, member countries much stress on their sovereignty and finally the process of integration purely based only on the basis of tariff elimination.<sup>44</sup>

Moreover, this integration has criticized since member countries became reluctant in establishing close integration due to their trade relation is closely associated with exporting led economy to U.S.<sup>45</sup> If a regional integration established without setting achievable goals, wave for integration faces internal and external challenges. When one looks the ASEAN experience, it mixes the economic and political integration agenda.

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40. J. Daniels, *International Business environment and operations* (2004), P.256.

41. Ibid

42. N.Chary, *Elements of International Business* (2006), P.176.

43. *Id.P. 176*

44. *Id.P 177*

45. J. Daniels,*supra note 40, P.256.*

### **3.3 The North American Free Trade Agreement(NAFTA)**

NAFTA has been one of the successful regional integrations that brought socio-economic development of the region. This agreement comprises Canada, the United States and Mexico. This agreement came in to effect on January 1, 1994 with a basic objectives of creating market access, formulating trade rules, investment and dispute settlement mechanisms.<sup>46</sup> The type of integration of NAFTA is limited to create free trade area without having common external tariff against non-member countries.<sup>47</sup> Studies showed that impact of NAFTA on trade, investment and job has brought remarkable increment in United States, Canada and Mexico “have tripled their business dealings”<sup>48</sup> In this case Mexico is an example which exports in 1992 was \$49 billion where as 135.59 billion in 2000. This region has over 405 million populations that could be a large market of the region. As J.Daniels rightly put it, regional integration in North America “has a logical rationale, in terms of both geographic location and trading importance.”<sup>49</sup>

The agreement which establishes NAFTA provides for detail rules regarding the objective, time table to phase out tariff and non-tariff barriers, establishment of the free trade commission and secretariat, and safeguard measures.<sup>50</sup> These detail rules helps member countries to implement Treaty obligations. R.Schaffer and etal summarizing the origin and main objective of NAFTA in that it was formed to enhance trade and investment among the member countries which they have in common is that their economies is so much like.<sup>51</sup> However, the nature of trade arrangement among NAFTA member countries is a weak which is limited only to reduction or elimination of tariff and non-tariff barriers without having a common external tariff against non member countries.<sup>52</sup> By implication it can be said, this type of trade arrangement does not have strong supra national institution to represent their member nations in international trade negotiations including in the WTO forums.

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46. J. Daniels *supra* note 40, P. 250-251.

47. *Id.* P.251.

48. *Id.* P.252.

49. *Id.* P.250.

50. J. Jackson, W. Davey and A.Sykes, *Legal Problems of International Economic Relations, Cases Material and Text*, (3<sup>rd</sup> ed. 1995), P.489-491.

51. R. Schaffer, B.Earle and F.Agusti, *International Business Law and its Environment* (5<sup>th</sup> ed.2002), P.409-410.

52. *Id.* P.411

### 3.4 Historic evolution of African economic integration

The wave for regional economic integration in Africa trace back to the pre independence of the continent. In that period process of integration was mainly focused on the continuity of colonial ties. In the time of post independence of the continent, some countries had tried to continue their trade relations with their former colonizers in the name of common wealth. This had created two trading blocs within the continent.

In the post independence a number of attempts had been made to establish true African integration scheme that replace the colonial legacy. The basic questions that were raised in the process of economic integration can be summarized as follow: The first question is when did African leaders launch the integration process? Second, what type of model of integration was favoured? These crucial questions inspired researchers to find out the real intention of the founders of the integration scheme and to assess what is going on in practice. Understanding the intention of the framers of the integration scheme also helps us to evaluate policy justification and development of the integration process.

As P.Adogamhe asserted that since late 1950s, African Countries have experienced process of economic integration.<sup>53</sup> The process of African regional economic integration was initiated from the need for closer regional integration as a way to overcome fragmentation of the continent which has been a basic challenges to its development.<sup>54</sup>

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53. P.Adogamhe, *PAN- AFRICANISM Revisited: Vision and reality of African unity development* (2008), Vol.2 No 2 available at <http://www.africa-union.org...pdf> Accessed: 10/12/2009 P.2.

54. M. Ndulo, *African Economic Community and the Promotion of Intra-African Trade* (1992), available at <http://www.einudi.conrnell.edu/files...pdf>: Accessed: 5/12/209, P.1.

To this end, African states showed their commitment through various declarations. According to Naldi, the Monrovia, Liberia, in February 1979 Resolution AHG/ST.3 (XVI) Rev.1, of February 1979 and the Lagos Plan of Action of April 1980 clearly underscored the necessity of African Economic Integration to create environment which is conducive to encourage economic growth in Africa.<sup>55</sup>

At the inception of the process of African integration there were two activist groups with similar final purpose of integration but with different approaches. The Casablanca group which consisted of 5 countries advocated an immediate union of the African continent; whereas the Brazzaville group comprising 11 member countries stood for a gradualist approach.<sup>56</sup> The third group was the Monrovia group which consisted 19 African countries favours same which is gradualist approach as the Monrovia group.<sup>57</sup>

African integration process was dominated by two approaches of integration. Those who favoured immediate integration argued that a political integration is a pre-requisite to economic integration. According to the proponents of immediate integration, political union can create a conducive situation to economic integration. The other argued, the formulation of federation of African States or United States of African can only be realized through gradual process meaning that the formation of African federation or United States of Africa can only be realized through gradual process that is, step by step, first establishing economic integration and then political union. This approach further argues African economic integration has to be started from sub-regional Communities and Cultural co-operations. The issue of economic integration in Africa is still ongoing debate regarding to which approach has to be followed.

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55. G.Naldi, *The organization of African Unity Analysis of its role (1999)*, P. 240.

56. M.Genge, F.Komegay and S.Rule, *African Union and Pan-African parliament: working papers (2002)*, available at <http://www.unpan1.un.org/intradoc/...pdf>: Accessed: 12/10/2009, P.1.

57. Ibid

To summarize the historic evolution of African integration, the pre independence wave of integration was mainly targeted on continuity of the colonial trade arrangement ties. Even post independence African countries were more friendly with their former colonizers. Consequently, the process of economic integration using trade liberalization as a tool was stagnant. The attempt made after independence was not as effective as it was intended, *interalia*, the difference in the approach of integration. Moreover lack of clarity on the approach has created a dilemma among member countries. On top of that member countries were not committed to form an integrated economy. Despite such challenges, economic integration in Africa was initiated as a means to tackle African marginalization from the global economy and to motivate the weak or in effective economic development of the continent.

## **CHAPTER FOUR**

### **THE AEC TREATY**

#### **4.1 Back ground to the AEC Treaty**

Genesis of the AEC Treaty goes back to the long cumulative efforts of the process of African integration. This treaty makes clear that the founding fathers or framers of the AEC have had an aspiration of forming a unified Africa through sectoral integration such as trade liberalization. The preamble of the AEC treaty provides for a policy justifications of the newly emerged community.<sup>1</sup> Among others, the Treaty had taken in to account the principle of international law guiding relations between states, principles and objectives of the OAU Charter, the importance of utilising human and natural resources of the continent for the well being of African People.<sup>2</sup>

The AEC Treaty considers the historic legacy of backwardness of the African People, which have been visible obstacle for the future development of its people. It has under taken conscious and deliberate attempts of the countries for the implementation of integration schemes of the continent. In this regard, various resolutions and declarations of the OAU can be taken as a land mark for the economic integration process. Worth noting are all the declarations and decisions of the Assembly on establishment of African Economic Community was considered as a ground to achieve aim of the OAU.<sup>3</sup> Inception and development of African economic integration was not an overnight work and goes almost half a century back. The Monrovia Declaration which mainly focuses on formulating collective self-reliance in economic development as well as the establishment of African common market was taken in to account for the establishment of African Economic Community.

Similarly the Lagos Plan of Action (LPA) and Final Lagos Act (FLA)1980, taken as initial commitment of member states in order to foster, among other things, economic integration of the Continent.

The rationale behind the process of economic integration in Africa is an overall effort directed to put in place the aspiration and commitment of

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1. Treaty Establishing African Economic Community, Abuja, 3 June 1991, came in to force on 12 May, 1994.  
2. Ibid.  
3. Ibid.

African Countries so as to accelerate the formation of the African Economic Community. This is to be implemented through sectoral, sub-regional economic co-operation and then after full continental economic integration. The Abuja Treaty, which heralded the establishment of AEC, has to be considered as integral part of the OAU or its successor of AU. The AEC Treaty on its definitional part makes it plain that the African economic integration has to be launched from Sub-regional economic communities. Accordingly, the continent is divided in to five regions as per the decision of the Council of Ministers.<sup>4</sup> Nevertheless, in practice the OAU and its successor AU has acknowledged additional RECs like IGAD to act with the same purpose. The AEC Treaty provides limitations to establish a sub-region, a minimum of three (3) states are required.

#### **4.2 Economic Principles and Objectives of the AEC Treaty**

The AEC Treaty provides for fabulous economic principles and objectives to integrate African economy through a fixed period of time by phasing out tariff and non-tariff barriers. The AEC Treaty has been articulated in a manner that enables member countries abide by some principles.

Consequently, member countries affirm and declare their adherence to the following principles:

- “Solidarity and collective self-reliance,
- Promotion of harmonious development of economic activities among member states;
- Peaceful settlement of dispute among members states, active cooperation between neighbouring countries and promotion of a peaceful environment as a pre-requisite for economic development; and
- Accountability, economic justice and popular participation in development”<sup>5</sup>

These are novel concepts to Africa in that finding a common solution for common economic problems enables the continent to have strong bargaining power in international transactions.

4. Id, Article 1 (d) Resolution CM/Res.464 QCWI) divide the continent in to the following blocks: North Africa, West Africa, Central Africa, East Africa and Southern Africa.

5. Id. Article 3(b) (d) (f) (h).

These basic principles can only be realized if African states harmonize their economic policies and adhere to the rule of law. Avoiding dispute among member countries to the AEC Treaty is also a priority agenda of the integration schemes. Besides, development in any party of the continent is meaningless without affirming fair distribution of wealth and establishing responsible and accountable government.

Economic objective of the community is formulated in the treaty in a way that enables member countries to look the integration process in out ward looking with long effect of economic benefit. The reading of Article 4 of the Treaty makes it clear that the objectives will be implemented through a well defined means of integration schemes of economic, social and cultural spheres. As the focus of this thesis is the process of economic (trade) scheme of integration, the author's discussion is limited only to the economic sphere.

Hence, the objective of the economic community can be summarized:

- To encourage economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and promote an indigenous and self-sustained growth /development;
- To set up, on a continental scale a frame work for a development, mobilization and utilization of overall resources of the continent in order to achieve a self-reliant development;
- To encourage co-operation in all fields of human strive so as to raise the standard of living of African peoples, and preserve and enhance economic stability, promote close and peaceful relations among member states and contribute to the progress, development and the economic integration of Africa; and
- To coordinate and harmonize policies among existing and future regional economic communities in order to foster(encourage) the gradual establishment of the community.<sup>6</sup>

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6. Id, Article (1) (4).

The AEC Treaty provides broad economic principles and objectives of the community. Economic objectives of the community are part of the overall integration objectives of the community which focuses, *inter alia*, on intra-continent trade inter-link. The continent needs to be integrated in economic sectors to scale up its economic growth. This Treaty takes in to consideration the human and material resources of the continent as a means in making effective the integration schemes. Besides, member countries are obliged to create economic stability and close tie to implement the integration schemes. Africa lacks good track record in economic development. Hence, the Abuja Treaty gives an emphasis to the economic motto of self-reliant and the continent expected to achieve economic development. However, this cannot be effective without taking positive actions in the process of integration. The scheme of African economic integration is not mere trade liberalization. Rather it goes beyond and has a broad objective in creating economic justice and raising the standard of living of citizens of the member states.

Economic integration could not be an overnight effort. It takes a considerable period of time and effort in which African Countries may have them own unique socio-economic policies. This can be an obstacle in changing the integration vision in to reality. In this regard, the AEC Treaty is carefully crafted by considering the existing economic situation of the continent. Integration can be only effective through coordination and harmonization of policies. The very word coordination and harmonization of policies does not mean formulating identical economic policies among member countries. Rather member countries need to be cautious to make their system as much as possible similar. This has to be done through gradual process of integration.

### **4.3 Mechanism to implement economic principles and objectives**

Economic principles and objectives of the AEC are too general and need concerted effort of member countries to be realized up on the stipulated period of time. Hence, a means has to be designed to change the dream of integration in to reality by formulating concrete rules and detail implementation programmes. The question here is what the mechanisms to realize the integration schemes are.

The AEC Treaty provides for a means or mechanism for the attainment of the economic principles and objectives as follow:

- The integration process designed to be realized by strengthening the existing RECs and establishing other communities which do not exist;
- Agreements need to be concluded between the existing RECs and future sub-regional economic communities;
- Encouraging and strengthening of joint investment programmes in the production and trade of major products and inputs within the frame work of collective self-reliance;
- Trade liberalization is at the heart of the AEC Treaty in that abolition of tariff and non-tariff barriers among member countries on imports and exports, establishing a free trade area among regional economic community;
- The harmonization of national policies in order to encourage community activities, *interalia*, trade;
- The adoption of common trade policy against non-member states;
- The establishment of common market;
- Gradual removal of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment;
- Special emphasis has to be given to states categorized as least developing countries, land-locked, semi-land-locked and islands;
- The harmonization and rationalization of the activities of existing multinational institutions as well as transforming them in to supra-national institutions;

- Establishing other supra-national institutions to speed up trade liberalization, and
- Any other activity that member countries may decide to undertake commonly with a view to attaining the objective of the community.<sup>7</sup>

The main issues in point behind these mechanisms can be singled out as follows. Firstly, these mechanisms take in to consideration the importance of gradual realization of the continental economic integration. The AEC Treaty adopted an approach of integration which has to begin from sub-regional economic communities. This approach presumes that some groups of countries may have common interest and shared values. Effective accomplishment of sub-regional integration will be an input to establish a synergy or continental integration.

*The second point* formulated as a mechanism deals about facilitating the integration process that affirms state parties to the AEC Treaty urged to conclude agreements aimed at harmonizing and coordinating economic policies. Convergence of economic (trade) policies is a basic foundation to instigate process of regional economic integration. Regional economic communities are requested to launch joint investment programmes aimed at achieving collective self-reliance. Moreover, liberalization of Trade has been considered as a corner stone to create economic ties among regional economic communities. To this end, elimination of tariff and non-tariff barriers plays a significant role. In this level, member countries would establish a free trade area in their respective region.

*The third means* formulated under the AEC Treaty is the importance of harmonization of national policies, *inter alia*, in the field of trade is a key element. Trade among member countries would be too slow or impossible if member countries do not reach at an agreement on basic trade policies. Economic policy of respective regional states matters the market oriented transaction. Therefore, member countries should formulate a common trade

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7. *Id. Article 4(2) (a-p)*

policy against third states. Moreover, establishment and maintenance of a common external tariff and marching to the establishment of a common regional market need to be established orderly.

*The fourth means* posits the gradual removal of all obstacles of trade. Moreover, special treatment of some category of countries with in the RECs got has also got emphasis. The rationale of this means is that the cost and benefit of integration has to be calculated in a way that it distributes as much as possible equally among member states. Besides, regional institutions need to be empowered to implement the regional integration schemes. This would be effective through pooling sovereignty of member states to the supra-national institutions. Integration is a dynamic process which needs close follow up to produce vibrant economic development. In doing so, the AEC Treaty does not provide exhaustive list of mechanisms. Consequently, the AEC Treaty calls for further collective decisions of member countries as the matter requests to be made timely.

The AEC Treaty provides for under takings. This shows that member countries look carefully the integration process as a decisive matter for their economic survival. The general under takings associated with positive and negative obligations of member countries. Accordingly, member countries are under obligation to create favourable conditions for the development of the community and the attainment of its objectives.<sup>8</sup> Besides, member states should give special attention to the harmonization of strategies and policies. Member states urged not to take unilateral action which has the effect of hindering the attainment of economic objectives of the Treaty.

Member countries are also requested to take legislative measures to make effective the principles and objectives of the AEC Treaty.<sup>9</sup> Moreover, mainstreaming the integration agenda have got recognition.

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8. Id. Article 5(1&3).

9. Id. Article 5(2).

Member states obliged to take all necessary measures to ensure the legislative as well dissemination of such laws as may be necessary for the implementation of the provisions of the Treaty.<sup>10</sup> Another important issue which relates to the conduct of member states. In this regard, when a member state which persistently fails to adhere to its general undertakings under this Treaty or fails to adhere to the decisions or regulations of the community, may be subject to sanctions.<sup>11</sup>

When there is violation of Treaty obligations sanctions against a member state has to be taken by the Assembly up on the recommendation of the Council. Sanctions would be based on the degree of failure which could be extended up to suspension of the rights and privileges of membership which emanates from the Treaty. The AEC Treaty introduces a new concept which was not provided under the OAU charter. The Constitutive Act of African Union provides for imposition of sanctions in case where member countries failed to pay contribution or fail to comply with decisions and policies of the union.<sup>12</sup> Legally speaking, if applied properly, this provision can be a best mechanism to implement words and spirits of the AEC Treaty.

#### **4.4 AEC Institutions**

The Implementation of the AEC Treaty is dependent on the efficiency of the organs of the community. The practice of states that have successful economic integration affirms that institutions of the community play significant role in realizing economic integration schemes. The AEC Treaty provides for seven organs of the community. These are: The Assembly of Heads of State and Government; The Council of Ministers; The Pan-African Parliament; The Economic and Social Commission, the Court of Justice, The General Secretariat; and The Specialized Technical committess.<sup>13</sup> In This sub-section, the writer would analyze briefly the key functions of the organs of the community and their role in implementing the AEC Treaty.

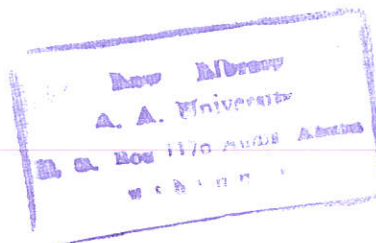
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10. Ibid

11. Id. Article 5(3)

12. Id. Article 23(2).

13. Supra note 1, Article 7(1).



### **a. The Assembly of Heads of State and Government(AHSG)**

The Assembly of Heads of State and Government is the highest organ of the community with an exclusive power to make any decision on the community matters.<sup>14</sup> The AHSG is a responsible organ for implementing the objective of the community through formulating policies and guidelines, harmonize economic policies of member countries. Moreover, it supervises the functioning of the community organs. It also has a power to set up important institutions and determine their organizational structures. Election and appointment of leaders of the organs of the community is vested on the AHSG. The Assembly up on the recommendation of the council, takes necessary decisions and give directives regarding the regional economic communities in order to ensure the achievement of the objective of the community.<sup>15</sup> The overall integration programmes, budget and the amount of the annual contribution of member countries has to be decided by the AHSG. Another important power of the AHSG is that when a member country fails to adhere to the Treaty obligations, it can refer the issue to the Court of Justice by an absolute majority vote.<sup>16</sup>

The AEC Treaty provides for AHSG frequency of meeting, decision making process, voting procedure and nature of decisions. Accordingly, member countries are obliged through their Assembly to hold meeting once a year in regular session.<sup>17</sup> Unlike the European Union considers population size in voting rights, the AEC Treaty and Rules of Procedure of the Assembly of the Union provides for " each member state shall have one(1) vote."<sup>18</sup> This can lead us to raise one important question in that what would be the implication when small countries entitled equal right of voting with countries having huge population.

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14. Id. Article 8(1 & 2).

15. Id. Article 8(h).

16. Id. Article 8(k).

17. Id. Article- 9(1).

18. Id. Article 26 (1) of the Rules of Procedure of the Assembly of the Union, Durban, July 2002.

The AEC Treaty advocates the adoption of decisions by consensus; failing that by a two-thirds majority of member countries.<sup>19</sup> This Treaty seems lenient compared to the European Council which requires unanimous vote on accession of new member ship and tax issues. When one view nature of decision made by the AHSG, they have binding effect on member states, organs of the community and RECs. Moreover, the Treaty provides a time frame work in which decisions of the Assembly shall be automatically enforceable thirty (30) days after the date of their signature by the Chair Person of the Assembly. However, the AEC Treaty does not provide a fixed time that obliges the chair person to put his signature after decision has given by the Assembly.

### **b. The Council Of Ministers**

The Council Of Ministers is among the key institutions of the community and plays an active role in passing decisions on issues of its competence and assisting the Assembly by making recommendations that help to attain the objectives of the community.<sup>20</sup> The council is vested with direct and delegated jurisdictions. The activities of the subordinate organs of the community are supervised by the Council. The Council of Ministers shall meet twice a year in ordinary session.

The decision making procedure of the council is similar to the Assembly and requires the vote of two-third of the members of the council.<sup>21</sup> The Council has a power to enact regulation. Effect of this regulation can be seen from two perspectives. When the Council renders decision on its delegated power its decision has binding effect up on member countries, sub ordinate organs of the community and regional communities. On the other hand, when the council enacts a regulation based on original jurisdiction, its decision has binding effect provided that it gets approval by the Assembly.<sup>22</sup> Council Of Ministers of the OAU/AU are at the same time acts as Council of Ministers of the AEC.

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19. Supra note 1, Article 10(2).

20. Id Article 11(1,2,& 3).

21. Id, Article 12(1).

22. Id, Article 13(2).

### **c. The Pan-African Parliament**

The framers of the AEC Treaty presume the importance of public participation as a decisive matter in the process of African economic integration. Though there are sensitive questions on representation, composition and functions of the PAP, it is a marvellous idea that PAP could create conducive environment for the effective integration process of the continent. To this end, the AEC Treaty provides for “in order to ensure that the people of Africa are fully involved in the economic development and integration of the continent, there shall be established a Pan-African Parliament.”<sup>23</sup> The AEC Treaty declared PAP establishment and detail issues left to be defined in a protocol.

The PAP has been formally established by the protocol relating to the establishment of the Pan-African Parliament.<sup>24</sup> The protocol has taken in to account previous efforts of the OAU on the process of economic integration and stipulates targets to this end. Amongst, the Sirte Declaration of 1999, which emphasis on the establishment of institutions, the importance of formulating a vision to provide platform to enhance grass root level participation and decision making on the problems and challenges facing Africa.<sup>25</sup>

Moreover, the Cairo Agenda for Action, which was endorsed by the Assembly of Heads of Government (June 1995 (AHG/Res.236 (XXXI) in Addis Ababa, underscores the necessity of speeding up the rationalization of the institutional framework so as to achieve economic integration at the regional level.<sup>26</sup> The PAP composition and election process is designed in the protocol from short and long time perspectives. In the short period of term, members of the PAP has to be elected or designated by the representative of national parliament or any other deliberative organ.<sup>27</sup>

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23. Id Article 14(2).

24. Protocol to the AEC Treaty relating to the PAP: available at <http://www.PaxAfrica.org/documents/resources/African-union...Pdf> Accessed: 12/12/2009

25. Id. supra note, 27.

26. Ibid.

27. Id. Art 5.

In the long run, the PAP members have to be elected by universal suffrage like the EU Parliament members.<sup>28</sup> Regarding to the function and powers of the PAP, in the long term it will evolve in to full legislative powers. Nevertheless, Currently the PAP has limited its power to consultative and advisory powers.<sup>29</sup> The basic objective of the PAP is to facilitate effective implementation of the policies and objectives of the AEC Treaty.<sup>30</sup> The PAP has also a significant role in that in creating people to people relationship, harmonizing economic policies of member countries and make recommend aimed at the achievement of the objective of AEC.<sup>31</sup> The protocol, which establishes the PAP, disregards size of population of member countries and all member states are represented by equal number of parliamentarians (each 5 member one women).<sup>32</sup>

This form of representation raises controversy from countries with large size of population. Another crucial issue associated with representation is that the PAP is expected to comprises the “representation of each state must reflect the diversity of political opinions in each national, parliament or other deliberative organ”.<sup>33</sup> This model of composition is a carbon copy of the EU parliament in which it seems unrealistic in Africa because currently in most countries there is no matured multi-party system.

#### **d. Court Of Justice**

Elimination of tariff and non-tariff barriers cannot be effective by the mere fact of signing treaties, protocols and related regulations. Rather, it needs effective, competent and independent Court Of Justice to interpret the provisions of the Treaty. Member Countries are expected to formulate common commercial policy and competition law. The AEC Treaty provides for trade liberalization as to be a land mark to facilitate integration of the continent. The rationale behind the establishment of the Court Of Justice is associated with changing the vision of integration schemes in to reality.

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28. Id. Article 2(3).

29. Id. Article 2(3).

30. Id. Article 3(1).

31. Id. Article 11(3&4).

32. Id. Article 4(1 & 2).

33. Id. Article 4(3).

Hence, one may query what roles given to the Court Of Justice. The AEC Treaty officially constitutes the ACJ of the community. The AEC Treaty provides for general functions and powers of the African Court of Justice. Main functions of the Court Of Justice is related to ensuring the adherence to law in the interpretation and application of the AEC Treaty.<sup>34</sup>

The Court has original and delegated power in which interpretation of the Treaty falls under the competence of the Court and the Assembly may confer on the Court of Justice the power to assume jurisdiction.<sup>35</sup> The Court of Justice would decide on cases brought by a member state, the Assembly, on the ground of the violation of the provision of this Treaty, or decision or regulation or on the grounds of lack of competence or abuse of powers by an organ or a member state.<sup>36</sup> Moreover, the Court Of Justice can render advisory opinion to the Assembly and the Council.

The AEC Treaty gives emphasis to the independence of the Court. Accordingly, the Court of Justice is expected to exercise its jurisdiction independently of the member states and other organs of the community.<sup>37</sup> Besides, decisions of the Court of Justice has a binding effect on member states and organs of the community.<sup>38</sup> The AEC Treaty empowered the Assembly to enact a protocol relating to the Court of Justice.<sup>39</sup> The Protocol of the Court of Justice of the African Union was adopted by the 2<sup>nd</sup> ordinary session of the Assembly of the Union in Maputo, 11 July 2003.<sup>40</sup>

This document makes clear that the Court of Justice has been established to attain objectives of the AEC/AU. It also provides for detail issues regarding to the establishment of the Court among others, composition of judges, qualification, election of judges of the Court, eligibility to submit cases, jurisdiction of the Court, and nature of decision and execution of judgement.<sup>41</sup>

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34. Supra note 1, Article 18(2).

35. Id. Article 18 (4).

36. Id. Article 18(3(a)).

37. Id. Article 18(5).

38. Id. Article-19

39. Id. Article – 20

40. Protocol of ACJ of AU at: <http://www.africa-union.org...pdf>, Accessed: 12/12/2009.

41. Protocol (ACJ) Article 2, 3, 4, 7, 18, 19 and 37.

Regarding to composition of judges it takes in to account the regional representation of member countries in which each region should be represented by no less than two judges. Judges of the Court obliged to be impartial and independent. This is a crucial issue in that trade competition could only be effective if member countries subject to the jurisdiction of the Court.

The AEC Treaty does not recognize the jurisdiction or standing of individual persons or Companies before the Court of Justice. The EU law entitled natural and legal persons to bring action before the EU Court of Justice.<sup>42</sup> In relation to the case in point, the EU Treaties organizes two levels of Courts the court of first instance and European Court of Justice.<sup>43</sup> Member countries under a duty to comply with decisions of the Court of Justice. Failure of compliance, the Court obliged to refer the matter to the Assembly. The Assembly may impose sanctions pursuant to the paragraph 2 of Article 23 of the Constitutive Act of African Union.

This statement seems permissive that the word 'may' makes it weak. Consequently, do African Countries Provide Strong legal framework to make effective the integration process?. This is unsettled issue questioned frequently by many pro-integration activities.

#### **e. Other Institutions**

The AEC Treaty provides for other institutions mandated to speed up the process of integration. Among others, the Economic and Social Commission, the General Secretariat and the Specialized Technical Committees can be named.<sup>44</sup> Composition, function and powers of these organs is stipulated in the Treaty. The Economic and Social Commission Comprises Ministers responsible for integration and is empowered to coordinate, harmonize, supervise and follow up the overall integration schemes.<sup>45</sup>

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42. P., Mathijsen, *A Guide to EU Law* (5<sup>th</sup> ed. 1990), p. 72.

43. Id. P. 96

44. Supra note 1, Article 7(1) (d), (f) (9).

45. Id. Article 16(a), (b).

Besides, it has a power to comment on preparation of international negotiation make a recommendations to the Assembly through the Council on the overall integration matters. The Economic and Social Commission empowered with a key function of preparing programmes, policies and strategies so as to speed up integration schemes. It also takes the mandate to follow up the Secretariat, examine reports and recommendations by holding once a year ordinary session. The General Secretariat of the AEC has the power to follow up implementation of integration schemes, promote development programmes, submit its report, prepare and service meetings and carrying out studies so as to achieve objectives of the AEC.<sup>46</sup> To this end, member states obliged to furnish country report and necessary information.

The AEC Treaty establishes seven (7) specialized Technical committees.<sup>47</sup> *Inter alia*, the committee on trade, customs and immigration matters can be cited. Respective committees with in its field of competence has a power to prepare projects and programmes, make supervision, follow-up and the evaluation of implementation of the decisions of the organs of the community, ensure the co-ordination and harmonization of projects and programmes, prepare reports and recommendation on the implementations of provisions of the Treaty.<sup>48</sup> These committees are established by expertise think tank persons. This provision has been criticized in which it misses crucial organ of legal affair committee that can play indispensable role in the process of integration.

#### **4.5 Modalities (Stages) for the establishment of the AEC**

The African Economic Integration is a process expected to be realized within six (6) stages or phases over 34 years. <sup>49</sup> The African integration Schemes has been launched from simple form of integration and would be developed

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46. Id. Article (22(2)).

47. Id. Article 25 (1).

48. Id. Article- 26(a-d)

49. Id. Article 6(1)

in to a complex integration schemes through pre-planned programmes. The modalities, as provided under the AEC Treaty, comprise initial steps of integration which have a positive impact on the schemes of integration. Under this section, the author outlines the grand schemes of integration in brief.

### **a. First Phase**

The AEC Treaty was ratified in 1991 and came in to effect in 1994. The first task of the community, as provided under the Treaty, is strengthening the existing economic communities and establishing economic communities in regions where they do not exist.<sup>50</sup>The AEC Treaty on its definitional part divided the continent in to five (5) regions. Consequently, every region shall establish a regional economic community to speed up the process of integration and strengthen the existing economic communities such as the SADC and the ECOWAS etc.<sup>51</sup> Strengthening the existing regional economic communities is meant empowering them to discharge their responsibility of realizing schemes of integration. Furthermore, RECs need to be capable in overall human and material resources to carry-out their mandate. After the adoption of the AEC Treaty, a number of regional economic communities have been established. The time frame allotted to such purpose was between May 1994 and May 1999 for five years. The AEC Treaty is conspicuous in that regional economic communities' coordination and harmonization of their activities considered as a mile stone to create integrated economy.<sup>52</sup>

### **b. Second Phase**

The second stage for the establishment of the AEC Treaty was expected to run from 1997-2007. In this stage, regional economic communities are obliged to produce concrete results. *Inter alia*, stabilizing tariff and non-tariff barriers, customs duties and internal taxes.<sup>53</sup> The rationale behind the second stage of integration is that member countries should refrain from adopting unilateral administrative regulations on revenue.

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50. Id. Article 6 (2) (a)

51. M.Ndulo, *African Economic Community and the Promotion of Intera-African Trade*, (1992), available at <http://www.einadu...pdf> Accessed: 10/12/2008, p.1.

52. Supra note, 28(1), (2).

53. Id. Article. 6(2) (b) (i).

Besides, in the second stage researches has to be conducted so as to determine the time table for the gradual removal of tariff and non-tariff barriers, to promote intra-community trade and for the gradual harmonization of Customs Duties in relation to non-member states.<sup>54</sup> Functional effort is also required in strengthening sectoral integration at the regional levels especially in the field of trade, agriculture, and finance, transport and communication, industry and energy.<sup>55</sup> This because sectoral integration is an effective mechanism to scale up the integration scheme in to other fields. This leads to formulate similar economic policies. Moreover, in this stage, member states should promote co-ordination and harmonization of programmes among the existing and future economic communities.<sup>56</sup>

### **c. Third Phase**

The third stage is a crucial level of integration which launches to change the vision of integration in to reality. To this end, there are clear indicators which help to make an assessment whether or not the process of trade liberalization is on the right track. This phase runs for 10 years and covers years 2007-2017. The third stage can be considered as a critical phase to change the core principles enshrined in the AEC Treaty in to practice and begin to achieve the target of common market. Accordingly, in this phase a Free Trade Area (FTA) has to be established on each RECs.<sup>57</sup>

In the third stage gradual removal of tariff and non-tariff barriers to intra-community trade will be launched. Furthermore, RECs should establish a customs union in which member countries obliged to impose common external tariffs on non-member states.<sup>58</sup> In this regard; wording of the AEC

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54. Ibid.

55. Id Article 6 (2) (b) (ii).

56. Id Article 6 (2) (b) (iii)

57. Id Article 6 2(c)

58. Ibid

Treaty makes it plain that at these level two basic features has to be accomplished. Firstly, member countries will have free trade area. Secondly, common external tariff against non-member countries will be adopted. Hence, every member countries of the RECs could have close trade tie and interdependence so as to facilitate schemes of integration.

#### **d. Fourth Phase**

The fourth phase of integration scheme is expected to be implemented within two years after the third phase completed. In this stage, two basic activities have to be done. The first, issue is related to co-ordination and harmonization of all trade barriers among various RECs.<sup>59</sup> This is to say tariff and non-tariff barriers will be formulated to have similar ties. Second, a custom union will be declared at the continental level.<sup>60</sup> African economic integration follows the functional integration approach in that effectiveness of the regional integration schemes has to be tested in regional level and then after to scale up in to continental level.

#### **e. Fifth Phase**

At this level the process of integration has continental image. It provides for progressive economic policies convergence among African Countries. A four (4) years time frame allotted for the adoption of common policy on various socio-economic sectors.<sup>61</sup> Furthermore, harmonization of monetary, financial, fiscal policies and the enforcement of the principle of free movement of persons as well as the rights of residence and establishment will be applied in this phase.

#### **f. Six Phase**

The final stage will be implemented within five (5) years. In this level economic principles and objectives of the AEC Treaty will be put in practice. The core activities which will be done in this stage are consolidation and

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59. The Id Article 6 (2) (d).

60. Ibid.

61. Id Article 6 (e).

strengthening of the structure of the African common market, through implementing the so called four freedoms, integration of all the sectors such as economic, political and cultural, establishment of a single continental market, Pan-African Economic and Monetary Union, a single African Central Bank and creation of a single African Currency, establishment of Pan-African Parliament and election of its members by continental universal suffrage.<sup>62</sup>

The AEC Treaty also provides for co-ordination and harmonization of programmes which already launched at regional levels, determining the structure of African multi- national enterprises in all sectors and setting up of the structure of the supra-national institutions of the community.<sup>63</sup> The overall implementation of the African integration process need to be supervised by the Assembly and the Council. Furthermore, the minimum period for full scale integration will be 2028 and maximum time frame 2034. However, this Treaty does not provide for solutions in case where programmes of integration failed to be accomplished as per the stipulated schedules.

#### **4.6 Customs Union and Liberalization of Trade**

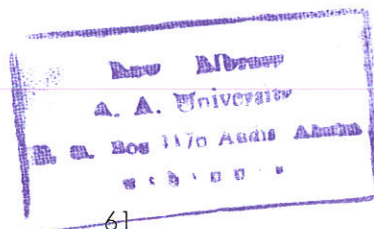
This section focuses on chapter five of the AEC Treaty which deals with concrete actions of the RECs. It provides how and when Customs Union will be established. The process of economic integration through Customs Union and trade liberalization could be effective if all forms of trade barriers are removed. In this regard, the AEC Treaty gives emphasis to the negative and positive obligation of member states. Tariff and non-tariff barriers as well as trade restrictions, which have equivalent effect have to be abolished.<sup>64</sup> Member Countries of regional economic communities urged to remove all forms of trade barriers in one hand, and to adopt a common external tariff.

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62. Id (f)

63. Ibid

64. Id. Article 29 (a)



#### **4.6.1 Elimination of tariff and non-tariff barriers**

Trade liberalization requires well established fiscal and monetary policies. As indicated in the AEC Treaty, in the second phase, member countries of the regional economic communities should refrain from establishing among themselves any new customs duties.<sup>65</sup> The reason behind this concept is clear that economic integration needs policy harmonization and convergence. Hence, if member countries in their respective region adopt new Customs duties, it could be an obstacle for realization of the integration plan. To this end, the AEC Treaty provides for stabilization process as an initial prerequisite for economic integration. Besides, member states of the RECs should refrain from complicating their trade relations while the integration scheme has officially been launched.

The AEC Treaty seems cautious on the process of reducing and finally eliminating customs duties among the regional economic communities. This task has to be done step by step with carefully planned programmes due to the fact that elimination of customs duties may have negative impact on the economy of member countries. The AEC Treaty then articulates the process be done progressively and finally eliminate the tariff. Indeed, all the RECs should act simultaneously in order to establish the economic union up on the fixed period. Furthermore, Co-ordination and harmonization of the REC programmes regard to elimination of customs duties among member countries needs effort of the Assembly and the Council.

Free movement of goods with in REC could be effective when quota restrictions removed. However, the AEC Treaty provides one condition in quota restriction in which origin of the product need to be from the same region of member state.

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<sup>65</sup>. Id Article 30(1).

Goods originating from one member state and cross border of another state within the same region do not subject to any restrictions. This could be effective within the scheduled modalities of third stage. By the end of the third stage, all quota restrictions and prohibitions and other administrative barriers which having equivalent effect on liberalization of trade be eliminated.<sup>66</sup> The AEC Treaty encourages elimination of all forms of trade barriers earlier than the time already stipulated. The AEC Treaty also calls for the enactment of detailed rules which governs restrictions, prohibitions, quota restrictions, dumping, subsidies and discriminatory practices.

#### **4.6.2 Establishing Common External Tariff**

If RECs reached at the level of Customs Union, it is common to have same common external customs tariff. The AEC Treaty provides for activities to be done step by step. Accordingly, in the third stage, member states of the RECs will agree to gradual establishment of a common external customs tariff applicable to goods originating from third states imported in to member countries.<sup>67</sup> Consequently, RECs are candidates to test feasibility of regional integration schemes.

The AEC Treaty also provides for harmonization of common external tariff among RECs at the fourth stage. This is to mean the customs union of COMESA has to be similar to the SADC. Besides, RECs are under a duty, to eliminate differences between their respective external Customs tariff.<sup>68</sup> Moreover, the Council of Ministers is duty bound at the fourth phase to set out a Customs Union at the continental level and then to propose a plan to the Assembly.<sup>69</sup>

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66. Id. Article 31(2).

67. Id. Article 32(1).

68. Id. Article 32(2).

69. Id. Article 32(3).

#### **4.6.3 System of Intra-Community trade**

The AEC Treaty provides for basic principles of free trade area. In this regard, the AEC Treaty provides for basic Treaty obligations. At the end of the third stage, all member countries of the RECs should refrain from imposing customs duties on goods originating in one member state and imported in to another member state.<sup>70</sup> Furthermore, this rule has to be applied in case where goods originating from third states which are in free Circulation of one member state and then imported to another member state.<sup>71</sup>

In the case of intra-community trade issue of originality of goods become a sensitive matter. Though the AEC Treaty provides for the adoption of protocols concerning "Rules of Origin", it is a difficult task to come up with precise definition. Throughout history rules of origin has been a challenging matter in that whether purpose of goods or similarities of goods has to be taken as a criterion. Nevertheless, whatever it's challenging nature, the AEC Treaty provides for the purpose of free circulation of goods Rules of Origin has to be formulated.<sup>72</sup> Besides, for the purpose of this Treaty, conditions has been provided under the same instrument to determine status of goods originating from third state where it is in free circulation of a member state by fulfilling all the stated requirements.<sup>73</sup> Moreover, member states of the RECs should refrain from enacting laws which have an effect of discrimination against identical or similar products originating from another member states.<sup>74</sup>

#### **4.6.4 Other Provisions of the AEC Treaty on trade liberalization**

The AEC Treaty provides for detailed rules which has to be applied in each RECs and then after at the continental level. The provisions which deal on integration underlines the importance of out ward looking for long lasting effect of economic integration.

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70. Id. Article 33(1)

71. Ibid

72. Id. Article 33 (2)

73. Id. Article 33(2)

74. Id. Article 33(4)

To this effect, the AEC Treaty advocates non-discrimination of similar goods produced locally and imported.<sup>75</sup> State parties to the AEC Treaty in the RECs should not levy internal taxes in excess of those levied on similar domestic products. Moreover, it calls for elimination of internal taxes levied for the protection of domestic production and should desist from renewing of bilateral or multi-lateral agreement which is already in practice.

The AEC Treaty tries to strike balance between smooth integration process and controlling bad conducts of member countries which results on unfair competition. To this end the AEC Treaty strictly prohibits the practice of dumping.<sup>76</sup> On the other hand; the most favoured nation treatment is at the heart of the Treaty in which member countries at the RECs prohibited to enter in to agreement that harms member states.<sup>77</sup> Besides, member countries should carry their Treaty obligation in that they should refrain from entering in to incompatible accords with their Treaty obligations.<sup>78</sup> Intra-community trade can be only successful when member states adhere to their Treaty Obligations which urges them to create smooth, predictable and flexible transit procedures. To this effect, the AEC Treaty calls up on member states to enact protocols on Re-export of goods, Customs Co-operation and administration, harmonizing trade documents and procedures.<sup>79</sup>

In order to attain economic objective of the community trade promotion has to be done. Accordingly, member states should create awareness among the African people to promote the motto “Buy African” products. To this end, the treaty gives emphasis to “promote the use of community’s local materials; intermediate goods and inputs, as well as finished products originating within the community”.<sup>80</sup> Moreover, forums will be arranged to promote African trade and creating net work among member countries. Besides, studies have to be done to know the actual demand and supply throughout the continent.

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75. Id. Article 34(1).

76. Id. Article 36(1).

77. Id. Article 37(1).

78. Id. Article 37(3).

79. Id. Article 38, 39, 40.

80. Id. Article 42(1) (a) (i)

The AEC Treaty provides for direction as to how to develop intra-community trade and with international trade. As far as the South-South trade relation concerned, promotion of the diversification of Africa's markets and the marketing of community products get priority.<sup>81</sup> Regarding to the North-South trade relation has to be led based on the principle of promoting better terms of trade for African Commodities and improves market access for community products.<sup>82</sup>

The Abuja Treaty underscores the importance of representing Africa's trade interest collectively. As clearly stipulated "Participate as a group in international negotiations with in the frame work of GATT and UNCTAD and other trade related negotiating fora".<sup>83</sup> This is an interesting proposition in which African Countries could have strong bargaining power to be beneficiary from the international trade arrangements.

#### **4.6.5 Scope and application of exceptions and safe guard clauses**

Economic integration has its own draw backs. There are arguments on the costs and benefits of trade liberalization. If member countries are not at the same level of development, it could be said there is no balancing economic development. When one review the practice of states on the application of exceptions and Safe guard rules, it lacks uniformity in understanding its scope. For many, under the guise of safe guard rules countries may use double standard to protect their domestic industry. The Abuja Treaty Provides for exceptions and safe guard clauses. Unless exceptions strictly construed, the whole idea of the objectives of integration become at stake. Hence then, strong supra-national institutions needed to implement the Abuja Treaty.

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81. Id. Article 42(1)(b) (i)

82. Id. Article 42(1)(c)(i)

83. Id. Article 42(c) (ii)

The exceptions and safe guard clauses provided under the Abuja Treaty are commonly known on international and regional trade arrangements. It can be said some of the concept are Carbon Copy of the GATT/WTO and EU Provisions. When we come to the basic provisions, member countries entitled to take necessary measures provided that they have to inform the secretariat of the community and member countries.<sup>84</sup> Grounds which are identified as a source to take safeguard measures are: ,*interalia*, application of security laws and regulations, control of arms, ammunitions and other military items and equipment, protection of human, animal, plant health or life or public morality, strategic minerals and precious stones, protection of national treasures of artistic or archaeological value or the protection of industrial, commercial and intellectual property, control of dangerous materials, protection of infant industries, control of strategic products.<sup>85</sup>

The Abuja Treaty tries to formulate concrete grounds to take safe guard measures. On wording of this Treaty safe guard measures should not be a means for discrimination or a disguised restriction of trade between member states.<sup>86</sup> some argue, exceptions and safe guard clauses are temporary in nature and needs unequivocal rules. In this regard, the Abuja Treaty empowered the Council of Ministers to report to the Assembly in order appropriate measures to be taken. However, intra-community trade arrangement needs daily follow up and well staffed institutions. Moreover, the Assembly and Council hold meeting in most cases in every six month or beyond. Consequently this could be an obstacle to take necessary measures against a violator member state. Besides, it needs technical knowledge. Member countries not yet provide detail criteria on these broad concepts as to how to be construed. Accordingly, application of safe guard clauses without somehow objective criteria will have negative effects that will create frustration on the African integration process.

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84. Id.Article-35(1)

85. Ibid

86. Id. Article 33(2)

## **CHAPTER FIVE**

### **IMPLEMENTATION OF TRADE LIBERALIZATION IN THE AEC: CHALLENGES AND PROSPECTS**

The process of African economic integration has been started in a formulated manner after the adoption of the AEC Treaty. The AEC Treaty provides for a step by step process of integration. In this section the author would discuss achievements, key challenges and prospects.

#### **5.1 Assessment of implementation of trade liberalization in the AEC**

Trade liberalization in the AEC Treaty is considered as key mechanism to speed up the economic integration of the continent. The first issue that need to be discussed is then, whether or not the modalities have been implemented as per the stipulated time frame in the AEC Treaty. The AEC Treaty, provides for clear schedules for the economic integration. These schedules and activities are associated with strengthening the existing RECs and establishing RECs where they do not exist, stabilization of tariff and non-tariff barriers, gradual harmonization of customs duties, sectoral integration at the regional and continental level, establishment of free trade area, equal treatment of goods and refrain from escalating the existing bilateral, trade agreements between member countries.

The modalities designed to facilitate the establishment of the community under the Treaty provides for six stages. The AEC Treaty provisions make it plain that the six phases are divided in to two main categories. The first category (1-3) stages, expected to be completed from 1994-2017, which focuses on co-ordination and harmonization of integration process with in the RECs as the Treaty considers the RECs as building blocks for the establishment of the AEC. The second category expected to be accomplished between 2019-2034, deals with the overall integration process at the continental level. In this regard, the second stage is expected to take experience from the RECs to scale up the integration process in to African common market. Both categories have listed down indicators to measure the

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development of integration. This section focuses mainly on the first category.

The AEC Treaty provides for the establishment of RECs where they do not exist. To this end, eight RECs namely COMESA, EAC, SADC, ECOWAS, UMA, ECCAS, CEN-SAD and IGAD nominated as building blocks of the African Economic Community. In fact some RECs were established before the ratification of the Abuja Treaty. These eight RECs which are considered as building blocks in practice did not adhere to the AEC Treaty in their geographical configuration. If reference made to some RECs like COMESA whose 20 member countries include seven countries of Southern Africa, two countries from central African and East African countries. CEN-SAD, which is its 18 member countries are found in East, West, Central, and Southern Africa.<sup>1</sup>

RECs in practice did not adhere to the division made by the AEC Treaty. To this extent, some countries became a member of RECs out of their geographical location. This is clear when one looks the CEN-SAD, it comprises the North African Countries including Eritrea from East as well as COMESA encompass some countries from Southern Africa, East and Central Africa.

The AEC Treaty does not provide for maximum or minimum number of RECs in every region of the continent. Moreover, whether or not the division made by the OAU Council of Ministers which divided Africa in to five regions has binding effect not to join other RECs is unsettled question. Nevertheless, when one makes reference to the AEC Treaty, member countries seems to be obliged to adhere to only one region. In other words, the reason why RECs are considered as building blocks in the process of integration closely related with their geographic proximity, socio-economic relation of every neighbouring countries.

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1. UN ECA, *Assessing Regional Integration in Africa I* (2006), p.28.

In practice there are six RECs which are not recognized by AU, in addition to the eight building blocks. These are, CEMAC, established by a group of six countries, CEPGL, comprising 3 members of ECCAS, IOC, made up of 4 members of COMESA, MRU, Consisting 3 members of ECOWAS, SACU, comprising 5 members of SADC and UEMOA, made up of 8 member of ECOWAS.<sup>2</sup>

Assessing practice of the eight RECs in the light of the main activities of the first phase of integration, one can conclude that in every region regional economic communities have been established. There are eight regional groupings aimed at realizing the AEC Treaty. However, at this stage, member countries are expected to strengthen the RECs. This proposition seems to be so general in that what does it mean by strengthening? Nonetheless, referring to the AEC Treaty makes plain that economic principles and objectives of the same Treaty will be implemented through well staffed empowered supra-regional institutions. To this extent, though some RECs have entitled meaningful power, RECs are not strong enough to take necessary measure to realize the integration schemes.

The UNECA and AU have made assessments on the level of integration in the RECs. The UNECA has made three assessments. The first assessment was made in 2004, the second in 2006 and the third in 2008. These evaluations examine the status of integration process in the light of the AEC Treaty modalities. The assessment made in 2004 explains that average intra-Africa trade is 8.4 percent.<sup>3</sup> In relation to this the study reveals that elimination of tariff barriers within the RECs is not as effective as intended except in the EAC which cuts up to 90%.<sup>4</sup> Moreover, non-tariff barriers are bottle necks in intra-Africa trade in which there are a number of official check points between member countries.<sup>5</sup> By implication, if member countries establish a number of check points within their sovereignty it can be obstacle to free flow of goods. Besides, cost of business transaction becomes very high.

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2. *Ibid*

3. Id.P.84.

4. Id.P.85.

5. Id.P.87.

The third assessment obvious describes the importance of trade liberalization to realize the integration schemes. However, the status of import and export within the RECs is poor compared with the internal trade in Europe and Asia.<sup>6</sup> Though RECs have geographical proximity, African countries establish close tie with EU.<sup>7</sup> The intra-community trade is poor in that African countries have more tie with other nations. This happened due to major factors. Among others, African countries produce primary goods; and lack diversified goods, poor physical integration as well the influence of colonial ties. The following data elaborate the intra community trade.

**Table-2**

**Growth rate of trade (%) average between 2000 and 2007.<sup>8</sup>**

RECs	Intra-REC Trade		Intra-African		Trade with rest of the world	
	<u>Exports</u>	<u>Imports</u>	<u>Exports</u>	<u>Imports</u>	<u>Exports</u>	<u>Imports</u>
CEMAC	18	17	16	16	20	20
CEN-SAD	17	18	19	20	16	16
CEPGL	17	17	51	26	9	-3
COMESA	13	15	19	17	19	19
EAC	14	23	16	20	15	12
ECCAS	13	12	38	18	23	24
ECOWAS	17	19	17	18	13	13
IGAD	14	18	17	22	22	21
IOC	13	23	14	10	6	5
MRU	8	13	55	15	19	21
SADC	16	19	16	20	14	13
UEMOA	15	17	16	14	11	14
UMA	17	17	25	25	16	16
<b>Average</b>	<b>15</b>	<b>18</b>	<b>25</b>	<b>19</b>	<b>16</b>	<b>15</b>

This data makes it clear that trade among RECs is not strong enough. Rather trade among intra-Africa is relatively good compared to the RECs.

6. UNECA Assessing Regional Integration in Africa III (2008) P.35.

7. Ibid.

8. UNECA, Developments intra-African Trade (2009). P. 8.

Therefore, trade among member countries of RECs has to be developed to scale up the integration scheme. Moreover, this calls for harmonization of economic and market spaces across the RECs so as to create a larger market in Africa.<sup>9</sup> When this is compared with the intra community trade among European, South and Central America and Asia it is too low. Compare the following chart.<sup>10</sup>

**Tbale-3**

Intra-Africa trade export	Intra- Europe	Intra South and Central America	Asia
9.8 percent-8.9 percent in 2000 and 2005	72.7 percent in 2001 and 73.2 percent in 2005 for Europe's export trade and 66.8 percent and 66.7 percent respectively among the 25 countries of European Union	51.2 percent in 2005.	24.3 percent in 2005.

This data shows the actual intra community trade and leads to a conclusion Africa ranked last in its intra community trade performance. This is a clear indication in that without producing concrete result, realization of the AEC Treaty appears to be impossible. Therefore, member countries need to be strengthened intra-Africa trade to implement objectives of the Abuja Treaty.

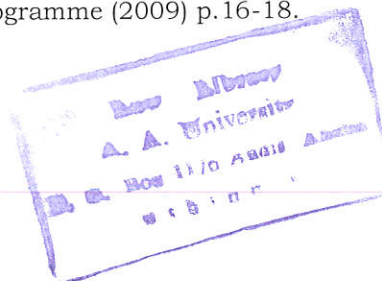
On the other hand, assessment made by the AU in 2009, shows status of the regional integration process. According to the AU report, ECOWAS, COMESA, ECCAS, and SADC has reached the stage of the free trade zone.<sup>11</sup> when we look this level in the light of the AEC Treaty, these RECs have reached at the level of third phase which was designed to be accomplished between 2007 -2017. Indeed, there is one REC which is a head of free trade area. In this regard the EAC is the only community to have reached the stage of a Customs Union level.<sup>12</sup>

9. Ibid

10. UN ECA: Assessing Integration in Africa III (2008) P.34.

11. Africa Union, Minimum Integration Programme (2009) p.16-18.

12. Id. P. 21.



Contrary to the practice of other RECs; IGAD is behind the stipulated modalities, which is not yet reached at the level of Free Trade Area.<sup>13</sup> The assessment made by the AU concludes that if the time table for integration of the RECs is viewed in the light of the Abuja Treaty, “it is seen that except IGAD and CEN-SAD, the other communities are in a distinct advance in relation to the date envisaged by the Treaty for the creation of a Customs Union in every RECs by the 2017.”<sup>14</sup> In fact, when one look the development of African integration pursuant to the Sirte Declaration of 9-9-1999 which decided to accelerate the establishment of the AEC by shortening the implementation period, the status of integration of RECs is not as much as satisfactory.<sup>15</sup>

## **5.2 Challenges of the implementation of trade liberalization**

Economic integration in the form of trade liberalization requires strong commitment of states parties. The major challenges and impediments in establishing effective economic integration are thus, analysed in the light of member states commitment and practice. In this section the author would discuss the challenges that directly impede the implementation of the AEC Treaty as per the stipulated frame work.

### **5.2.1 Political Challenges**

Any integration process, whether inspired by economic or political strategy, needs popular participation and rules for transfer of sovereignty in to supra-national institutions. Member states have to be refrained from hindering the process of integration and in case where if there is violation of the accord an effective supra-national institution is needed to pass binding decision. Political and legal challenges are inseparable issues in integration process. In this context, establishing an irreversible integration depends on solving political and legal challenges.

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13. Id. P. 20.

14. Id. P. 22.

15. Available at, [www.http://en.wikissource.org/wiki/Sirte\\_Declaration](http://en.wikissource.org/wiki/Sirte_Declaration) Accessed:15/12/2009

### **5.2.1.1 Lack of Political Commitment**

Political challenges of the implementation of trade liberalization have many facets. Economic integration requires coordinated and harmonized national policies and this in turn, demands transfer of power to supra national institutions. In practice, economic nationalism and jealously guarded sovereignty become obstacles. The African economic integration is arguably a top down scheme of integration and in line to this argument P. Adogamhe classifies the African integration as an "elite-driven", <sup>16</sup> which lacks public participation. Consequently, such integration that lack popular participation, private sector and civic society involvement has limited success.

It is possible to conclude that in the African integration process, there are missed elements which have significant effect in the integration agenda, *interalia*, lack of accession criteria, mainstreaming, and public participation. As Fantu puts it rightly, "regionalism cannot be a good substitute for poor national economic management."<sup>17</sup> According to this proposition, member countries need to formulate sound policies which help to speed up the integration scheme.

The main challenge in the process of African economic integration is the unwillingness of states to give up their sovereignty to supra national institutions.<sup>18</sup> In line to this proposition G.Naldi argues that "the traditional emphasis on sovereignty and domestic jurisdiction by African states is bound to be problematic."<sup>19</sup> D.Olowu and G.Nadi agree in this issue in that African states jealously guarded their sovereignty and domestic jurisdiction. Why member countries become reluctant to surrender their portion of sovereignty to the RECs is a basic question.

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16. P.Adogamhe, *Pan Africanism Revisited: Vision and Reality of Africa Unity and development (2008)*, Vol.2 No.2, available at <http://www.africa-union.org/root.pdf>: Accessed: 20/10/2009, P.21.

17. Fantu Cheru, *African Renaissance (2002)*, P.128.

18. D.Olowu, *Regional Integration, Development, and the African Union Agenda: Challenges, gaps, and opportunities (2003)*, available at <http://web2.westlaw.com/result/document text>: Accessed: 27/08/2009 p.9.

19. G.Naldi, *The organization of African Unity (2<sup>nd</sup> ed.1999)*, P.248.

General public participation is a prerequisite to make effective regional integration. Top down model of integration is against mainstreaming and bottom up integration agenda. In Africa, member countries fail to make the integration agenda as a public concern and mandate of their respective parliament.<sup>20</sup> The African model of integration articulated in a manner to start from RECs and Scaling up in to continental level. In practice member countries did not consult their people on the benefits and costs of integration. Besides, though integrations need implementation mechanisms, national parliaments have little knowledge about the merits of such programmes. As a result, effective system may not be in place.

The ECA made a review on this challenge and concluded that political will of member states was not adequately translated in to action. The inaction and lack of political will of member states is reflected in:

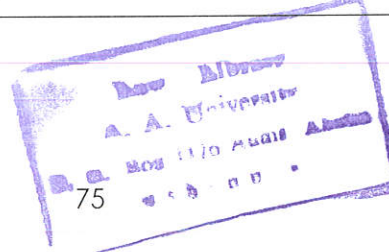
- “In adequate internalization of agreed integration objectives at the national level,
- Reluctance to cede national sovereignty to regional economic communities, leaving them without supra-national authority to enforce decisions; and
- Lack of broad-based understanding and support for integration at the national level, with civil society largely spectator and integration issues are limited to parliamentary discourse and debate”<sup>21</sup>

### **5.2.1.2 Instability and Conflicts**

Regional economic integration can only be effective in a peaceful environment. Needless to say most African countries have no good track record in maintaining peace and stability. Most African countries has been facing protracted inter and intra state conflicts. Instability and conflicts are one of the main challenges of the continent and has become obstacle to build confidence among the people of member countries.

20. DOlwlu, *supra* note 18, p.10.

21. UNECA *supra* note 1, p. 59.



In this respect, the Africa Union Directory of 2002 states that conflict is one of the cause for failure of member states to implement Abuja Treaty obligations.<sup>22</sup> In deed conflict and instability are not inherent weakness of the continent. Rather, they are human made problems due to lack of good governance, poverty and colonial legacies. The cost of instability and conflict is beyond expectation of every human being. It is a zero sum game which hinders development. According to Assistant Secretary General of OAU J.Makhan, Africa witnessed a serious instability and conflict which is between 1960-1993 saw not less than 24 fully fledged wars and consequently war discouraged investment, destruction of physical infrastructure, distribution of economic activities displacement of people and the collapse of civic societies.<sup>23</sup>

Impact of conflict and instability also explained rightly by D.Ghai in that Africa witnessed civil wars and prolonged violence and as a result aggravated the economic problems of the continent.<sup>24</sup> In the words of this writer, protracted civil war and violence has direct effect with economic development.

P.Adogamhe states nature of intra state conflict. According to him: “[D]omestic squabbles and *interalia*, ethno-religious conflicts are not just confined within the state borders but have also spilled-over to the neighbouring countries, they are exacerbating the general security threats to the African states-system either as a whole as well as its constituent parts.”<sup>25</sup>

Lastly S.Sako summarizes the reason why integration was not successful in Africa and its costs in the following manner:

*The integration process on the continent is ...constrained by the high incidence of conflicts among member countries. Conflicts hinder integration and development by curtailing economic activities destroying infrastructure and constituting a serious barrier to the flow of trade and investment.*<sup>26</sup>

22. The African Union Directory 1<sup>st</sup> heads of State summit “the path of integration sectoral overview”(2002), P.32.

23. J.Makhan, *Policy consensus strategy Vacuum: A Pan African vision for the 21<sup>st</sup> Century* (1999), P.49-50.

24. D.Ghai, (ed.) *Reviewing Social Economic Progress in Africa* (2000), P.7.

25. P.Adogamhe, *supra* note 16 p.21.

26. S.Sako, *Challenges Facing Africa's Regional Economic Communities in Capacity building* (2006), available at: <http://www/len.cd.com.../9.challenges%20facing...pdf> Accessed: 27/12/2009, p.12.

Assessment made by UN ECA on the process of integration made it clear that wide spread conflict and political instability hinders the process of integration scheme. According to the study;“Cross-border and civil conflicts remain a tragic reality or constant threat in many parties of Africa, the result of weak democratic institutions, poor economic performance, and a lack of political and civil rights.”<sup>27</sup> Besides, this evaluation underlines the impact of conflict and political instability in the continent which weakens socio-economic development, destroy physical infrastructure and human resources, discouraging public spending on output enhancing activities, motivating people to move asset out of the country.<sup>28</sup>

### **5.2.2 Legal Challenges**

The African integration scheme faces a number of challenges which has the effect of hindering realization of the designed implementation of the Abuja Treaty. Under this section the writer would discuss the major Legal Challenges.

#### **5.2.2.1 Multi-adherence to Several RECs and Other institutions**

States parties to the AEC Treaty are became members of different groupings. These groupings can be categorized as continental and international. There is overlapping of membership in which African countries become member on more than two RECs. Besides, some states parties to the AEC Treaty are also members of various international and regional organizations among others things, membership to WTO, OPEC, and AL.

The crucial issue here is to what extent such arrangement affects the implementation of their treaty obligations. To put it simply, what would be the implication of adhering to multiple of RECs and other institutions in terms of implementing treaty obligations, convergence of policies and strengthening institutions?

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27. UN ECA, supra note 1, P.20.

28. Ibid

The AEC Treaty recognizes RECs as building blocks rather than stumbling blocks. However, in practice member states joined more than two RECs and overlapping of membership had been created. According to the second assessment made by ECA the status of regional integration asserted that 95 percent of member states of the RECs belong to two and more community.<sup>29</sup> When one critically look magnitude of the problem, it is clear that overlapping of membership is a key impediment in that of the 53 African countries 26 countries are members of to two RECs, 20 countries become member to three RECs, one member state belong to four and only six countries maintain members ship in just to one REC.<sup>30</sup>

In line to this proposition, African countries enter in to international agreements which can make difficult implementation of Treaty obligations. In this regard P.Kimunguyi states degree of the problem in case the allocation of production quotas by OPEC members which has adverse effects on the price of crude oil on the economies of non-OPEC African countries and such activities hinders the integration process in one hand, as well as, it could be source of conflict in the OPEC and non-OPEC African countries party to the AEC Treaty.<sup>31</sup>

Member countries may join different RECs for various reasons. According to the study made by UN ECA, two basic reasons stated. These are political and strategic reason and economic interest.<sup>32</sup>

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29. UNECA, *Assessing Regional Integration in Africa II: Rationalizing Regional Economic Communities* (2006), P.XVii.

30. UN ECA *supra* note 1, P.40.

31. P.Kimunguyi, *Regional Integration in Africa Prospects and challenges for the European Union* (2006) available at <http://www.newcastle.edu...pdf> Accessed: 22/ 12/ 2009. P.16.

32. UNECA *supra* note 29, P. XVii.

This assessment highlights concrete drawbacks of overlapping membership.

Accordingly, overlapping membership results on:

- “Fragmented economic spaces and approaches to regional integration,
- Increased cost of membership in RECs;
- Unhealthy rivalry for donor funds;
- Contradictory obligation and loyalties for member countries;
- In consistent objectives and conflicting operational mandates;
- Duplicated efforts; and
- Reduce ability for regional economic communities to pursue coherent and effective integration programmes.”<sup>33</sup>

Overlapping of membership in RECs became one of the main challenges in integrating the continent as per specified in the Treaty of Abuja. If one member country belongs to COMESA and SADC or ECOWAS and UEMOA they in effect have different rules of origin of goods produced in the community based on some criteria. Therefore any product to be said product of a given community case in point is ECOWAS should comprises domestic value added 35 percent. Where as in UEMOA requires 40 percent domestic value; and in COMESA local value added should be at least 35 percent.<sup>34</sup> This is a simple example but shows the consequence of complication of overlapping of membership in more than two RECs. Moreover, member countries not only face setting harmonized criterion for rule of origin but also participating in different meetings, policy decisions, instruments, procedures schedules, trade documentation and became against trade liberalization goals.<sup>35</sup>

Member countries are with meagre resources which does not have the capacity to finance the ambitious integration projects. Thus, the proliferation of RECs puts a big challenge on the integration process; every RECs formulate its own integration programmes, laws, procedures and other policy directions. This doubled the challenge of integration in that in addition to member countries policy disconvergence, another area of legal regime will be created. It is obvious that such an activity makes the integration scheme too slow and fails to achieve its objectives.

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33. UN ECA supra note1, P.7.

34. UN ECA supra note1P 88-89.

35. Id. P. 41.

### **5.2.2.2 Non-ratification and implementation of protocols**

The AEC Treaty and RECs establishing treaties provide for enactment and implementation of protocols. Protocols are necessary detailed instruments to elaborate and outline treaty obligations in to concrete results. The AEC Treaty itself requires a number of protocols to be enacted so as to implement some objectives. In this regard, there are two major challenges. First, lengthy process of protocol ratification and second a problem of implementation.

Lengthy negotiation process of protocols hinders realization of the integration schemes. On top of that the scheduled phase of integration will be behind the modalities. Some countries also refrain from ratifying protocols. In this case DRC can be cited as an example which has never signed a single protocol.<sup>36</sup> The implication is that delays in signing and ratifying agreements and protocols contributes to a loss of momentum in the integration process.<sup>37</sup> There is also a gap between signing a protocol and putting it in to practice. Most countries sign a protocol as early as possible; however, they are usually reluctant to implement the protocol and fulfil their obligations. This is basically related to the fear of handing over some portion of state power to the supra-national institutions.

### **5.2.2.3 Lack of effective institutional set up to implement Treaty obligations**

Formulating ambitious programmes will have no effect if there is no institutional setup to implement it. Institutional setup is crucial issue to realize economic integration. In this section, institutional setup would be viewed at national, regional and continental level.

Member countries to the Abuja Treaty and RECs are expected to create a conducive environment to implement their treaty obligations. This has to be done concurrently in line with the economic principles and objectives of the AEC Treaty and should be incorporated in to national laws.

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36. *UN ECA supra note 1, P.49.*

37. *Ibid*

Moreover, states parties to the Treaty of Abuja oblige to legislate laws that help to enforce the Treaty. States parties to the Abuja Treaty should also establish relevant organ which is responsible to the integration agenda. In practice states parties to the Abuja Treaty are not fulfilling their commitment. As Fantu pointed out; "...African governments have ignored the importance of introducing policies and institutional requirements necessary for regional integration at national level."<sup>38</sup>

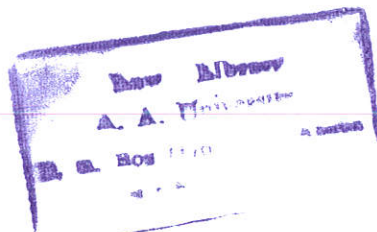
Similarly, the assessment made by UNECA on the progress of African integration asserted that the problem: "it lacks of national mechanisms to coordinate, implement and monitor integration policies and programmes as well as inability to make integration objectives, plans and programmes part of national development frame works".<sup>39</sup> It can be argued in line to this proposition that African states do not seem committed to speed up the integration scheme in due time. Even though some member countries have established dedicated Ministry for integration, compared to other ministers, these are under Staffed and budgeted. Some countries also assigned their Ministry of foreign affair in addition to its mandate to follow up integration programmes.

Even though one could not set a hard and fast rule as to whether integration programme needs a specific ministry or department, it is clear that well empowered and responsible institution is required to implement the objective of the Abuja Treaty. Practically, only 32 percent of African countries have a Ministry dedicated solely to regional integration, while 70 percent have more than one Ministry that serve as a focal point of regional integration (usually Ministry of foreign affairs and Ministry of trade and commerce.)<sup>40</sup>

38. Fantu, Supra note 17, P.128.

39. UN ECA, supra note 1, p.33.

40. UN ECA, supra note 1, P. 69-70.



Furthermore, problem of implementation of Treaty obligations at national level has diversified faces. Member countries lack commitment to change regional integration schemes in to their national legal frame works. Studies made on African regional integration identified key problems of the case in point. Member countries did not agree on the institutional set up, as to how to mainstreaming the integration agenda and allocating sufficient resources to realize and implement Treaty obligations. Institutional arrangement at national level has no uniformity throughout the region. Though some countries have established dedicated organ for integration, there are still countries did not address the problem. In this regard the sixth session of the committee on trade, regional cooperation and integration call up on member countries:

*To enhance coordination and implementation of regional integration at national level, member states who have not established specialized Ministries on regional integration are urged to establish dedicated structure, in accordance with Executive Council Decision EX.CL/Dec.437 (XIII) to coordinate and oversee implementation of regional integration agreements and programmes at the national level.<sup>41</sup>*

This communiqué underscores the necessity of having dedicated national institution to regional integration in Africa. On the other hand, some countries did not yet establish responsible organ for economic integration. By implication, if member countries do not show tangible commitment, vision of the integration agenda would be hindered.

The Abuja Treaty designed to be started the integration process from RECs. The first, second, and third phases of integration is need to be completed as per the modalities provided in the AEC Treaty with in RECs. The question here is whether the RECs provide sufficient institutional setup to implement their Treaty obligations or not.

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41. UNECA COMMUNIQUÉ, *Sixth Session of the committee on Trade, Regional cooperation and Integration (2009)*, P.3.

In the RECs as E.Okolo states rightly "... institutional structures of regional organizations are weak owing to their limited authority. Member-states retain the right to veto legislation approved by their representative at the regional level."<sup>42</sup> Institutions which have been established to implement REC Treaties and protocols do not have meaningful power to pass binding decisions against member states. Consequently the process, which aimed to create an integrated Africa, hindered by non-implementation of Treaty obligations.

Second problem in relation to this issue is that the overlapping of membership results in a number of institutions which are not well staffed and financed. To this end, D.Olowu argues that:

*... the existence of too many regional organizations, a tendency towards top-heavy structures with many political appointments, many failures by governments to meet their financial obligations to regional organizations, a reluctance by countries to hand over power and resources to regional executives... institutions compete and duplicate activities often holding rounds of increasingly costly meetings.* <sup>43</sup>

This proposition underlines the nature of institutional setup of the RECs. Accordingly, establishing a number of institutions results in duplication of integration schemes; create financial constraints and lack of convergence policies of integration. Member countries do not have skilled human power to contribute to the RECs sufficient time to prepare, to participate and contribute their role on the meetings of integration agenda.

The final goal of the Abuja Treaty is to realize an integrated Africa through gradual implementation of its Treaty objectives. This is to mean at the end of the sixth stage Africa will be transferred into political union. The third phase and following stages have to be implemented by supra national organizations of the continent. The main challenge here is whether or not member states to the AEC Treaty are well prepared to implement their respective duties.

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42. E.Okolo, *Integrative and Cooperative regionalism: the economic community of West African States* available at <http://www.Jstor.org/stable/2706636>; Accessed: 07/10/2009, P.121.

43. D.Olowu, supra note 18, P.11.

Trade liberalization needs effective institutional setup in case where business transaction has to be based on clear competition law. Activities of import and export cannot be implemented only through decisions of political leaders. Rather it needs competent organ, legal frame work and implementation mechanisms. When one looks the situation in Africa may argue against. There are yet unsettled issues associated with African societal structure. Among other things, the problem of legal diversity, culture and language.

Unless member countries create a fertile environment for integration, the vision of creating economically integrated Africa become meaningless. There are urgent issues which needs adequate answer to come up with a strong supra national institutions. The first point associated with language issue of the continent. In this context language barriers could be obstacles to create an integrated economy. Hence then, addressing language related issue is a necessary condition for effective realization of the vision of the Abuja Treaty. B.Ajulo describes the sensitively of language in the following manner:

*... [U]nlike political or economic sovereignty linguistic sovereignty cannot be easily surrendered or trade of. ...languages are related to the emotional feelings of their users and coercive efforts to make people give up their own languages for others usually fail.<sup>44</sup>*

The AEC Treaty under sub Article (1) of Article 106 basically recognizes Arabic, English, French and Portuguese. This appear to be a challenging issue for Africa to internalize the integration programme and would be an obstacle in creating effective supra national institutions.

Another challenging issue which has connection with establishing an effective institution to implement the AEC Treaty is the existence of diversity of legal systems. Institutions especially the African Court of Justice need a harmonized legal instrument to play its significant role in the integration process. In this case M. Alhousseini observed the problem of having diverse legal system. As he notes, « the diversity that prevailed among African laws is not only handicap for the

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44. B.Ajulo, myth and Reality of law, languages and International organizations in Africa: the case of African Economic Community (1997), available at <http://www.jstor.org/stable/745667>. Accessed: 27/08/2009 p.39.

creating an integrated economic area, but it also accompanied by the legal and judicial in security resulting from obsolete nature of applicable laws which discourages private sectors on the one hand.»<sup>45</sup> These two very interesting issues have to be addressed timely to facilitate the intended integration scheme.

To some the AU is not in a strong position to speed up the integration schemes. Among other things, it did not reconcile programmes of the African Union with RECs, it fails to establish supranational institutions like the PAP and ACJ, to pass legally binding and enforceable decisions against member states.<sup>46</sup> The continent wide integration process and establishment of institutions is not as effective as intended in the AEC Treaty. Member countries are reluctant to cede portion of sovereignty to super-state institutions. There is still a strong argument on the role of AU commission and transferring it to authority.

The status of AEC and REC Treaties in light of national laws is not yet sufficiently addressed. The Abuja Treaty does not empower the African Court of Justice to make judicial review when it is necessary. These all lead to frustration and wastage of resources on non-effective integration agenda. This has proved when the departments of AUC pay a visit in RECs which identifies “in adequacy of coordination between the Pan Africa institutions and lack of cohesion among partners in the face of the many development partners.”<sup>47</sup>

### **5.2.3 Economic Challenges**

It is a common knowledge Africa is the poorest continent in the globe. Economic challenges in African integration have multi-facets. These are: fear of loss of revenue, fear of dominance in trade financial constraints to fund projects, lack of effective mechanism for compensation (cost and benefit of integration), limited commercial products for the intra-Africa trade, the impact of foreign aid on indigenous schemes of integration and physical integration.

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45. M. Alhousseini *understanding the organization for the harmonization of business laws in Africa* (2nd ed. 2009), P.12.

46. UNECA, *supra* note 1, p. 65-66.

47. AU *supra* note 11, P. 23.

In respect of the fear of loss of revenue member countries to the AEC Treaty depend on trade taxes to finance public expenditure. Consequently, African countries have been reluctant to eliminate barriers to intra community trade owing to a fear of a significant revenue loss.<sup>48</sup> In line to this statement, Alemayehu and Haile argue "reducing trade barriers in economies where tariff revenue is one of the most significant sources of government revenue complicates"<sup>49</sup> trade liberalization. The Abuja Treaty stipulates elimination of trade barriers results on enhancement of integration schemes and if member countries believe removal of tariff barriers as revenue loss, it hampers the vision of integration. Hence, revenue loss is still challenging issue of the integration scheme.

Funding integration projects is another challenge of the continent. African countries do not have enough financial resources to finance the planned integration projects. Member countries to the AEC Treaty could not adhere to fulfil financial obligations to the RECs which are member. According to the assessment made by UNECA on progress of African economic integration, it made clear financing regional integration has remained a major challenge to the continent so as to realize the AEC.<sup>50</sup> The study further argues "if regional economic communities were well financed and thus efficient, and effective the AEC could be realized much more quickly."<sup>51</sup> The cost benefit of integration is also still arguable. Though major arguments support integration as it has a log effect benefit, from short view point there are obvious costs. The case in point is here do member countries setting up mechanisms to recompense losers of integration schemes. In Africa among other things, the cost of tariff cuts, crime prevention crossing borders, limits on national sovereignty and culture due to integration need to be addressed.<sup>52</sup> Addressing such costs of integration is a crucial issue among African countries. Trade dominance is also a challenge in Africa. Some countries are dominant in exporting goods in to intra-Africa market. The data collected by UNECA which shows share of intra-REC exports make

48. UNECA, *supra* note 29, P. 10.

49. Alemayehu Geda and Haile Kibret, *Regional Economic Integration In Africa: A Review of problems and prospects with case study of COMESA (2002)*, available at <http://www.soas.cauk/economics...pdf>; Accessed: 28/08/2009, P.11.

50. UN ECA, *supra* note 29, P.79.

51. *Ibid.*

52. *Id.*P.-85-86.

plain that in the CEN-SAD, 82 percent of exports came from Nigeria (28%) Coted'voire (22%) Libya (9%), in SADC 64% percent of exports provided by South Africa, in ECOWAS intra-community trade dominated by Nigeria (44%) and Coted'voire (34%) in COMESA Kenya has (29%) share in intra-community trade Libya (15%) Egypt (13%) Zambia (11%), in UMA exports were dominated by Tunisia (37%), Libya (30%) and Algeria (23%), in CEMAC exports came from Cameroon (77%), in EAC, from Kenya (79%), in IGAD Kenya provide (59%) export, in CEPGL, DRC provided (66%) of the exports within that community.<sup>53</sup>

This is clear evidence currently there are countries which have lion share in the intra-community trade. Hence, formulating an effective compensation mechanism helps to address fear of dominance and should be priority agenda of the AEC. Indeed, as Alemayehu and Haile concludes "...even if gainers agree to compensate losers in principle, setting up an agreeable mechanism and implementing it in a sustainable manner, is a complex exercise."<sup>54</sup>

In Africa trade is mostly depends on primary goods of agricultural products. These limited diversifications of trade weaken the ambitious plan of integration. Trade liberalization in Africa pre-supposes the existence of tradable goods. In practice African countries failed to produce variety of quietly goods which could be exported to the entire continent and international market.

In words of P.Kimunguyi in Africa intra-community trade faces key challenges:

*A number of factors have contributed to the poor (inter/intra) African trade performance. Firstly, most countries in the region basically produce raw materials, which are less competitive in the international market. Sometimes they are raw materials for which there is virtually no demand elsewhere in Africa. Secondly, many African countries have not diversified their products hence few commodities make up the bulky of their exports.<sup>55</sup>*

53. UNECA: Development in Intra-Africa Trade (2009), P.3.

54. Alemayehu and Haie supra note 49 P.12.

55. P.Kimurguyi, supra note 31, p.10.

This proposition identifies one of the key challenges of the continent in production area in which Africa depends its trade on Primary products. This hampers the theory of comparative advantage. African economy being based on agriculture products many not have opportunity to compete in the global trading arrangements.

Infrastructure is one of the key prerequisites to accelerate economic integration and facilitate trade. In this regard though integration requires effective regional infrastructure transport, communication and energy; in practice Africa did not well connected. When one take the transport sector, the survey made by UNECA asserts “(T) transport costs are among the highest in the world, which means a high cost of doing business and products that are not competitive in international markets.”<sup>56</sup>

This document further provides an empirical example in that “shipping a car from Japan to Abidjan costs one thousand five hundred dollar (\$1,500) (including insurance); whereas, shipping that same car from Addis Ababa to Abidjan costs five thousand dollar (\$5000).”<sup>57</sup> This statement shows degree of the problem in that lack of adequate infrastructure increases cost of doing business and will hinders the African integration scheme. This empirical data underlines the importance of infrastructure to have integrated economy, in order and hence fulfilment of physical integration in Africa remains being core functions of member states.

The last point which related with economic challenges is the problem of financial aid. As has been said, African countries are not in a good position to finance their integration programmes. The question is here what would be role of donors in the integration agenda. In this case there are two problems. Firstly, donors do not provide sufficient fund to the launched programmes.

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56. UNECA supra note 1, P.132.

57. Ibid.

Secondly, donors need to gear integration programmes in light of their regional or national interests. Fantu explains this issue by taking the SADC experience as follow:

*One of the most glaring weaknesses of SADC had been its excessive dependence on external funds. By 1990, this dependence had reached a critical threshold with more than 90 percent of financial requirements coming from foreign donors. The dependence on external assistance to finance its projects placed SADC at the mercy of donors and there by rendered it unable to determine its own programmes.<sup>58</sup>*

This was not only basic problem of SADC but also other RECs which do not have sufficient budget to fund community projects. Therefore, the problems of aid need to be settled in long run so as to implement of the AEC Treaty, *interalia*, Africa to be self-reliant. Aid depends on calculation of cost and benefit in one hand and it could not be sustainable means to scale up the vision of African economic integration. The AU understands magnitude of the matter and has intended to formulate policies in order to tackle the problem of financing integration projects. To this end, AU noted: “African integration and African union cannot be funded solely by unreliable financial contributions of member states or outside support”<sup>59</sup> Moreover, it explains rightly, external assistance cannot be available means to support integration.<sup>60</sup> To rectify financial constraints the AU/AEC should put formulated policy in place so as to generate sustainable income from its member states.

### **5.3 Prospects of the implementation of trade liberalization in the AEC Treaty**

Establishing an economically integrated Africa logically speaking has always been key agenda of most member states of the Abuja Treaty. Though there is disparity in the level of the integration process, member countries have given their consent by signing and ratifying the AEC Treaty and subsequent protocols.

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58. Fantu supra note 17, P.140.

59. UNECA, supra note 1, P.65.

60. Ibid.

However, the efforts made to integrate Africa have not been successful as stipulated in the Treaty. None the less, this does not mean there is no prospect of integration. This section is devoted to elaborate and discuss, *interalia*, the main prospects for the implementation of one of the key mechanism stipulated in the AEC Treaty liberalization of trade.

### **5.3.1 Economic integration as a necessary strategy**

Studies on economic integration assert that integration could be a viable option to address socio economic problems of a given region. As the thesis discussed in section 2.3 of this paper the merits of regional integration outweighs its demerits. In the African context, integration is a key survival strategy that helps to solve the multi-facet continental problems. The current challenges of the continent need timely solution. A survey made by the UNECA on the progress of integration makes it clear that economic integration could solve basic challenges of the continent. According to the study, integration can firstly help African countries over whelm constraints arising from small domestic markets so as to reap the benefits of scale economies, it could create fertile ground for stronger competition, more investment and overall can raise productivity and diversify production and export.<sup>61</sup>

Secondly, integrated economies is a remedy to globalization precluding Africa from being playing its role and get benefit in the international arena, as it being vital instrument for Africa to be part of the globalization. Member countries of the AU/AEC are not able to represent the continent and put forward their position collectively. In this case, the European Union is best example which has common commercial policy against non-member of the union. If Africa has had similar position in international arena, it would not have been marginalized. The study made by UN ECA underscores "cooperation can increase countries bargaining power and visibility."<sup>62</sup> Africa has to be united to get fair market access in the international market. Economic integration in Africa encourages member countries to have common commercial policy negotiate collectively for the common will of the continent.

61. UNECA, *supra* note 1, p.21.

62. *Ibid.*

If member countries go contrary to the agenda of economic integration, they will compute each other by ignoring their common interest.

Thirdly, which emphasizes the importance of integrated economy enables member states to utilize their resource for the continent socio economic development. Member countries share same resources and problems. Many African countries share such as rivers and problems such as HIV/AIDS and low agricultural productivity.<sup>63</sup> On the other hand, member countries endowed with diversified resources. This is an opportunity which helps member countries to integrate their economy in trade, energy, transport and etc. In other words, as the survey made by UNECA explains rightly, “ by pooling their resources and exploiting their comparative advantage, economically integrated countries can devise common solutions and use resources more efficiently to achieve better out comes.”<sup>64</sup>

Economic integration results on inter dependence among member countries. By implication, member countries may not go to wage war if difference a raises. Integration also helps as a means for prevention and conflict resolution. To this extent, regional integration could be taken as a viable option to resolve the protracted war and civil strife of the continent.

In nutshell, African integration should be accepted as a survival strategy. This emanates from internal and external pressure. The internal pressure is that African countries hit by economic crisis which needs well managed cooperation to rectify it. The AU/AEC institutional structure calls for cooperation and creating self-reliant continent. The external pressure is globalization. Unless Africa integrated and created economic blocks, member countries cannot compete in international market. Therefore, integration basis on objective grounds of the African socio-economic situation. This concept has been reflected on the

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<sup>63</sup>. Ibid.

<sup>64</sup>. Ibid.

document which deals about status of integration in Africa in the following manner:

*...the new global crisis namely: food, energy and financial is clear indication that there is a need to strengthen the coordination among the African community in order overcome these challenges and one country cannot face it alone. This constitutes an opportunity for African leaders to speed up the integration process by revisiting the method adopted so far towards the integration and removed of all obstacles that hinder integration, committing strongly to reach these goals and provide more resource to the AU to implement the continental programmes.<sup>65</sup>*

### **5.3.2 Formulating Minimum Integration Programme(MIP)**

Under the auspices of the AUC, MIP is formulated based on the priority areas of RECs and came in to effect in July 2009. The MIP is basically backed by objective grounds of every RECs in Which what they have made in practice and the key challenges of each RECs. The MIP is a key instrument which helps speeding up the integration process. The MIP provides top priority and sub priority of sectors and sub sectors of the RECs, implementation, monitoring and evaluating mechanisms.

As indicated in the MIP document, the priority programmes of RECs more or less are stated as follow:

- « Free movement of persons, goods, services and capital (100%),
- Peace and security (100%),
- Infrastructure and energy (100%),
- Agriculture (100%),
- Trade (86%),
- Investment (86%) and,
- Statistics (86%). » <sup>66</sup>

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<sup>65</sup>. African Union, *Status of Integration in Africa (SIA) (2009)*, p.120.

<sup>66</sup>. AU *supra* note 11, P.25.

These programmes are necessary prerequisites to establish an integrated economy. Without harmonizing economic policies and foster free market, integration may not have a meaningful result. Besides; lack of peace and security has been a key challenge in Africa. Hence then, prioritizing these sectors show their importance to encourage economic cooperation. Without having physical integration, *interalia*, conducive road, industry, movement of goods and persons will not be effective.

Though do not have the same importance for time being as the above numerated sectors, political affairs, science and technology, and social affair have been also given emphasis in the MIP.<sup>67</sup> Integration cannot be effective without having democratic governance, rule of law and establishing accountable government. So, member countries seem to consider political issue as a necessary condition for the ongoing integration scheme. The percentages indicated in the above mentioned sectors shows the level of priority which the RECs, in their entirety give to every sector and subsectors. According to the MIP, monetary policy, development financial market, and fiscal policy does not get priority of priorities.<sup>68</sup>

The MIP articulated in a way to achieve two key goals at the RECs and continental level. To that end, the first phase of the MIP (2009-2012) designed to establish the Customs Union in every RECs but also to lay the foundation to a continental Customs Union.<sup>69</sup> When this examined in the light of the AEC Treaty Article 6 (2) (c) shortening the time frame which provides for the establishment of Custom Union in between 2009-2019. The AUC listed down additional RECs priority of sub sectors to be achieved and named by order of importance in the following manner, *interalia*;

- « Tariff barriers (100%);
- Non-tariff barriers (100%);
- Customs procedure (100%);
- Free movement of persons, goods, services and capital (100%);and,
- Rules of origin (86%); »<sup>70</sup>

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67. Ibid.

68. Id, P.26.

69. Id.P.26.

70. Id. P. 27-28.

The African economic integration formulated in a manner to be implemented through trade liberalization. The above mentioned sub sectors, could be key impediments in making achievable objective of the AEC Treaty.

The AUC has given an overall role of coordinating, monitoring and evaluating the MIP and assisting RECs as well as other integration parties. Accordingly, detailed plan of action, indicators, and check list has been provided. The integration scheme is one of the top agendas of the continent. In this regard, the report submitted to the sixth session of the committee on trade, regional cooperation and integration underscores the issue in which it has got attention on the political leadership: "... minimum integration programme (MIP) which was adopted during the fourth conference on African Ministers in charge of integration, held in Yaounde, Cameroon in may 2009 and endorsed the AU Assembly in Sirte, Libya, in July 2009."<sup>71</sup>

The MIP as indicated in the document stipulates objectives on every sector which has to be achieved. Among other things, when one critically looks the trade sector, the first objective of MIP is gradual elimination of tariff barriers in the RECs.<sup>72</sup> This has to be done with in a fixed time frame. The second objective deals about elimination of non-tariff barriers among member countries of the AEC Treaty.<sup>73</sup> It encourages listing down of non-tariff barriers and member countries obliged to make it open to be detected by every member country. The third objective underlines the importance of simplification and harmonization of rules of origin. <sup>74</sup>

The fourth objective deals with the necessity of signing of partnership agreements between the RECs.<sup>75</sup> This helps to solve the overlapping of membership, duplication of programmes, conflicting projects. The last objective regarding to the trade sector is it talks about significance of facilitation of customs procedures and creation of a customs union in each RECs with a common external taiff.<sup>76</sup> This objective urge member countries

71. AUC, Report presented on the sixth session of the committee on Trade, Regional cooperation and integration (2009), P.7.

72. AU supra note 11, P. 28.

73. Ibid

74. Ibid

75. Ibid

76. Id. P.30.

of the RECs to harmonize, simplify and standardize their custom formalities and procedures. Moreover, it goes to the extent of establishing a single custom document valid for all declarations at the borders. There are crucial issues need to be addressed timely among other things, compatibility with WTO rules, tariff levels, conformity, alternative source of revenue, administration modalities of the CET, distribution of revenue as well as categorization of products.<sup>77</sup> Establishing common external tariff results on loss of revenue. Consequently, member countries need to formulate compensation scheme. Besides, detail rules should be adopted to govern the huge intra-continent import and export activities.

When one made reference to the summery of the MIP, the third stage which is provided under the Abuja Treaty broke down it in to three phases. Accordingly, objective of the first phase (2009-2012), second, (2013-2016), and third phase to be implemented between (2017-2020).<sup>78</sup> In these three phases concrete results expected from the RECs at regional level as well as at the end of third phase at the continental level, elimination of tariff and non-tariff trade barriers, harmonized rules of origin at the continental level and continental Customs Union with continental common external tariff. To follow up these projects clear distribution of activities, projects and programmes of the MIP has been made among the stake holders according to their responsibility in implementation. These are the grouping of two or more RECs, AUC and individual RECs. When one query whether the MIP is necessary, indispensable for the realization of the AEC or not. This MIP document concludes:

*The certainty is that the MIP seems not only necessary but prime necessity if we intend to combine our efforts and coordinate those activities of the regional economic communities. ...(T)he non simultaneousness and difference in action carried out by the RECs have caused disparity between their degree of integration...are focusing of activities of the RECs around priority sectors identified by common agreement should be envisaged among them and the African Union, guarantor of the implementation of the Treaty, in order to speed up the integration process of the continent under the form and denomination of a Minimum Integration Programme. <sup>79</sup>*

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77. Ibid.

78. Id.P.38

79. Id.p. 48

Even though there are impediments, the prospect of implementation of trade liberalization stipulated in the AEC Treaty seems attainable looking it in the light of the MIP. The MIP comes up with a new approach of implementation of the Treaty. Firstly, the MIP can be considered as a revision of the Abuja Treaty. The reason is that it shortening the time frame of third stage by breaking it in to three phases. Secondly, the AEC Treaty provides general principles, objectives and under takings with few detail legal frames. Contrarily, the MIP identified priority sectors and subsectors in order of their importance. Moreover, it proceeds with specified time frame which activity has to be implemented in a specific period.

Thirdly, the MIP identifies the key stake holders and their mandates. In this regard it distributes the mandate among the regrouped RECs, AUC and RECs. Fourthly the MIP underscores the importance of creating two zones. Consequently, COMESA, SADC, EAC, IGAD in one zone and ECOWAS, ECCAS, CENSAD, and AMU on the other zone to be regrouped in order to speed up the process of integration as scheduled. Fifthly, a system is arranged for the purpose of coordinating monitoring and evaluating the integration scheme.

Lastly, challenges and constraints with their possible solutions singled out. These all leads to conclude the MIP is a new approach which has the capacity of speeding up the continental integration agenda.

### **5.3.3 Feasibility of integration**

It is Common knowledge Africa representing around one billion people. This is an important prerequisite to have intra-Africa trade which have sufficient market. This could be a golden opportunity among the African people to establish trade ties. Industries across the continent will have market access if member countries are in a position to take this golden opportunity to enhance the integration scheme. Hence forth, needless to say since it is a clear matter size of population determines market accessibility in the continent.

The second point which can be taken as an opportunity is the natural resources of the continent. African as a continent has endowed with enormous natural resources. Though natural resources are not evenly distributed, they could be source of comparative advantage. In line to this argument the UNECA policy research report makes explain that: "African has abundant energy resources-oil, coal hydroelectric city, natural gas, and biomass and other renewable sources."<sup>80</sup> Besides, African has a fertile soil, rich mineral deposits which have contributions to the scheme of integration.

If member countries properly exploited natural resources of the continent, they can scales up the integration agenda. Natural resources like water create interdependence among member countries. In this case we can take a classical example of the Nile River. There are ten upper and lower riparian countries which have common interest on the water supply of the region.

If member countries committed to work hand in hand and formulate policies which govern the distribution of water resources they can easily integrate their economy. Therefore, the fate of the continent is not dark if member countries diversified their products, properly use their natural resources, and promote intra-Africa trade. Hence, the huge population size and natural resources of the continent can be taken as a marvellous opportunity to create an integrated continental market.

#### **5.3.4 Geographic Proximity, shared values and common interests**

Geographic proximity is a necessary condition to establish a regional integration. In most cases, economic blocks being established among countries which have geographic proximity and as a result the distance that goods need to travel among member countries is short. Consumers tastes are likely to be similar. Furthermore, distribution channels can be easily established in adjacent member countries.

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80. AU supra note, P.155.

Neighbouring nations may also have common history as well as interest that lead to be more willing to harmonize their policies. Evaluating the African Situation in the light of this proposition appears to be true that the continent can take geographic proximity as a prospect. The assessment made by UNECA asserted that:

*... several factors should be considered geographical proximity, economic interdependence, commonality of language and culture, and history of cooperation and shared resources. Geographical proximity is the most common important in terms of shortening the distance for promoting effective cooperation and integration among participating countries.<sup>81</sup>*

When one made a reference to the African situation, geographical proximity has to be taken as a prospect. Shared values and common interests of the African people reflected in various treaties and declaration. The concept of shared values and common interest may be defined in various ways. However, it is sufficient to say, if a given people have communal interests and challenges said to be they share common values and interests. Founding fathers of the OAU under the preamble of the same document proclaimed: “inspired by a common determination to promote understanding among our people and co-operations among our states in response to the aspiration of our peoples for brotherhood and solidarity...”<sup>82</sup> By the same token, Constitutive Act of the African union<sup>83</sup> and AEC Treaty<sup>84</sup> on their respective preambles provides for Pan Africanism, Unity, solidarity, common vision of a united and strong Africa. In this context, African people face almost similar problems, *intaralia*, poverty, disease, lack of good governance. They also being, marginalized from the international trade arena.

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81. UNECA, supra note 29, P. Xxiii.

82. Charter of the Organization Africa Unity, Addis Ababa, 23 May 1963.

83. Constitutive Act of the African Union Lome, 11 July 2000, came in to force 2002.

84. Treaty Establishing the African Economic Community, Abuja, 3 June 1991.

A research has been made on the concept of shared values and common interest of African countries. According to this study:

*Shared values and common interests have both structural and psychological elements which ensure collective development of the African people under conditions of good governance at continental level and constructive engagement with the rest of the world. They serve as the basis of mutuality and reciprocity in Africa's self-discovery and strengthen of re-invigorated pan African institution.<sup>85</sup>*

Shared values and common interests as said contained on various declarations such as Kampala document, OAU declaration on un constitutional change of government on the other hand, a common interests are derived from the challenges facing the continent as a whole, namely, it's over dependence on the external world and under exploitation of its enormous development potentials at national, regional and continental level.<sup>86</sup>

### **5.3.5 Efforts of the AU, RECs, and other Partners**

Institutions which are responsible for the realization of the AEC Treaty expected to play a pivotal role on the process of African regional integration. Despite the facts that there are limitations on the responsible institution for integration, the AU, RECs and other partners to the African regional integration have produced tangible results. The author conducts interview with Mr. Islam Swaleh, Policy Coordination Officer Expert in Economic Integration and Regional Coordination in the African Union.<sup>87</sup> The first question focuses on efforts of AU and REC in implementing the AEC Treaty. According to Mr. Islam there are remarkable achievement on side of the AUC and other partners. He further argued, the AU recognizes only 8 RECs to limit duplication of conflicting programmes. Accordingly, COMESA, EAC, ECOWAS, UMA, ECCAS, CENSAD, SADC and IGAD are categorized as building blocks. The second question relates to whether or not there are

85. AU, Study on African Union government towards the United States of Africa (2006), available at <http://www.african-union.org/doc/study-on-AUGovernment2006pdf>. Accessed:: 09/01/2010 .P.6

86. AU study, supra note 85, P.8.

87. Interview with **Mr. Islam, Swaleh**, Policy Coordination Officer Expert in Economic Integration and Regional Integration Addis Ababa, 8 January 2010.

challenges which hamper the AEC. In this issue, he admits existence of challenges and underlines the impact of challenges which diminishes effectiveness of the institutions, *interalia*, overlapping membership, non-implementation of protocols, lack of coordination/unnecessary competition among RECs hiding information by the RECs, lack of peace and security, lack of political will, and outsiders cacophony.<sup>88</sup>

The third question was directed to whether Africa has prospects of integration or not. According to Mr. Islam in spite of these limitations, there are continuous efforts made by the AUC, RECs, and international organizations to achieve objectives of the AEC Treaty.

As Mr. Islam, explained AU Organizes conference of African Ministers in charge of integration since 2005. A protocol also adopted to coordinate efforts of integration. This protocol gives a mandate the AU to supervise functions of the RECs. Mr. Islam further argues the assessments made on status of integration in Africa (ARIA I, II and III) enable to overview the progress, identify achievements and key challenges. Besides, follow up report made based on the recommendation of the Ministries in charge of integration.<sup>89</sup> The continuous meetings are essential forums which helps to make recommendations, to find difficulties, evaluate level of implementation and to come up with other recommendations. Alongside the AUC effort, the UNECA, ADB discusses issues mainly focuses on integration progress report.<sup>90</sup> Mr. Islam concludes by saying that as long as concept of integration is communicated to the African people effectively; since they have common interest the integration scheme would be implemented.

Though not decisive, overlapping of membership is one of the key impediments to the realization of African economic integration. In this regard there are two key achievements. Firstly, the African union only recognizes eight RECs as building blocks.<sup>91</sup> This discourage member countries not intend to conclude agreement to create more RECs.

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88. Ibid.

89. Ibid.

90. Ibid.

91. AU, *supra* note 65, P. 116.

In effect, member countries will focus on their primary obligation to facilitate the integration scheme. Secondly, RECS have started to enter in to joint tripartite agreements.

This enables RECs to plan and implement projects collectively. As a result harmonization of policies becomes possible. The SADC – COMESA – EAC – Joint tripartite summit can be take n as remarkable achievement.<sup>92</sup> This Joint Tripartite summit calls for coordination, harmonization of economic policies with a prime objective of speeding up the continental integration scheme.

Some regional efforts can be taken as a bench mark of effective progress of integration.

Case in point is the EAC, which is one of the RECs trying to implement its treaty obligation timely. As reflected in the report which assesses the status of Regional Integration in Africa States:

*The prospects are high that the region would realize its great potential to turn in to an epicentre around which a wider community could be built. Already, with entery of Rwanda and Burundi, the resource base of the community has been raised with exciting prospects for rapid progress towards EAC's transformation in to a middle income economy by the year 2020. Indeed, the East African Community is strategically located to become the economy hub under an Eastern and Central African economic entity. <sup>93</sup>*

This is a remarkable achievement can be a lesson in to other RECs to implement their respective treaty obligations, objectives and strengthening their institutions accordingly.

The above mentioned efforts lead to a conclusion that the AU, RECS, and partners like UNECA, ADB and etc though not sufficient, are on the process to implement integration schemes.

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<sup>92.</sup> UN ECA, *Continental integration agenda...state of play (2009)*.P.7.

<sup>93.</sup> AU, *supra note*, 65. P.98.

As indicated in the MIP document, detailed projects and programs as a priority area are identified. Besides, AU, RECs and grouped RECs empowered with some significant role to implement the AEC Treaty. Therefore, continuous efforts of AU, RECs and partners could be a prospect to the implementation of the objective of Abuja Treaty up on the stipulated time frame.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

The thesis has clearly examined issues associated with regional economic integration with special reference to trade liberalization as a necessary condition or mechanism to the realization of the AEC. In this study a central analysis was made based on the AEC Treaty and practices of RECs as well.

In order to address the research questions, the study has framed, *interalia*, the following objectives in its introductory section:

- Make analysis on the implementation of trade liberalization as a means for the realization of the AEC;
- Examine whether or not the process of regional economic integration in line with the AEC Treaty modalities; and
- Identify the main challenges in the process of regional economic integration and analyze the prospects which could be essential factors for full realization of the milestone objectives of the AEC Treaty.

#### 6.1. Conclusion

Regional economic integration is a complex system and hence with it is difficult to reach a consensus on every issue of African regional integration schemes. Nonetheless, based on the discussion made, the following major findings are identified.

- This research argues that regional economic integration in Africa is considered as a survival strategy. Studies made on regional economic integration asserted that benefits of economic integration outweigh its costs. Globalization imposes challenges on member countries of the AEC Treaty in which make it difficult to address their economic problems unilaterally. African States failed to act and bargain collectively on their common interests and problems. Furthermore, intra-regional and continental trade remains too slow. To this end, member countries need to change the current situation so as to speeding up the integration schemes. On top of this, lessons drawn from countries which have

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portion of sovereignty in to supra-national authority, political will to implement Treaty obligations and physical integration (infrastructure, energy, etc). This study made plain that African countries which are party to the AEC Treaty are not in a position to fully support the integration agenda. This has been reflected in various aspects. Member States and their leadership lack political commitment, and jealously guarded their sovereignty. Consequently, the continent still lacks fulfilment of prerequisites of regional economic integration and as a result the process did not reach at irreversible stage.

- Multiplicity and over lapping of membership on various RECs is a common feature of African countries. The AEC Treaty divides the continent in to five zones. However, in practice, more than 14 RECs have been established. Though the AU only recognizes eight RECs, it did not pass a decision which prohibits being membership to more than one REC. As a result this led to complicate coordination of activities, create budget constraint to finance projects and administrative costs of integration.
- This study made analysis on the institutional setup of supra-national and regional institutions. Supra-national and regional institutions are not fully empowered to execute the integration programmes in to actual result due to lack of specific mandate, budget constraints and enforcement mechanisms. The AEC institutions are not fully engaged in the integration agenda. The PAP and ACJ are not in a position to take action so as to accelerate the integration process. This make difficult monitoring and evaluating implementation of Treaty obligations on every sector which has been identified as initial projects to realize the AEC. On the other hand, if Heads of State and Governments has to decide on every trade issue, this makes them busy since they involve in detail matters rather than focusing on strategic issues. Disputes are inevitable on the implementations of Customs Union and intra-community trade. Hence, effective mechanism has to be put in place.

established an integrated economy had recorded tangible benefits, *interalia*, economies of scale, strong intra-community trade, and collective bargaining power in the international trade.

- It has been clear that countries which have established regional economic integration did not adopt only a single theory and preferred pragmatic approaches. Mostly functionalisms with gradual approach, supra-nationalism and intergovernmentalism of integration have got priority over other theories and approaches. The AEC Treaty provides for an approach of gradual integration out lines modality of integration base on sectoral coordination of projects and harmonization of economic policies. Hence then, in Africa immediate approach of integration has not get priority at regional and continental level.
- The study evaluated the status of regional economic integration in Africa in the light of the AEC Treaty modalities. Reference has been made to the eight RECs which have been recognized by the AU, namely: IGAD, SADC, CEN-SAD, ECOWAS, COMESA, ECCAS, EAC, and UMA with the exception of IGAD and CEN-SAD all are clearly a head of in terms of the time frames set by the Treaty to create a customs union in each REC by 2017. EAC has already reached at the level of Customs Union. Despite the fact that there are tangible results, intra-community trade remains very slow, sectoral integration like infrastructure, energy did not develop as much as the Treaty aspires. Though some RECs have completed phase one and two, all RECs are not being in the same level. In this regard, IGAD and CEN-SAD are behind the scheduled time frames which could be an obstacle to realize the planned integration schemes up on the agreed time frame.
- Findings of the study examine the necessity of prerequisites for regional economic integration. In this context the research underscores integration to be achieved some minimum conditions has to be fulfilled. Amongst these are: Peace and Stability, coordination and harmonization of economic laws and policies of member countries, transfer of some

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- The integration agenda which have been launched lacks popularization at national level. Among others; public at large, civic society and private sector has not been made main actors of the regional integration agenda. As the study made plain member countries of the Abuja Treaty did not have strong institutional arrangement at national level. In this context, we can take indicators which help us to examine whether member states are really committed for integration or not. In this regard there are key impediments, *interalia*, lack of professionals, allocating insufficient operational budget to the ministry or department dedicated for integration, being reluctant to transfer integration goals in to national plans, and national parliaments of some countries did not deal actively on issue of integration. Besides, member countries seems reluctant to ratify and implement protocols provides for liberalization of trade. Political leadership of member countries are not in a position to address legal issues of integration, issue of cede some portion of sovereignty to supra-national institutions, and determining status of continental and regional Treaties on respective member countries national legal system. Furthermore, the integration agenda seems to be top down model and as a result which lacks public support at the grass root level.

## **6.2. Recommendations**

Through a detailed analysis on the implementation of AEC Treaty with special reference to challenges and prospects the study has identified a number of issues. The recommendations addressed here present some options for implications and practical interventions to implement the of AEC Treaty.

- It is essential to reach consensus among member countries on the significance of regional economic integration as is a viable option for economic growth of the continent. Accordingly, member countries should show their actual commitment in ceding some portion of their sovereignty to supra national institutions, main streaming the integration agenda, transfer integration schemes in to national policies and set out mechanisms to analyze cost benefits of economic integration.

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- Regional economic integration needs fulfilment of some preconditions. Among other things, the minimum prerequisites are: Peace and security formulating, coordinating and harmonizing national policies of member countries. Therefore, member countries to the AEC Treaty should act accordingly to actualize the vision of establishing an integrated economy.
- An effective dispute settlement mechanism at regional and continental level is needed. In practice, inter and intra state conflicts hinders the African integration agenda. A typical example case in point is IGAD which has been behind the regional integration due to the conflict in the region. Conflict and instability among other things, affects intra-community trade. Hence, member countries and AU should act in a manner to resolve all conflicts which have continental impact in realizing integration so as to foster the process of economic integration.
- Though the AU recognizes only eight RECs, in practice there is a trend of establishing additional RECs. Multi adherence to several RECs and overlapping of membership in Africa became a crucial problem. Consequently, this creates critical problems in allocating resources, coordination, and harmonization of policies. Furthermore, member countries do not have sufficient financial position to fund various projects. It also complicates the integration scheme when member countries reach at stage of Custom Union while being membership to two REC. In this case, the European Union does not allow regional groupings which have the effect of hindering the objective of regional integration. Therefore, member countries to the AEC Treaty should enact binding law which prohibits establishment of additional RECs and to keep the status quo.
- Implementation of decisions, treaties and protocols needs commitment of member countries and effective institutional set-up of supra-national authorities. In this regard, competent institutions are highly needed at national, regional and continental level. Among other things, the African Court of Justice should be empowered with meaningful jurisdiction to

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adjudicate commercial disputes arising in the continent. Member countries at national level should establish institutions dedicated for economic integration with meaningful power. Moreover, regional and continental institutions of AEC/RECs have to be empowered so as to pass binding decisions against member countries which are alleged violate the AEC Treaty.

- AEC Treaty provides for sectoral integration like in trade, energy, and infrastructure. In Africa intra community trade is too slow, transportation is too cost compared with other integrated economies. Therefore, member countries should make effort to rectify the constraints on sectoral integration in order to speeding up the integration programmes.
- Export in Africa mainly depends on primary goods. Studies made on this issue revealed that export of some countries depends only on three commodities of the overall their exportable goods. Therefore, member countries should work hard to diversify their tradable commodities so as to expand intra-community trade.
- Integration can only be effective if public at large, civic societies and private sector actively involved in the integration agenda. Therefore, member countries should empower their parliaments and other institution for the sole purpose of popularizing the integration agenda.
- Financing integration projects became main constraint of the member countries. Donors do not provide necessary and long lasting fund to finance integration projects. Hence with, mechanisms have to be put in place to rectify budget constraints. Therefore, member countries should introduce mechanism to get sustainable sources to fund their common projects.
- Harmonization of legal system in general and commercial codes in particular is needed to promote trade liberalization. Competition law is

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essential in order to promote intra-community trade. Besides, setting rules and procedures to compensate losers of integration become very important. Hence, member countries should enact laws which make smooth the wave for integration.

- The AUC, UNECA, ADB and the RECs should hold meetings to address problems timely and speeding up the continental integration scheme. Continuous assessment, monitoring and evaluating the status of integration has to be made regularly to overcome encountered problems. Member countries should address the notable challenges which have the effect of hindering the vision of actualizing continental integration up on the stipulated time frame.

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